

# **The Sanctity of Life, Moral Responsibility, and Human Therapeutic Cloning**

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## **Abstract**

This paper shows that the sanctity of life argument does not resolve the moral dilemma of human therapeutic cloning, because it gives unequal weight to the lives of the embryos that would be destroyed and of those with diseases who could be saved by therapeutic cloning. The bulk of the paper is devoted to demonstrating the moral equivalence of action and inaction, a claim that I demonstrate by proposing a game theoretic interpretation of the moral nature of agency. As a consequence of this equivalence, one cannot simply decide not to intervene and let the consequences be as they may: the decision not to allow cloning is a decision to allow people to die needlessly and must be justified by more than the claim that agency is not involved in these deaths. The option of sanctifying life is thus not available, as in either case our actions have resulted in deaths that we could have prevented. We must choose who will live and who will die. I argue in the final section of the paper that we can make this difficult choice on the basis of a modified version of the distinction between biological and biographical life, prioritizing the biographical over the biological, and the biological over the metaphysical. This priority demands that research into therapeutic cloning go forward.



## The Sanctity of Life, Moral Responsibility, and Human Therapeutic Cloning

We find ourselves in a difficult position. The technology of human cloning, if perfected, will improve the lives of many people with terrible diseases. But the cloning process that could treat many life-threatening diseases necessarily destroys human embryos. Having opened the Pandora's Box of cloning—and we have already done so—we have given ourselves not just a technology but a choice, and with that comes responsibility for our choice. How are we to deal with this dilemma? Many believe that we should not permit cloning. I believe that this is misguided. Fundamentally, this belief is premised on the undeniable fact that banning research that would prevent or cure life-threatening diseases is a choice that causes the death of those with such diseases. Our choice is, this paper argues, not of preserving life *or* causing death but of whose life we will preserve *and* whose death we will cause. There can be no simple answer to such a question. The question itself takes us to places that we would rather not go. The awesome responsibility of life or death weighs heavily on the soul. But there is no avoiding the question; inaction is action, and avoiding the choice is making a choice. The aim of this paper is to outline the considerations in making such a difficult decision. The difficult moral questions about cloning have given rise to many calls to ban all human cloning, including therapeutic cloning, because such processes do not respect the sanctity of life.

This paper shows that the sanctity of life argument does not resolve the problem, because it gives unequal weight to the lives of the embryos that would be destroyed and of those with diseases who could be saved by therapeutic cloning. The bulk of the paper is devoted to demonstrating the moral equivalence of action and inaction, a claim that I demonstrate by

proposing a game theoretic interpretation of the moral nature of agency. As a consequence of this equivalence, one cannot simply decide not to intervene and let the consequences be as they may: the decision not to allow cloning is a decision to allow people to die needlessly and must be justified by more than the claim that agency is not involved in these deaths. The option of sanctifying life is thus not available, as in either case our actions have resulted in deaths that we could have prevented. We must choose who will live and who will die. I argue in the final section of the paper that we can make this difficult choice on the basis of a modified version of the distinction between biological and biographical life, prioritizing the biographical over the biological, and the biological over the metaphysical. This priority demands that research into therapeutic cloning go forward.

### **Preliminary Considerations**

When I refer to cloning, I refer to the process of artificially creating an animal whose nuclear DNA (that which is in the cell's nucleus, as opposed to that in the cell's mitochondria) is an identical copy of that of some other animal through the process of somatic nuclear transfer. In this process, an egg cell is taken from one animal and the nucleus of that cell removed. It is then replaced with the nucleus from a cell taken from the body of some other animal of the same (or occasionally a closely related) species. The egg, which now has a complete set of DNA as if it had been fertilized, is then allowed to develop as it normally would, in the case of mammals implanted in the uterus of a female of the species through techniques similar to those used in *in vitro* fertilization. In reproductive cloning, the clone is allowed to develop fully. This technique is now commonly used to produce identical laboratory subjects for animal experimentation. There have been several unsubstantiated reports of human cloning by groups whose scientific

status is, shall we say, dubious, most famously that of the Raelian sect which believes that cloning is a path toward immortality and was used by aliens in populating Earth.

In the case of human medical research, however, the more common procedure involves therapeutic cloning. In the case the cloned eggs are allowed to develop only as far as the blastocyst stage (approximately 16 undifferentiated stem cells), at which point the cells are harvested and guided toward development of specific types of body cells. The process is in this case very similar to that used in embryonic stem cell research except for the origin of the cells, and as a consequence the fact that cells produced through therapeutic cloning are genetically identical to those of the donor of the somatic cell. There has been relatively little verifiable progress in developing the techniques needed to accomplish this. In November 2001 Advanced Cell Technologies announced that they had successfully produced several cloned embryos that had progressed to the blastocyst stage before they stopped dividing. Scientists at Children's Hospital Boston, a part of the Harvard Medical School, recently joined several other teams of researchers at Harvard and elsewhere in attempting to develop more reliable processes that would allow the production of stem cells from cloned embryos.<sup>1</sup> The British Human Fertilization and Embryology Authority has granted human cloning research licenses to the Roslin Institute (which had cloned the first mammal, Dolly the sheep, in 1997) and the Newcastle Centre for Life.<sup>2</sup>

The central aim of this approach is to develop treatments for diseases that involve the regeneration of damaged tissues and organs. The Harvard teams aim to treat a variety of blood

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<sup>1</sup> Malcom Ritter, "Harvard Researchers to Clone Human Embryos," June 6, 2006, online: available at [http://www.livescience.com/humanbiology/060606\\_ap\\_harvard\\_clone.html](http://www.livescience.com/humanbiology/060606_ap_harvard_clone.html), last accessed April 1, 2007.

