

The Legacy of Glanville Williams in Contemporary Bioethics Debates: Response to Professors Keown and Jones

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PROFESSOR JOHN KEOWN, along with Dr. David Jones, has written a fine critique of a very flawed “standard” work—indeed, the “foundational” work—in the discipline of the law and ethics of medicine. It is highly regrettable that it took fifty years for such a critique to be written, for the effect of the misguided polemic that is *The Sanctity of Life and the Criminal Law* has been great on both sides of the Atlantic Ocean.

In Professor Keown’s article, he notes four problems with Williams’s argument: (1) it mis-characterizes the “inviolability of life” position as theologically based; (2) it badly misunderstands theology; (3) it evades engagement with the philosophical basis of the “inviolability of life” position; and (4) it does not state or defend a clear counter-position. All of these faults may be found in contemporary debates about “bioethics.”

For instance, as Professor Keown points out, Williams confuses the question of whether the embryo is a human being with the question of when ensoulment takes place. The religious traditions of the world are not united on when ensoulment takes place. For instance, the Catholic Church does not have a dogmatic teaching on this point. When ensoulment takes place is a theological question. Presumably there is an answer to it, but we do not have a magisterial declaration on this point. But the question when a human being comes into existence is a straight-forward scientific question: when—at what moment—does another member of the species *homo sapiens exist*? And it is not a difficult question to answer. It begins, as every embryology textbook makes clear, when a human sperm cell fuses with an oocyte or “egg” cell. From that point forward, another member of the human species exists. It exists as a separate organism. It

directs its own integral functioning and development. It is no longer an egg or a sperm or even a “fertilized egg.” Rather, it is a living human being. It is distinct from its parents, each of whom has supplied half of its chromosomes. And so long as it lives, which could be for one second or for one hundred years, it remains a living member of the human species. Implantation, for instance, in a womb does not change its nature or cause it to “become human” or to “come alive.” It is already a living member of the human species.

As I say, this is not controversial. It is a scientific commonplace. Yet in the political debates over human cloning and human embryonic stem cell research, this fact has been repeatedly denied. Hard as it may be to believe, the discredited claim from the abortion debate—“it’s just a ball of cells”—has been resurrected here. Many proponents have claimed that it is *not* a human being.

Now it would be one thing to claim that it is not a “person.” Whether there are some attributes that a human being must possess to be a “person” is a legal and philosophical question. Granting that the embryo is a human being would advance the argument to the proper point: is *this* human being entitled to legal protection (for presumably all “persons” are)? And if not, why not? In other words, can you defend the proposition that some human beings, lacking what you claim are essential attributes of personhood, can be killed without subjecting other human beings who lack the same attributes to deadly violence under that same principle? What principle allows us to kill this human being (allegedly a nonperson) without endangering other human beings? (If it is the size of the unborn, then all small people are at risk. If it is the age of the unborn, then all young people are at risk. If it is the lack of rationality, then comatose or demented persons are at risk. If it is location that matters, what protects a human being who moves from New Jersey to New York? If it is dependency on other human beings, then we are all at risk.)

Some of us who have been involved in both the abortion debates and the stem cell wars had hoped that it would be possible to conduct this later debate apart from the former. After all, though it is a bad argument, there is an argument that the pregnant woman’s interests/ rights trump that of the unborn fetus. However, in the stem cell case, there is no woman who is arguing for control of her body against the baby within it; rather, there is a scientist in a laboratory who wants to dismember the embryo in order

to do research to benefit others (and to make a healthy profit). As I say, some of us had hoped that, by being away from the emotional flashpoints of the abortion debate, we could discuss embryonic stem cell research rationally. Sadly, that has not proven to be the case. We have faced the same kinds of evasions of reality in which Williams engaged, for instance, when he claimed that the deformed human babies were “monsters,” resulting from bestiality.

