News and Views

Inter-Species Embryos and Human Clones:
Issues of Free Movement and Gestation

Jacqueline A. Laing*
Senior Lecturer in Law, Human Rights and Social Justice Research Centre,
London Metropolitan University

Abstract
The United Kingdom’s Human Fertilisation and Embryology Bill, introduced into Parliament on the 8th of November 2007 contains a number of controversial proposals inter alia expressly permitting the creation of inter-species embryos for research and destruction and increasing the scope for human cloning also for destructive research. It is supposed that there ought not to be a blanket ban on the creation of human clones, hybrids, cybrids and chimeras because these embryos are valuable for research purposes. The prohibition on the gestation of non-permitted embryos and interspecies embryos is used to generate confidence that embryos with compromised origins would not be gestated and reared. The argument outlined here demonstrates how uncertain are any legal prohibitions on gestation. Accordingly, the practical import of the distinction between compromised embryos for research and the same for live birth is equally dubious. The legislation would not, on this analysis, supply effective controls over this reproductive technology.

Keywords
Inter-species embryos; hybrids; human cloning; human fertilisation and embryology; freedom of movement: Charter of Fundamental Rights of the European Union; bioethics; medical ethics; artificial reproduction; donor conception

1. Introduction
Much of the debate about the permission to create inter-species embryos and human clones is conducted upon the supposition that, whereas it would be unjust to do so for the purposes of achieving live births, it should be permissible to create such embryos for scientific research and destruction. The distinction between the creation of, for example, animal-human hybrid embryos for destructive research and their creation for live birth is relied upon to promote confidence that it is possible to create and undertake research on such embryos without loss or

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wrong to future generations. It is my contention that given the current state of UK and European law, no guarantees can be given that people with deliberately compromised origins (e.g. hybrids, cybrids, chimeras and clones) would not be gestated. If this is right, the more reliable way of ensuring that gestation of these compromised embryos does not take place, with all the concomitant damage to the individuals created that might be expected, is by way of a blanket ban on the creation of such embryos.

The *Human Fertilisation and Embryology Bill* was introduced into Parliament on the 8th of November 2007. The Bill contains a number of controversial proposals inter alia expressly permitting the creation of inter-species embryos for research and destruction and increasing the scope for human cloning, also for research and destruction. It removes various welfare requirements relating to a child’s need for a father. Indeed, many of the alterations to English law envisaged by the Bill reverse the minimal child welfare regulations of the *Human Fertilisation and Embryology Act 1990*. It is supposed that the freedom artificially to produce a child is essentially a private contract between the commissioning parties and their technical providers. A discussion of the child’s need for a father and the doctrine of reproductive liberty is not undertaken here. Our attention focuses on the question of the creation of inter-species embryos and clones for research and destruction. Our scope is limited to the question of whether the boundary between the creation of compromised embryos for destructive research, and the same to achieve live births, can be sustained in law.

2. Inter-species Embryos and Gestation in the *Human Fertilisation and Embryology Bill 2007*

Clause 3 of the *Human Fertilisation and Embryology Bill 2007* amends section 3 of the 1990 Act, which covers prohibitions governing human embryos. Section 3(2) of the 1990 Act prohibits the placing in any woman of any embryo other than a “permitted embryo.” A “permitted embryo” is defined in such a way as to attempt to ensure embryos created by artificial gametes or genetically modified gametes could not be placed in a woman. Permitted embryos include embryos which have been formed by the fertilisation of a permitted egg by a permitted sperm, whose nuclear or mitochondrial DNA has not been altered and that has not had cells added (apart from by division of the embryo’s own cells). Permitted eggs are defined as eggs produced or extracted from the ovaries of a woman and permitted sperm as sperm produced or extracted from the testes of a man. These eggs and sperm must also not have been subject to any alterations to their nuclear or mitochondrial DNA. Similarly, genetically modified embryos or embryos created by cloning are not “permitted embryos” which may be placed in a woman. This is intended to prevent cloning for live birth and supersedes the *Human Reproductive Cloning Act 2001*. 