<sup>2</sup> "HFEA grants the first therapeutic cloning licence for research," press release, August 11, 2004, online: available at <http://www.hfea.gov.uk/en/1048.html>, last accessed April 1, 2007; "HFEA Grants Embryonic Stem Cell Research Licence to Study Motor Neuron Disease," press release, February 8, 2005, online: available at <http://www.hfea.gov.uk/en/1061.html>, last accessed April 1, 2007.

diseases with stem cell treatments; other current research specifically on cloning approaches focuses on diseases such as diabetes and Lou Gehrig's Disease. The British licenses were issued for preliminary research and for motor neuron diseases. But the applications of therapeutic cloning are broader than research specifically focused there. Because therapeutic cloning aims to create embryonic stem cells, the research has application to any of the myriad applications of stem cell research. Its primary advantage in relation to the broader field of embryonic stem cell research comes from the fact of genetic identity, which can mitigate the problems related to immune rejection that occur with embryonic stem cells taken from other sources.<sup>3</sup> That would be an especially important consideration with regard to one of the most promising areas of stem cell research, the generation of replacement tissues and organs for transplantation.

For the purpose of this paper, I will make several simplifying assumptions regarding empirical conditions of therapeutic cloning. I believe that these are all reasonable though certainly not beyond controversy. However, I offer them primarily for the purpose of focusing the discussion on the specific moral questions posed by the sanctity of life argument. The first of these is that the probabilities that therapeutic cloning research will lead to life-prolonging treatments for any particular condition, and that the currently daunting technical hurdles in the way of therapeutic cloning will be overcome, are non-trivial. Surely, of course, not all of this research will succeed. But it is likely that some will. Taken together, these assumptions prevent one from resolving the question of therapeutic cloning on the grounds that it is unlikely to lead to significant gains because even small chances of success for any one case present a high likelihood that some people will live when they otherwise would not because of therapeutic cloning research. Similarly, I further assume that the probability that alternative sources of stem

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<sup>3</sup> American Association for the Advancement of Science, "AAAS Policy Brief: Human Cloning," January 2003, online: available at <http://www.aaas.org/spp/cstc/briefs/cloning/index.shtml>, last accessed April 1, 2007.

cells, such as non-cloned embryonic cells, adult stem cells, or adult differentiated cells, will fail to produce treatments where therapeutic cloning would be also non-trivial. That prevents resolution of the argument on the basis of the availability of less objectionable alternatives.<sup>4</sup>

### **Cloning and the Sanctity of Life**

Proposals to ban human cloning seem justified by a fundamental concern shared by ordinary American citizens. In February 2004, after the announcement that South Korean researchers had claimed (fraudulently, it turned out<sup>5</sup>) to have cloned human embryonic cells, I published an editorial in the *Arkansas Democrat-Gazette* defending therapeutic cloning. A few weeks later, the *Democrat-Gazette* published a response from a reader:

Cloning for whatever purpose, be it reproductive (which he agrees is unethical) or therapeutic (which he argues for), is a violation of the principle that life is sacred. No doubt, Johnson's end is noble—the relief of human suffering that therapeutic cloning might bring about. He proposes that trading (destroying) one life (an embryo) for another (a deceased child) excuses the violation of the life is-sacred principle. . . . Johnson's ethical views can only be supported by the presupposition that life is not sacred, which then allows for all kinds of human experimentation.<sup>6</sup>

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<sup>4</sup> These assumptions do pose a limitation on my argument. I concede that with them I cannot—and therefore do not—claim that the argument that follows gives a definitive answer to the question of whether therapeutic cloning should be permitted, since I cannot offer a response to these alternative considerations. I further agree that if these assumptions do not hold then my argument about the implications of the sanctity of life argument necessarily fails as well, since the choice of whose life to sanctify does not present itself. Fundamentally, if these assumptions do not hold then I would conclude with the opponents of therapeutic cloning that the procedure is unethical. I do not believe that these assumptions can be reasonably rejected under the current conditions of uncertainty, but that is ultimately beside my main point, which is to analyze a particular argument under these conditions.

<sup>5</sup> “Korean University Says Cloning Claim Faked,” *Associated Press*, January 10, 2006, online: available at [http://www.livescience.com/othernews/ap\\_060110\\_cloning\\_fake.html](http://www.livescience.com/othernews/ap_060110_cloning_fake.html), last accessed April 1, 2007.

<sup>6</sup> Jeremy Hampton, “Remember: Life Sacred,” *Arkansas Democrat-Gazette*, March 14, 2004.

It is this principle that cloning violates the sanctity of life that tends to dominate the public debate on the subject of human cloning.

The sponsors of the main cloning bans couch their arguments in this language. “The prospect of creating new human life solely to be exploited and destroyed in this way has been condemned on moral grounds by many as displaying a profound disrespect for life,” according to Senator Sam Brownback.<sup>7</sup> Brownback has co-sponsored the Senate versions of the Human Cloning Prohibition Acts of 2001, 2003, and 2005, which would ban all human cloning. His rhetorical excess upon introducing his Senate bills in 2001 and 2003 is entertaining, but rests on a similar claim:

The world was stunned when a cult claimed to have produced the first live-born human clone. Whether or not the Raelian claim of a live-born human clone is, in the end, proven to be true or false, we all know, at a minimum, that a live-born human clone is either already among us or is, at least, a likely reality. Of course, what the Raelians claim to have done is built on work that some in the biotech community are attempting to do.

Work has already begun in biotech labs for the mass production of made-to-order human clones.<sup>8</sup>

Alien believers, mad scientists, and the *Brave New World* are here, the Senator would have us believe, undermining the respect for life that we all hold. Representative Dave Weldon, sponsor

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<sup>7</sup> Sam Brownback, “Human Cloning,” html document, online: available at <http://brownback.senate.gov/english/legissues/cultureoflife/cloning.cfm>, last accessed April 1, 2007.

<sup>8</sup> Sam Brownback, “The Science and Ethics of Human Cloning: Opening Statement before the Commerce Committee Subcommittee on Science, Technology and Space,” Adobe Acrobat document, January 29, 2003, online: available at <http://brownback.senate.gov/FinishedDocs/cloning/cloning%20--%20science%20and%20tech.%20opening%20statement.pdf>, last accessed April 1, 2007.

of the House version, evokes “rogue scientists” that are “rushing to perform human cloning, both for research and reproductive purposes.”<sup>9</sup>

The allusions to *Frankenstein*, *Brave New World*, and mad scientists of various sorts are so prominent in the debate over cloning because these images all challenge the relationship between humanity and the creation of life in the way that cloning opponents see human cloning doing as well. Frankenstein’s monster is a warning to an increasingly technologically powerful society in the 19<sup>th</sup> century. The Central London Hatchery is the opening scene of *Brave New World* because it tells us that life is no longer sacred. Mad scientists of all sorts undermine what we know to be the one, true moral path. One may laugh at the apparent hyperbole of political leaders who govern on the basis of science fiction, but they evoke the images because they communicate important meanings and moral lessons. The fear is not of Frankenstein’s monster threatening society, but of Frankenstein’s values undermining a cherished moral principle.