Many of those in Congress who voted to reject President Bush’s limitations on the federal funding of human embryonic stem cell research (limited to the lines in existence before the date of his policy, August 9, 2001) and to pass a bill to subject to lethal violence human embryos frozen *but living* in IVF clinics did so for nakedly utilitarian reasons. They believed that thousands of suffering people would be helped thereby. In so doing, they adopted the utilitarian view that Williams helped introduce into the debate about the inviolability of human life, and they applied it with no more rigor than did Williams. Who knows whether the consequences of institutionalizing the destruction of embryonic human beings in order to provide cures for sick and diseased people will result in a “greater good”? Perhaps doing so will so de-humanize our society and the way we treat one another that the resulting “costs” will far exceed the gains from whatever “cures” we develop from embryo-destructive research.

Further, just as did Glanville Williams, proponents of embryonic stem cell research and cloning ignore—and thus do not engage—the philosophical underpinnings to the “inviolability of life” position. They ignore not only the Hippocratic Oath, but the Nuremburg Code, which states in principles 5 and 7 that no research should be undertaken when it is known in advance that death or disabling injury will result, as well as the Universal Declaration of Human Rights and the International Covenant on Civil & Political Rights, whose article 27 states: “every human being has the inherent right to life.” Such principles are not merely the “airy” theorizing of philosophers, but a universal (or at least Western civilization’s) protest after millennia of abuse of human beings and human rights.

Further, proponents of embryonic stem cell research often proceed with what seems a cavalier disregard of logic, inclining one to Elizabeth Anscombe’s judgment on Williams’s book: it is polemics, not scholarship.

I remember being astonished to hear one prominent proponent of human embryonic stem cell research, Irv Weisman, himself a scientific entrepreneur, claim before the President's Council on Bioethics that the principles of the Nuremberg Code prohibited what he called "reproductive cloning," but not what he called "therapeutic cloning." Essentially, he was arguing that it would be unfair to human clones to be *born* (after all, Dolly the cloned sheep had suffered grievous abnormalities), but it would not violate the same Nuremberg Code to create cloned human beings so long as they were killed *before* being born.

In many ways, this phenomenon parallels what Professor Keown criticizes in Williams—a position vaguely articulated and never directly defended. In other words, it is hard to bring such people to the point: either this "thing" is a human being or it is not; if it is, then either we treat it as we do other human beings or we are obligated to justify not doing so. Science, not theology, provides the answer to the first question (whether it is a human being). Philosophy/ethics provides the answer to the second (how we should treat it). The case is so strong that every human being should be treated equally—I would say that this is the core principle of Western civilization—that there is a heavy burden of proof upon those who would apply a different standard to embryonic human beings.

However, sadly, the entire debate about human stem cell research has been shaped by an intention to mislead. That is a strong statement. Let me justify it.

In 1970, *California Medicine*, the journal of the California medical association, published an important editorial. The editorial set out to justify abortion; it did so by inviting its readers (the medical profession) to play the game of "semantic gymnastics," that is, to find ways of avoiding what it acknowledged was scientific fact, that is, that human life begins at conception and is continuous whether intra- or extra-uterine until death. The purpose of this new game was to replace "the traditional Western ethic" with its respect for "the intrinsic worth and equal value of every human life regardless of its state or condition" with "a new ethic for medicine and society" in order "to separate the idea of abortion from the idea of killing" (quotations from the article). This was step one in the "dehumanization" of the unborn.

Step two took place in the 1970s with the promotion of the concept of the "pre-embryo." (I do not assert that this was the motivation of all

who supported this concept.) The term was used to refer to the embryo before it implanted in the womb. Certainly we would say that the embryo at this point is “pre-implantation,” i.e., it has not yet implanted itself in the uterus. We would also acknowledge that implantation is a highly significant event; unless the embryo implants, it dies; if it implants, it receives nutrition and a safe environment in which to live, grow, and develop. (It is, however, important to note that every human being at every stage requires precisely the same thing.) The critical question is: does implantation effect a change in the *nature* of the thing that implants? Does it make the “pre-embryo” into a “person”? Embryologists are united that it does not.¹ In the 2001 edition of his leading textbook on embryology, Ronan O’Rahilly states:

