

But the problem with the approach that targets only reproductive cloning (that is, the transfer of the embryo to a woman's uterus) is not only moral but also legal and strategic. A ban only on reproductive cloning would turn out to be unenforceable. Once cloned embryos were produced and available in laboratories and assisted-reproduction centers, it would be virtually impossible to control what was done with them. Biotechnical experiments take place in laboratories, hidden from public view, and, given the rise of high-stakes commerce in biotechnology, these experiments are concealed from the competition. Huge stockpiles of cloned human embryos could thus be produced and bought and sold without anyone knowing it. As we have seen with in vitro embryos created to treat infertility, embryos produced for one reason can be used for another reason: today "spare embryos" once created to begin a pregnancy are now used in research, and tomorrow clones created for research will be used to begin a pregnancy.

Assisted reproduction takes place within the privacy of the doctor-patient relationship, making outside scrutiny extremely difficult. Many infertility experts probably would obey the law, but others could and would defy it with impunity, their doings covered by the veil of secrecy that is the principle of medical confidentiality. Moreover, the transfer of embryos to begin a pregnancy is a simple procedure (especially compared with manufacturing the embryo in the first place), simple enough that its final steps could be self-administered by the woman, who would thus absolve the doctor of blame for having "caused" the illegal transfer. (I have in mind something analogous to Kevorkian's suicide machine, which was designed to enable the patient to push the plunger and the good "doctor" to evade criminal liability.)

Even should the deed become known, governmental attempts to enforce the reproductive ban would run into a swarm of moral and legal challenges, both to efforts aimed at preventing transfer to a woman and—even worse—to efforts seeking to prevent birth after transfer has occurred. A woman who wished to receive the embryo clone would no doubt seek a judicial

restraining order, suing to have the law overturned in the name of a constitutionally protected interest in her own reproductive choice to clone. (The cloned child would be born before the legal proceedings were complete.) And should an "illicit clonal pregnancy" be discovered, no governmental agency would compel a woman to abort the clone, and there would be an understandable storm of protest should she be fined or jailed after she gives birth. Once the baby is born, there would even be sentimental opposition to punishing the doctor for violating the law—unless, of course, the clone turned out to be severely abnormal.

For all these reasons, the only practically effective and legally sound approach is to block human cloning at the start, at the production of the embryo clone. Such a ban can be rightly characterized not as interference with reproductive freedom, nor even as interference with scientific inquiry, but as an attempt to prevent the unhealthy, unsavory, and unwelcome manufacture of and traffic in human clones.

...

I appreciate that a federal legislative ban on human cloning is without American precedent, at least in matters technological. Perhaps such a ban will prove ineffective; perhaps it will eventually be shown to have been a mistake. (If so, it could later be reversed.) If enacted, however, it will have achieved one overwhelmingly important result, in addition to its contribution to thwarting cloning: it will place the burden of practical proof where it belongs. It will require the proponents to show very clearly what great social or medical good can be had only by the cloning of human beings. Surely it is only for such a compelling case, yet to be made or even imagined, that we should wish to risk this major departure—or any other major departure—in human procreation.

Americans have lived by and prospered under a rosy optimism about scientific and technological progress. The technological imperative has probably served us well, though we should admit that there is no accurate method for weighing benefits and harms. And even when we recognize the unwelcome outcomes of technological