Certainly, life is sacred, but there is one, very simple but very critical, flaw in the argument here. The principle that life is sacred is applied only to the embryos. The sanctity of life proscribes the destruction of an embryo, which the proponents of a ban on human cloning believe is the moral equivalent of a fully developed human. But the proponents rarely finish the formulation. Properly expressed, their claim must be that the sanctity of life proscribes the destruction of an embryo to save the life of another human being, for that is the consequence of embryonic stem cell research. Therapeutic cloning will likely, one day, save lives and eliminate the suffering of people with debilitating diseases. People with Alzheimer’s disease, heart failure, or diabetes will die if no treatment is found, and cloning-based treatments, while uncertain, are promising. Scientific progress can never be predicted in detail, but surely cloning-based

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<sup>9</sup> Dave Wheldon, “Why Human Cloning Needs to Be Banned” (press statement), January 8, 2003; Online, available at <http://www.ortl.org/publications/articles.php?articleID=275>, last accessed April 1, 2007.

treatments will produce success in some of these areas. And if we refuse to develop these treatments, those whose lives would otherwise be saved will die.

This raises the critical question in this debate: whose life is sacred? Why is the life of the embryo to be privileged over that of the fully developed human with a terminal disease? Why are the lives of the diseased not sacred as well? Imagine first that we assume that it is the lives of the diseased only that are sacred. Would we not demand every effort to save them, even the sacrifice of the healthy? And is this not preposterous, a most egregious transgression of any truly meaningful sanctity of life? But the same sacrifice is demanded to preserve the sanctity of the life of the embryo. Those whose life would be saved are sacrificed to save the lives of the embryos. In either case, our concept of life as sacred seems to be missing something. The point to be made here is not that we should automatically prefer the lives of the fully developed to those of embryos (though I shall argue for such a priority below). It is to say that there is no answer to the question that follows simply from the proposition that life is sacred. If life is to be held as sacred, then all lives must be held as sacred. The lives of the diseased, of the healthy, of the fully developed, and of the embryonic are, *prima facie*, equally sacred. None can be presumed to be prior to any other. And so we cannot simply announce that by banning cloning we have upheld the sanctity of life. Sanctifying life means sanctifying all lives.

This problem transforms the debate over therapeutic cloning in an exceptionally challenging direction. On one hand, we can ban human therapeutic cloning. If we do so, human embryos will survive and humans with diseases will die. On the other hand, we can permit human therapeutic cloning. If we do so, human embryos will die and humans with diseases will live. In either case, someone dies, someone whose life is sacred. There are no alternatives. There is no option that allows us to choose between the sanctity of life and the “industry of death,” as

some have called it.<sup>10</sup> We are in the position of having to make an inescapable choice of who is to live and who is to die.

### **Responsibility and Consequences**

On what basis, then, do we make this inescapable choice, if the sanctity of life will not help us?

There are, in the most general sense, two options. We can craft some principles by which we undertake the difficult task of choosing who will live and who will die. I will take up this task below. But first I consider the other option: nonintervention. That is to say, we can refuse to clone embryos for research purposes (which we would prefer not to do) and then allow (without any further action on our part) whatever would otherwise happen to happen. Such an argument rests on the claim that we are not responsible for the consequences of our noninterventions.<sup>11</sup>

Rather than solving the problem before us, the sanctity of life argument transforms the first-order question of whether therapeutic cloning is permissible into the second-order one of

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<sup>10</sup> Mimi Hall, "Stem-cell Issue Splits Republicans," *USA Today.com*, July 9, 2001; Online: available at <http://www.usatoday.com/news/washington/july01/2001-07-06-stem.htm>, last accessed April 1, 2007.

<sup>11</sup> One alternative form of that argument is not particularly important from a philosophical perspective but, because of the prominence of religious arguments in the public debate, must be addressed as a political matter and is therefore worthy of a brief digression here. One might say that one is not responsible for the consequences of our inaction because that which happens without our intervention is God's will. Such arguments are especially reassuring to those who are concerned about whether man has gone too far in his technology. The consequences of our inaction may be hard to watch, but we are reassured that something greater than us is in charge of the world, that God wills that these diseases come for reasons that we cannot understand but can trust are there, or that death is a part of the natural course of life without which life has no meaning. If we do not interfere with nature, if we allow God's will rather than our own to prevail, we are doing the right thing whatever the consequences. Humans are thus not responsible for the consequences of our inaction, as those consequences are part of something greater than we are.

This may be reassuring, but it is most certainly false from a theological perspective. The argument presumes not simply that God will simply take His course without us. It separates humanity from divine will and thus presumes that inaction, as opposed to action, constitutes that will. There is no reason to believe that this is always and necessarily the case. One cannot know, *a priori*, that God wills that one refuse to act, that the temptation to act is a sin that interferes with His will. Whether God has put one in a situation so that one will act to bring about that will is a question that must be answered by consulting one's faith rather than presumed as a matter of universal principle (consider, for instance, the case of the Good Samaritan, who is praised for acting when others did not). In the case of cloning and stem cell research, one does not know without actively, consciously, and seriously consulting one's faith that the capacity to heal people through cloning is not a capacity given by God to carry out his mission of love for humanity. We cannot simply assume that if we leave the situation alone then God's will necessarily prevails.

whether one is responsible for the unintended but foreseen<sup>12</sup> consequences of one's inactions. The problem of cloning is thus best understood in the context of the debate over killing and letting die, and is thus a variant of one of the more famous problems in contemporary moral philosophy:

Philippa Foot's Trolley problem:

The driver of a runaway tram . . . can only steer from one narrow track to another; five men are working on one track and one man is on the other; anyone on the track he enters is bound to be killed. . . . The question is why we should say, without hesitation, that the driver should steer for the less occupied track, while most of us are appalled at the idea that an innocent man could be framed [to satisfy rioters threatening five innocent hostages].<sup>13</sup>

Foot's argument is that the core difference in the two cases is between killing and allowing someone to die; the choice of the driver is permissible because it is a choice between killing one and killing five, while framing and then executing an innocent man to save the lives of the hostages is a choice between killing one and allowing the death of five. In the latter case, one is responsible for doing but not for allowing.

