

Scottish Council on Human Bioethics

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Oral briefing to the Science and Technology Committee

Embryo research, cloning

1. All of Europe and many other parts of the world are looking at what is being drafted in the UK.

This is because:

- The UK is relatively in advance in the field of embryological research
- In comparison to other countries, the UK is able to draft comprehensive legislation relatively quickly
- UK legislation is in English

And all these countries react in two kinds of way concerning some of the UK provisions:

- The great majority of countries react with a lot of alarm and concern with respect to some of the procedures currently possible in the UK. For example:
 - The possibility of creating human embryos for research
 - Therapeutic cloning
 - The fertilisation of animal eggs with human sperm
- Many countries are afraid that the UK is opening the door to procedures that should never be permitted. They recognise that the UK is very influential in this respect.
 - A small minority of countries follow the UK and basically copy its legislative solutions. For example:
 - 14 day limit on embryological research (12 Countries - Belgium, Finland, Greece, Hungary, India, Israel, Japan, The Netherlands, New Zealand, Slovenia, Spain, Sweden)
 - HFEA (Assisted Human Reproduction Agency of Canada)

The House of Commons should be aware that it is not just drafting legislation for the UK but is indirectly drafting legislation and having a considerable influence over a whole number of countries.

2. Extra-territorial extension of the offence of human cloning

In a similar manner to Article 4 of the UN Convention against the sexual abuse of children¹, the offence of human cloning in the UK jurisdiction should be extend to persons who are either nationals or habitual residents in the UK who commit the offence abroad. The risk of bioethical tourism will then be addressed for human cloning involving UK nationals and habitual residents.

(2) Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

This Protocol entered into force on 18 January 2002²

In Article 3 of this Protocol it is stated that:

1. Each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether such offences are committed domestically or transnationally or on an individual or organized basis:

(a) In the context of sale of children as defined in article 2:

(i) Offering, delivering or accepting, by whatever means, a child for the purpose of:

b. Transfer of organs of the child for profit;

Moreover in Article 4 it is indicated that:

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, when the offences are committed in its territory or on board a ship or aircraft registered in that State.

2. Each State Party may take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, in the following cases:

(a) When the alleged offender is a national of that State or a person who has his habitual residence in its territory;

(b) When the victim is a national of that State.

3. Each State Party shall also take such measures as may be necessary to establish its jurisdiction over the aforementioned offences when the alleged offender is present in its territory and it does not extradite him or her to another State Party on the ground that the offence has been committed by one of its nationals.

4. The present Protocol does not exclude any criminal jurisdiction exercised in accordance with internal law.

3. The importance of creator-created person bonds

In order to adequately understand the bioethical issues behind human reproduction and in particular cloning, parthenogenesis and Assisted Insemination by Donor (AID), it would be helpful to first ask two fundamental questions, namely:

(1) Why do parents want children?

Surprisingly as it may seem, the reasons why parents want children have still not yet been extensively investigated. Childlessness, for example, is often compared to a bereavement rather than to an illness. The deep pain through which a couple acknowledges their infertility is severe, long lasting and profound.

But in order to understand this distress, one must first discover the origins of the desire for child bearing in couples or individuals.

One of the strongest urges faced by all societies is to 'be fruitful and increase in number', but does this urge relate to some biological trigger in the brains of the couples or persons, or does it satisfy needs which they feel children could fulfil?

Though an enumeration of several reasons for wanting children is possible by hopeful parents, the deep urge for child-bearing can remain hidden.

(2) Why do parents want to have a child of their own?

When a couple or person envisages having a child it is also important to understand the deep socio-genetical bonds which are created between the parents and this child.

For example, if we consider the dilemma of the two women Natallie Evans and Lorraine Hadley who lost their High Court battle, last year, to use their frozen embryos against the will of their former partners. It was very clear to all that one of the main reasons why the partners had refused to give permission was that they felt that some kind of bond would exist between them and the child which they did not want.

And it is this bond, which is seen as so obvious to all, which should be further investigated. Indeed, the more one looks at it, the more it becomes profound and in a way 'mysterious'!

And it is this bond between the creators and the created person, which could provide a basis for the discussions relating to the ethics of cloning, parthenogenesis and AID.

Indeed, this creator-creature bond is very much put forward as something which is extremely strong as reflected in popular stories such as 'Frankenstein', 'Pinocchio' and 'Blade Runner'.

In this respect, there is still a need to understand the manner in which a cloned child or a child created through AID or parthenogenesis would experience the feeling of mutual belonging with those who wanted him or her to exist and/or who created him or her. But here the term 'mutual belonging' can be used and this is also a concept which should be further studied.

For example this is reflected in the expression "having a child of our own" which many couples use when considering procedures such as Intra-Cytoplasmic Sperm Injection (ICSI) which enables a child to be biologically related to its parents, instead of adoption or the use of donated gametes. Why do parents want a "child of their own"? Why do some prefer to procreate together? Why do other individuals want to create a child of their own on their own?

4. I believe that the HFEA should become more accountable to Parliament.

An appropriate parliamentary committee, such as the Science and Technology Committee of the House of Commons,

should be able to closely monitor any regulatory decisions of the HFEA and intervene if it feels that a particular issue requires wider discussion and consideration.

I am also concerned that the 18 members of the HFEA are often selectively appointed to only represent certain views and that they have too much power to act, without consultation with Parliament, in the important area of human reproductive technologies.

5. There is a need for more democracy

We need to find new ways of engaging the general public in the bioethical issues relating to human reproduction and embryology. There is also a need to encourage a more democratic process of decision making.

¹UN Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

²Legally binding if ratified by a country - United Kingdom has signed but not ratified this Protocol.