The term “pre-embryo” is not used here for the following reasons... it may convey the erroneous idea that a new human organism is formed at only some considerable time after fertilization...and...it was introduced in 1986 largely for public policy reasons.²

One of the leading proponents of embryonic stem cell research and bioethical innovations of any and every kind, Professor Lee Silver of Princeton, tells us what those “public policy” reasons were:

The term pre-embryo has been embraced wholeheartedly by IVF practitioners for reasons that are political, not scientific. The new term is used to provide the illusion that there is something profoundly different between a six-day old embryo and a 16-day-old embryo. The term is useful in the political arena— where decisions are made about whether to allow early embryo experimentation—as well as in the confines of a doctor’s office where it can be used to allay moral concerns that might be expressed by IVF patients.³

¹ It is an embryo from the first moment. See, e.g., *The Harper Collins Illustrated Medical Dictionary* (New York NY: Harper Perennial, 1993), p. 146: “Embryo: an organism in the earliest stage of development: in a man, from the time of conception to the end of the second month in the uterus.”

² Ronan O’Rahilly & Faiola Muller, *Human Embryology and Teratology*, 3rd ed. (New York NY: Wiley-Liss. 2001), p. 88.

³ Lee M. Silver, *Remaking Eden: Cloning and Beyond in a Brave New World* (New York NY: Avon Books, 1997), p. 39.

Therefore, we may conclude that the term “pre-embryo” was developed to avoid “something everyone really knows”—that life is continuous from the first moment (whether through fertilization or cloning) until death. The term “pre-embryo” was developed and used largely, if not exclusively, to mislead; to hide scientific facts about the beginnings and the unity of human life; to bolster support for a new reproductive technology; and to obtain funding for experiments on human embryos. It has also had a life beyond these areas, and has been adopted by some American courts. The result has been that the embryo is treated more like property than like a human being.⁴

In the cloning debate, the desire to “deny what everyone really knows” (the strategy of *California Medicine* above) by finding language that would hide the facts about human life has been so convoluted that it would be amusing if lives were not at stake. First, proponents of cloning tried to deny that cloning created a human embryo. Since, they argued, the new entity did not result from sexual reproduction, it was not an “embryo.” For reasons I have indicated—the nature of the thing as a living, genetically complete, unified, self-integrating human organism in the first stage of development—few have been taken in by that ploy. Even prominent advocates of embryonic stem cell research, such as Dr. John Gearhart of Johns Hopkins University, acknowledged that the “thing” created by cloning is a human embryo.⁵

Some then asserted that the *location* of the thing in a Petri dish or in

⁴ In *Davis v. Davis*, 842 S.W.2d 588 (1992), the Tennessee Supreme Court held that the “pre-embryo” occupied an intermediate position between property and humanity. The opinion was cited as an authority in several other cases, such as *J.B. v. M.B.* 2001 WL 909294 (N.J. 2001), which held that an ex-wife could not be forced by her ex-husband to “procreate” through having the IVF-produced “pre-embryos” implanted in someone else, with the consequence that the “pre-embryos” could be destroyed. Note that these cases permit, if there is a properly executed document, frozen but living embryonic human beings to be destroyed, effectively treating them as any other “personal property” to be disposed of per the will of the parties. It should be noted that it is ordinarily against public policy for two individuals to contract to kill a third.

⁵ See, Testimony of Dr. John Gearhart, at the third meeting of the President’s Council on Bioethics, April 25, 2002, at www.bioethics.gov/meetings.

an IVF clinic (i.e., outside a woman's womb) means that it is not an embryo. They asserted that since "it" will never be implanted in a womb but will be used in research, it can never be a human being. For reasons discussed above, this is scientifically unsound. The argument is a variation on the theme of "potentiality." In other words, since the "thing" lacks the potential to be born, it is not a human being. However, it is disingenuous for those who would deprive the embryo of the chance to be born to claim that *their action* changes the status of the thing considered. Every human being, by virtue of *that* fact, is full of inherent potential. That potential may never in fact be realized, or it may be impeded in particular cases in some intrinsic way. But that potential—to live, to grow and to develop—is part of what it means to be a human being.