The debate is a lengthy one, spanning several decades of moral thought.<sup>14</sup> At least five significant positions have emerged. The chief proponent of the idea that one is responsible for

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<sup>12</sup> For the purposes of this discussion, I limit the analysis here to the foreseen consequences, rather than the foreseeable consequences or the full set of foreseeable and unforeseeable consequences, of one's actions. Clearly the former are a subset of either of the latter two, such that any theory that would include either of the latter two in the sphere of responsibility would also include the former. Since what is at issue here is an instance of foreseen consequences, any resolution of the debate on this question would cover this case, making the status of unforeseen consequences of any sort irrelevant to the question at hand.

<sup>13</sup> "The Problem of Abortion and the Doctrine of the Double Effect," *Oxford Review* 5 (1967), in Bonnie Steinbock and Alasdair Norcross (eds.), *Killing and Letting Die*, 2nd ed. (New York: Fordham University Press, 1994), pp. 266-279, quoted at p. 270; see also "Killing and Letting Die," in Jay L. Garfield and Patricia Hennessey (eds.), *Abortion and Legal Perspectives* (Amherst: University of Massachusetts Press, 1984), reprinted in Steinbock and Alasdair Norcross, *Killing and Letting Die*, pp. 280-289.

<sup>14</sup> The debate is conveniently collected in Steinbock and Norcross, *Killing and Letting Die*.

both one's actions and the consequences (the so-called "neutrality thesis," i.e., the claim that making and allowing are morally neutral in that the difference is not relevant to the moral assessment of actions) of one's inactions is Jonathan Bennett.<sup>15</sup> Bennett's argument is rooted primarily in a semantic analysis of making and allowing. He shows that the key difference between allowing something to happen in the sense of not taking action that would have prevented the consequence ("abstention") and taking action that removed an obstacle preventing the consequence of some other's action ("negation") is that the former is a proposition in a negative form, while the latter is one in a positive form, a distinction framed in terms of the high specificity of actions of the latter type. Since the specificity of a proposition could not have any moral relevance, Bennett concludes that there is no basis for the intuition that one is responsible for acts of negation but not for acts of abstention.

Bennett's argument, while sound, seems unconvincing as an explanation of such a powerful moral sentiment as that preventing the utilitarian sacrifice of one person for the survival of several, at least in part because, as Daniel Dinello notes, there are cases where Bennett's distinction counts clear cases of killing as cases of letting die.<sup>16</sup> It also fails to account for the common sense that one who abstains from acting didn't *do* anything, which implies a key difference in agency between the two cases. Such a semantic analysis fails to consider the sense in which one is an agent in the two cases.<sup>17</sup>

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<sup>15</sup> "Whatever the Consequences," *Analysis* 26 (1966): 23, in Steinbock and Norcross, *Killing and Letting Die*, pp. 167-191; "Negation and Abstention: Two Theories of Allowing," *Ethics* 104 (October 1993), pp. 75-96, in Steinbock and Norcross, *Killing and Letting Die*, pp. 230-256.

<sup>16</sup> "On Killing and Letting Die," *Analysis* 31 (1971), in Steinbock and Norcross, *Killing and Letting Die*, pp. 192-196.

<sup>17</sup> Bennett does to some extent address the latter in his analysis of Alan Donagan (who I discuss in detail below). Donagan's approach is based on agency, and Bennett finds this approach complementary to his own in most cases (see "Negation and Abstention," pp. 246-250). But consistency with a more plausible claim does not improve the analytical utility of Bennett's claim itself.

A more directly moral argument is made by Judith Lichtenberg,<sup>18</sup> who relies on analysis of differences in probability and uncertainty to provide an alternate explanation of cases that are commonly explained with a distinction between action and omission. Since action and omission are equal in their connection between conduct and consequence, she concludes that they are morally equivalent. This, too, however, is unconvincing when applied more broadly. If the certainty of the connection between action and consequence is at the heart of moral decision-making, it would seem that this would require balancing probability with the severity of consequences, a consideration that can go against Lichtenberg's argument in some cases. Lichtenberg would prohibit putting a single individual at great risk in order to prevent some event that is somewhat less likely but catastrophic should it take place. For instance, a fundamental principle of naval architecture is the presence of automatically closing watertight doors. These doors ensure that those in flooding compartments of a ship will die when the system is activated. There is great uncertainty that the ship will sink if its captain waits a few minutes to activate the system until the flooding compartments are evacuated; hence Lichtenberg's considerations weigh against this protection against the loss of the ship and all those aboard. Yet maritime professionals would universally condemn the captain who with virtual certainty condemns to death a few crew members for a marginal improvement in the chances of saving the entire ship. The implications of Lichtenberg thus seem rather more problematic than the immediate case makes clear.

The failure of these two efforts inclines one to take seriously the two main claims supporting the moral asymmetry between doing and allowing presented by Foot. Her initial presentation of the focal problem of the killing and letting die debate, the Trolley Problem,

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<sup>18</sup> "The Moral Equivalence of Action and Omission," *Canadian Journal of Philosophy* 8 supp. (1982), pp. 19-36, in Steinbock and Norcross, *Killing and Letting Die*, pp. 210-229.

comes in an analysis of the Catholic ethical doctrine of the double effect. This approach holds that intent is the key factor in moral analysis. In the case of killing, one's intent (either as an end in itself or as a means to some other end) is directly to kill and therefore culpable, while in the case of letting die the intention is generally elsewhere and only obliquely to kill as an unintended consequence. For this reason, the case of the abortion that is necessary to save the life of the mother when the fetus could be delivered post-mortem by caesarian section (but only at the cost of the mother's life) must be decided in the case of the fetus, because the abortion would be an instance where the intended effect is to kill while the death of the mother would be an unintended consequence of not performing the abortion. Such a claim, however, is especially unconvincing. From this perspective, good faith negligence leaves one entirely inculpable not only for one's omissions but for one's actions as well. If it does not occur to someone that driving home drunk could result in the deaths of others, then the dozens of children on the school bus that the drunk forces off a bridge are deaths not on the drunk's conscience, as this was not the intent of his actions. One might well argue—soundly in all likelihood—that the drunk is still culpable for one of many other reasons. But if this is the case then the question of intent is clearly irrelevant to the case, and if there are cases where intent is irrelevant, the question of intent does not in itself establish a morally relevant distinction between killing and letting die.

This may be one of the considerations that Foot alludes to (but does not enumerate) that lead her to posit an alternative to the doctrine of the double effect. Foot holds that the question of intent focuses debate on the difference specifically between doing and allowing, a distinction that the doctrine incorrectly associates with that between direct and oblique intent. In the case of doing harm to someone, Foot argues that one violates a negative duty of noninterference with another, while in the case of allowing harm to come to someone one violates a positive duty to

give aid to another. Both duties apply *prima facie* in all cases. However, some cases do conflict, and in such cases the negative duty of noninterference takes precedence. Foot bases her argument on the consistency of this solution with widely-held intuitions about many moral dilemmas, but it has been defended more theoretically by Richard Trammell, who defends the priority on the basis of the ability to discharge negative duties more fully, of the failure to fulfill a positive duty's absence of closing off other possibilities in contrast to a negative duty, and of the greater responsibility for consequences that occurs adheres to a violation of negative duties; as well as in an analysis that ultimately rejects the distinction by N. Ann Davis where the priority of avoiding harm is tied strongly to ideas of agency and autonomy.<sup>19</sup>

Neither the principle in itself nor its defenses are compelling, either. Lichtenberg shows that the three claims that Trammell makes do not always hold, while Davis argues that a fuller theory of agency is needed in order to support this distinction. Davis' criticism is especially insightful in seeing the link between the priority of negative duties and autonomy. Foot's approach holds if and only if one accepts some form of liberal autonomy understood roughly in terms of negative liberty as the highest good. If the highest good is noninterference in the individual's ability to choose how one lives one's life and especially in choosing one's concept of the good life, then a priority on duties flowing from noninterference would rightly take precedence, and would in fact be a necessary consequence of that *summum bonum*: there would be no basis for any other claim to trump the claim to noninterference. But if there is any other good that is higher—for example loyalty to one's community, a concept of positive liberty, or a New Testament emphasis on the welfare of others—then actions that would fulfill these goods would take precedence over duties of noninterference. And if there is no highest good, then there

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<sup>19</sup> Richard Trammell, "Saving Life and Taking Life," *Journal of Philosophy* 72:5 (March 13, 1975), pp. 131-37, in Steinbock and Norcross, *Killing and Letting Die*, pp.290-297; N. Ann Davis, "The Priority of Avoiding Harm," in Steinbock and Norcross, *Killing and Letting Die*, pp.298-354.

can be no single principle that will in all cases trump all others. Foot's priority of avoiding harm makes sense only in a classically liberal world.

But this conclusion draws our attention back to the principle that initially motivated the rejection of Bennett's argument: that the heart of the intuitive distinction between killing and letting die is that the former involves agency while the latter does not. Davis argues that this is the key question in the whole debate:

Moral asymmetry views are merely moral principles; and what I have been suggesting is that the mere proffering of moral principles is insufficient. Without a theoretical base—a theory of agency in the case of principles about using—a moral principle can claim—at best—plausibility. But it cannot claim authority.<sup>20</sup>

Any solution to this problem, which is necessary if we wish to resolve the related problems of therapeutic cloning and stem cell research, requires the development of an understanding of agency and its relationship to consequences. It is to this that I now turn.

### **Agency, Inaction, and Responsibility**

Alan Donagan addresses directly the question of responsibility for consequences in the context of agency.<sup>21</sup> Donagan argues that agency is best understood in relation to a pre-existing situation that is external to the actor and changes according to laws of nature. An actor can be said to act in a situation by taking steps to cause that situation to change in ways that it would not have in the absence of that action. Donagan characterizes this as an intervention in “the course of nature,” though he recognizes that humans are not separate from nature in the way that the phrase suggests (one might take this as the technical use of a phrase used to describe the matter

<sup>20</sup> Davis, “The Priority of Avoiding Harm,” p. 347.

<sup>21</sup> *The Theory of Morality* (Chicago: University of Chicago Press, 1977), pp. 37-53.

in common discourse). An actor is responsible for some set of consequences if his action is a part of some set of conditions that are jointly sufficient for the occurrence of those conditions. But actions themselves are not caused; they are brought into being by the agent as an act of will. Thus where the jointly sufficient conditions for the consequences include a subsequent action of another actor, the initial action cannot be taken as causing the consequences, because the initial action cannot be part of the set of conditions jointly sufficient for the subsequent action. Actions cannot cause actions, because actions are not caused. However, actions can include actions taken through the use of another as one's own witting or unwitting agent (e.g., actions that use the anticipated response of another make that other the agent of the initial actor), and an actor is responsible for the consequences of actions that come about through one's agent as well as one's self directly. Most importantly, since one's inaction can be a part of the jointly sufficient conditions for some particular consequence, (i.e., it may be true that "the event both will happen if he does not intervene in that way and will not happen if he does"<sup>22</sup>) one is in principle responsible as well for the consequences of one's inactions as well as for one's actions (though as I argue below it is hard to reconcile this with Donagan's understanding of agency as an intervention in the course of nature).

But there are some cases in which there is no such responsibility. Donagan's approach to agency involves a strong distinction between on the one hand either causing or allowing an event, and on the other doing that which one can foresee will result in certain responses from others. He argues that this is necessary in order to avoid cases like one in which a Christian is faced with the choice of acknowledging the divinity of Emperor Nero or being killed; if there is no moral difference between causing and allowing then the Christian is responsible both for his

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<sup>22</sup> Donagan, *Theory of Morality*, p. 50.

suicide and for persecuting himself because he caused his death. Given his claims about causality and action, the actions of others in response to one's own actions are not caused by one's actions (they do not follow "in the course of nature") and therefore are not of the actor's doing. This leads Donagan to the conclusion that the foreseen or foreseeable reactions of others are a part of the circumstances surrounding the action and not of the action in itself. The actor is thus not responsible for the consequences of his action if those consequences come about through the foreseeable reaction of some other actor.<sup>23</sup> Donagan does not complete the connection of this argument to the question confronted here, but the final steps are relatively elementary. The foreseeable responses of subsequent actors break the chain of causality and thereby of moral responsibility. Hence where the intervention of some other actor is foreseeable but does not constitute action as an agent of the initial actor, then the initial actor is not responsible for any consequence subsequent to the response, even if that response is a virtual certainty.

This seems a quite implausible conclusion. One circumstance in which this goes against common morality is that of the crime of felony murder. The crime is, in principle, the death of some person occurring in the course of the commission of a felony, and applies even to circumstances that cannot fit Donagan's concept of agency in any sense. For example, an armed robber enters a crowded convenience store and begins the robbery. In the store is a police officer, who opens fire on the robber. In the confusion the officer kills the store's clerk and another customer. By Donagan's standard, we come to the conclusion that the robber bears no

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<sup>23</sup> This is, of course, provided that the initial actor's action does not use the subsequent actor's reaction in such a way that would make the subsequent actor an agent of the initial actor. Donagan does not provide any way to make this distinction, but it should not be particularly difficult to do so in at least an elementary fashion by making reference to the subsequent action as part of the jointly sufficient conditions for the consequences that the initial actor aims to cause. If the foreseeable reaction of the subsequent actor is a necessary condition for the consequences, then the subsequent actor is surely to be understood as an agent of the initial actor. Loosening of these conditions either by uncertainties or by weakening the requirement that the reaction be a necessary condition would require a fuller analysis than is possible or appropriate here.

responsibility for the deaths. The officer's response was a virtual certainty, and one can certainly foresee the possibility that innocent bystanders would be injured. But the robber did not himself cause the deaths, the officer cannot in any way be understood as an agent of the robber, and the causal chain of the robber's action is broken with the officer's action. The crime of felony murder must, from Donagan's perspective, be seen as a grave injustice, especially given that it is frequently a capital crime, because it holds someone morally responsible for that which cannot be his responsibility.

Hence further refinement of Donagan's promising approach is necessary. The emphasis on agency is well placed, as is the recognition of the causal potential of inaction. Donagan's chief failure is in his concept of agency itself. In spite of statements that seem to suggest the contrary,<sup>24</sup> Donagan sees agency as a separation from nature and thus as an exercise in comparative statics. Agency can be seen by comparing two situations: one in which the course of nature plays out without the actor's intervention and one in which the actor intervenes in that course. If there is a difference in the two situations, then the actor can be said to be responsible for that difference. Agency presumes a normal course of events exogenous to the actor, from which agency produces a deviation.<sup>25</sup> The intervention is endogenous to the situation if it takes place, but the decision about whether to intervene or not is exogenous—if it were not, nonintervention would also be part of the situation and there would exist no course of nature that would take place without the actor. Given this, it is especially difficult to see how the actor could be in a situation where inaction could be causal, as inaction would leave the otherwise existing

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<sup>24</sup> Donagan, *Theory of Morality*, pp. 44-45. While he calls the claim that humans are part of nature "an obvious philosophical objection," his theory is premised on the non-causative understanding of action specifically as a response to this objection and specifically distinguishes "the causation of human actions from that of other natural events," thereby reiterating in pragmatically identical language the distinction that he claims to have answered.

<sup>25</sup> In this sense, Donagan may be committing the same error that I attributed to those who argue on the basis of divine will above.

course of nature intact in most cases. Only where the course of nature takes the situation directly to the actor (for example, in the case of a decision that is required of a person in a particular position) would the actor's inaction be a deviation from the course of nature. For most circumstances in which the actor can either become involved or be an innocent bystander, the course of nature can completely bypass the actor. In essence, the course of nature is a privileged or default outcome in the situation, presumed to be what will happen *unless* there is a deviation. This assumption is unjustifiable.

Agency is the act of making and executing a decision about action in a given situation. A useful alternative to Donagan would be to understand agency in relation to a decisions process in which the actor plays a leading role. The pun is very much intended: the actors in a play cannot avoid their place in the action; the course of nature runs directly through them. Conceiving of agency as a central element in the course of nature eliminates the possibility that the actor can serve as an innocent bystander as the course of nature moves past. One way to frame such a concept of agency is to see agency as the act of choosing strategies in an extensive form game. Such a game consists of a game tree composed of nodes representing decision points at which actors choose branches representing the various choices of action that take the actors to the next node in the game. Different actors will have different strategies available to them at different nodes, and each strategy choice leads to a further node, confining the game to a particular subset of nodes that follow from a given choice at a given node. Actors continue moving through nodes until an end node is reached; each end node is associated with an outcome (see figure 1).

The extensive form game captures the important features of Donagan's concept of agency. There remains a situation exogenous to the actor in the structure of the nodes and strategies, the elements of chance, the actions of other actors. The actor's agency can be seen in

the causal relationship between actions and consequences, and responsibility can be clearly linked to the actor. And by working backward from the end (a process called “backward induction”) the actors to some degree can foresee the actions of subsequent actors and the consequences of each choice. But there are key differences. No strategy is privileged as happening without the actor; the node is defined as a place where the actor chooses, and this is the only place that the actor exists. Moreover, one who has the possibility of intervening is fully a part of the game, and the decision of whether or not to do so is endogenous to the game rather than exogenous as in Donagan. Most importantly, since the game can only end with an outcome found at an end node, anything that the actor can do is included in the actor’s set of strategies at any one node, including doing nothing. This captures the objections to Donagan’s position. Inaction and even indecision may occur, but these will lead to other nodes just as actions will. As such, indecision is nothing more than the decision to not decide, and inaction nothing more than the decision to not act; these are simply additional branches from one node to another, and lead eventually to end nodes (i.e., to outcomes) just as for any other actions. Nor can there be a separation of action and consequence; actions consist solely of decisions that bring about outcomes.

If responsibility follows from the choices that one makes, it is clear in this framework that one is necessarily responsible for inaction and for the foreseeable responses of others just as for action because there is no difference between action and inaction. These are simply two strategies that can be selected at a decision point, and the method by which one makes the decision is irrelevant. One makes a choice by consciously weighing the options, by flipping a coin, by sticking one’s head in the sand, and by maintaining a perfectly empty thought process. Inaction and indecision may well bring the game to a screeching halt, but that screeching halt is

an end node and will have an outcome associated with it. By using any of these processes, whether they lead to action, inaction, or indecision, one chooses at least the subgame that will be played from that point. One may not be responsible entirely for the outcome that occurs—responsibility in the framework can most certainly be shared (something that seems absent from most of the other frameworks including especially Donagan’s)—but clearly one is responsible at least for choosing to limit the outcomes to those in that subgame.

Thus it would be absurd to say that we are not responsible for the consequences of our choices. As R. G. Frey argues,

In passing by animal and child, in not administering the injection, in turning off the ventilator, in withdrawing feeding tubes, it is hard to see how the doctor can claim that she is not prepared to have the world be the way that it will surely be if she goes on as she proposes, namely, a world in which animal, child, and patient are dead. For in that case she has only to decide not to pass by, not to inject morphine, not to unplug the ventilator, or not to withdraw feeding tubes. Put summarily, she cannot claim that she is not willing to see animal, child, or patient dead, since she has either complete or partial control over this outcome.<sup>26</sup>

The core lesson of the game-theoretic approach to agency is precisely that at the center of existentialist philosophy: we are responsible for our actions not because we did them but because we chose them, and we can choose inaction just as easily as we can choose action. We thus cannot escape responsibility by refusing to act, because the refusal to act remains a decision to bring about a particular outcome.

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<sup>26</sup> R. G. Frey, “Intending and Causing,” *Journal of Ethics*, 9:3/4 (July 2005), pp. 465-474, quoted at p. 473.

The implications of this concept of responsibility for the cloning debate are quite clear. Whether we choose to allow cloning or restrict it, we are responsible for that choice. And in this case as in the trolley problem, we do not have the choice between everyone living and everyone dying. Our choice is thus not of killing an embryo or allowing it to live, nor of killing an embryo and saving another or saving the embryo and letting the other die, but of who will live by our hand *and* who will die by it. Any choice that we make—even the decision to stick our proverbial heads in the sand—will have consequences, and we are unavoidably responsible for the consequences of that choice, *whatever it is*, whether it is an action or inaction. In any case, we are responsible for the deaths of some people.

### **Whose Lives are More Sacred?**

To simply rely on claims about the sanctity of life or about not sacrificing some lives for the sake of others does not answer the question; it avoids it. If we are responsible for our inaction as well as our action, and we cannot justify inaction categorically as God's will or nature's course, then we cannot avoid responsibility by banning direct action and passively allowing those with diseases to die. Any decision that does not explicitly show why the lives to be spared are to be privileged over those condemned is an irresponsible decision. It is an attempt to avoid responsibility for the inevitable hard choices that our capacities create. No such attempt can be successful. Responsibility is ours, whether we like it or not. We can only make the best decision that we can under exceedingly trying circumstances.

The question is thus of how we will make this great and terrible decision: should we allow the sacrifice of human embryos to save the lives of humans with diseases? I believe not only that we should but that, given that the alternative is to sacrifice the lives of humans with

diseases to save the lives of embryos, we must. I base this argument on James Rachels' distinction between biographical and biological life.<sup>27</sup> Biological life or "being alive" carries on the physical processes that make something alive as opposed to either dead (if those processes have ceased) or inanimate (if those processes never existed). This is distinct from a biographical life or "having a life," the life of meaningful identity and action. Biographical life is "the sum of all we hold dear: our projects, our activities, our loves and friendships, and all the rest."<sup>28</sup> The ability to develop such biographical characteristics makes people the subjects of lives rather than (or more properly in addition to) being subject to life. Biographical life is central to discussion of the meaning and value of life in a way that biological life is not.

Rachels' approach makes two particularly problematic claims, however. The first is made quite explicitly. This is the claim that biological life is of value for purely instrumental reasons. One is harmed when losing one's biological life for no reason other than that one loses one's ability to create a biographical life: "being alive is important to an individual because it enables him or her to have a life."<sup>29</sup> This is consistent with Rachels and William Ruddick's argument that liberty is valuable primarily because it makes it possible to develop the personal goods needed to have a life.<sup>30</sup> This is an important claim for Rachels' argument more broadly, both because it is derived from the more basic claim that life has value primarily to the living individual (rather than to a higher power or the good of the human race) and because it provides the foundation for Rachels' arguments for the permissibility of suicide and euthanasia. The second claim is related.

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<sup>27</sup> *Created from Animals: The Moral Implications of Darwinism* (New York: Oxford University Press, 1990), pp. 197-207; a fuller treatment is offered in Rachels' *The End of Life: Euthanasia and Morality* (New York: Oxford University Press, 1986).

<sup>28</sup> Rachels, *Created from Animals*, p. 199.

<sup>29</sup> Rachels, *Created from Animals*, p. 199.

<sup>30</sup> "Lives and Liberty," in John Christman (ed.), *The Inner Citadel: Essays on Individual Autonomy* (New York: Oxford University Press, 1989), pp. 221-233.

In his posthumous assessment of Rachels' work on the biological/biographical distinction, Ruddick argues that while Rachels often expressed his view as defending the "sanctity of lives," Rachels' view is better understood as supporting a principle of respect for lives.<sup>31</sup> Sanctity seems to imply, Ruddick argues, a pure inviolability of even the least sacred thing. Respect, however, "takes various forms and degrees," allowing one to compare the relative worth of lives.

The problem with these two claims can be seen in the continuation of Ruddick's argument:

Moreover, respect can be won or lost. Even if, as Jim says, all people value their own lives equally, not all lives are worthy of equal respect. Indeed, we have no compunctions about trying to end certain lives, for example, lives of crime or unintentional self-destruction. The hope is to replace such lives by new lives better for both the liver and his or her associates.<sup>32</sup>

This seems to open a dangerous course. If all lives are not worthy of equal respect, if life itself is instrumental rather than valuable in itself, if life is not sacred, it becomes necessary to craft standards by which lives can be ranked. While my argument below does that, it does so explicitly because there of the situation: someone must die. There seems nothing in Rachels' position so interpreted that would limit the ranking of lives to this or similar cases. Utilitarian factors, it seems, are equally plausible in the decision to prefer biological over biographical life, and those who are solely capable of biological life may be killed simply because they are, in Ruddick's interpretation of Rachels, "a waste of medical and financial resources."<sup>33</sup>

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<sup>31</sup> "Biological Lives' Revised and Extended," *Journal of Ethics*, 9:3/4 (July 2005), pp. 501-515.

<sup>32</sup> Ruddick, "Biological Lives," p. 505.

<sup>33</sup> Ruddick, "Biological Lives," p. 503.

Few would accept any of these claims. Since none of Rachel's broader claims are at issue here, the instrumental understanding of biological life is simply needlessly controversial in the present argument; there is no harm in rejecting this corollary of the distinction for the purpose of this argument. Similarly, it is also possible to hold both biographical and biological life as sacred, by which I mean that they are inviolable under most circumstances, and still recognize the priority of the former using an argument that I shall make momentarily. Moreover, much of my aim in this essay is to evaluate the implications of, rather than reject outright, the principle that life is sacred. Thus, while I rely on the distinction between biographical life and biological life to develop an answer to the question at hand, I reject both of these specific aspects of Rachel's argument. This rejection requires two further considerations, however.

These criticisms require first a further amendment to Rachel's distinction, a third category of metaphysical life. A non-instrumental concept of biological life and the preservation of the sanctity, rather than mere respect, of life require further analysis of the category of being alive. To call "alive" that which cannot continue to live in its environment—the condition of an embryo outside of the womb, for example—seems to miss something important about what a biological life is. It would be similar to calling a severed limb "alive" while it is dying. It may be technically true that the cells in the limb are carrying out life processes, but we would never call it a life. At the same time, however, an embryo is fundamentally different than a severed limb in that, under the right conditions, it will *become* a biological life. It is a potential life. And it is so not just in the sense of having an empirical probability of becoming a life but of having a teleology—a fated end—of becoming a life. And so while a blastocyst may not be a biological life now, it must still be accorded some status as a potential life in a way that the severed limb is not.

This forms the basis for the second consideration, the need to develop a new foundation for the priority of biographical life that maintains the sanctity of lives as a fundamental moral principle. While the three categories are by no means developed sufficiently to operationalize reliably, it is probably safe to say that an embryo in a test tube will never be more than a metaphysical life, and a healthy child at birth has clearly begun her biographical life. But we need go no further than this to see the key difference between the embryonic human and the diseased adult. The former is a life in the metaphysical sense. The latter is a life not just biographically but in all three senses. In each succeeding understanding of life is implicit the preceding understanding. Only that which has the potential for life can carry out biological processes, and only that which carries out life processes can give meaning to the results of those processes. To equate the metaphysical and the biographical is thus to deny the importance of the additional concepts of life.

The distinction among the three types of life explains why we are dissatisfied with allowing fully developed adults to die in order to preserve embryos that will never carry out more than the simplest biological functions. Those adults who die end their lives in all three senses. We lose the biographical nature of life when we equate the frozen embryo with the diseased adult. With it, we lose the central characteristic of what it is to be human: the ability to give meaning to the world around ourselves by making conscious choices. We deny this when we reduce all life to the biological or the metaphysical. If humans are something more than self-replicating DNA, it is because we are capable of giving meaning to our lives, capable of living a biographical life.

Hence we must prioritize the biographical over the metaphysical when we cannot have both—a constraint that I cannot overemphasize. And this is why we must permit therapeutic

cloning. To ban therapeutic cloning is to reduce all human life to the metaphysical, losing the core of what we really mean by being human: the ability to give our lives meaning. One of the more interesting theological questions about reproductive cloning is whether cloned people would have souls. One persuasive argument commonly offered suggests that if the children of *in vitro* fertilization have souls, so would clones. But the answer is very different in therapeutic cloning. If we equate the embryo and the adult, as we do when we ban therapeutic cloning, then we deny that the meaning of life is central to human life. If that is the case then none of us, however we are born, have souls.

### **Conclusion**

Perhaps nowhere has the debate on embryonic research been as serious as in Germany. The specters of Nazi eugenics and human experimentation in the death camps have made the country unusually sensitive to the ethical issues involved. We should not be surprised that Germany has the most restrictive policy in the world.

But the ethical issues relating to the embryo should not make us forget that we owe something to the diseased as well. The consequences of banning cloning are not just consequences for principles, but for real people. As former German President Roman Herzog wrote, "I am not prepared to explain to a child sick with cystic fibrosis, facing death and fighting for breath, the ethical grounds that hinder the science which could save him."<sup>34</sup>

When I wrote the editorial on which this article was based in February 2004, I expected, especially in a conservative state like Arkansas, a strong reaction. I am sure that the letter that the editors of the Democrat-Gazette printed in reply was representative of many such responses. But

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<sup>34</sup> Roger Cohen, "Clash on Use of Embryos in Germany Stirs Echoes of Nazi Era," *New York Times* Late Edition (East Coast), May 30, 2001. p. A.3.

one person emailed me directly. Her story reminds us of why we must not forget the real people amidst the aliens, Nazis, and abortionists. She wrote:

My daughter graduated from your college a few years ago. Of course, her thinking on this subject and mine too, come as a direct result of the death of my husband and her father at an early age. We watched him die, knowing there was nothing we could do. If stem cell research could help one dying child or one dying father and husband, would it not be worth the “hard choice”? Of course it would.<sup>35</sup>

Of course it would. To otherwise would be irresponsible.

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<sup>35</sup> Personal communication, February 15, 2004. The author’s name has been redacted and identifying details edited out to protect the identity of the author.