Next cloning advocates posited a distinction between "reproductive cloning" and "therapeutic cloning." But such a distinction collapses of its own weight. Once you have created a living human embryo, the *reproduction* of a member of the human species has occurred, *regardless* of the purpose (birth or experiment) for which the clone was created. Thus, *all* human cloning is reproductive.

Likewise, "therapeutic cloning" cannot be "therapeutic."⁶ For a treatment to be "therapeutic," it must be so for the *subject*, not for someone else. As noted, medical ethics has always insisted that there be greater protection for the subject when the subject is not himself benefited by the procedure.⁷ Yet, "therapeutic cloning" kills the subject (the embryo) every time (in order to get stem cells). Thus, it is clearly *non-therapeutic*. The fact that the distinction between therapeutic and non-therapeutic procedures is so well-established, with greater protection

⁶ This is not to deny that the aim of the experiment is to identify cures for sick or injured people. But it is to assert that such an aim is wholly irrelevant as to whether the experiment is "therapeutic." (It is also irrelevant as to whether it is ethical.)

⁷ "In regard to pure or nontherapeutic research, the Nuremberg code is as vital a document today as it was when it was created." Leonard H. Glantz, "The Influence of the Nuremberg Code on U.S. Statutes and Regulations," in *Doctors and the Nuremberg Code*, p. 199

accorded subjects in non-therapeutic experiments,⁸ makes the decision of cloning proponents to use the term “therapeutic” even more troubling. It is difficult to imagine that this was not an intentional effort to confuse the issue.

After opinion polls revealed that Americans did not like any kind of “cloning,” whatever the adjectival modifier,⁹ the biotech industry took a breathtakingly bold gamble—they simply decided to *re-name* the procedure. Instead of “cloning,” it would now be called “somatic cell nuclear transfer” or “nuclear transplantation to produce stem cells.” Breathtakingly simple—and utterly dishonest—for both phrases are simply the *definition* of cloning itself. In other words, when one speaks about cloning, one is speaking about a laboratory procedure in which the *nucleus* from a *somatic* (body) cell is *transferred* or *transplanted* into an egg cell from which the original nucleus has been removed. That’s what “cloning” means. To substitute the definition of the term for the term and then to pretend that the two connote different things is plainly dishonest.

Even worse, with the phrase “nuclear transplantation to produce stem cells,” cloning advocates obscured the fact that the procedure does *not* produce stem cells but produces an *embryo* that is later killed so that its stem cells can be removed.¹⁰ We would not describe brutal experiments

⁸ “[C]oncern for the individual subject’s welfare and autonomy must take precedence over the interests of science and society. All enlightened codes and regulations, beginning with the Nuremberg Code and including the Helsinki Declarations and the U.S. federal regulations, appeal to and buttress this principle. In a therapeutic trial, particularly one in which subjects stand to gain greatly, they may be willing to take proportionately greater risks, and this may be ethically permitted. In a nontherapeutic trial, however, where no benefit is expected for the subjects themselves, the risks should be vanishingly small, or ‘minimal,’ in the words of the federal regulations.” Marcia Angell, “Editorial Responsibility: Protecting Human Rights by Restricting Publication of Unethical Research,” in *Doctors and the Nuremberg Code*, p. 277 (hereafter, Angell).

⁹ See the complete Gallup poll analysis at <http://www.gallup.com/pollreleases/pro20516.asp#rm>.

¹⁰ Sadly, this obfuscation continued in various bills introduced in the Congress and in state legislatures. For instance, one such bill was that introduced in the U.S. Senate in 2003. S. 303, titled “Human Cloning Ban and Stem Cell Research Protection Act of 2003,” defines “human cloning” as follows: “The term ‘human

on inmates in Nazi camps, in which they were immersed in freezing water to see how long it would take them to die, as “experiments to preserve the life of German pilots who crash into freezing water,” though that was the motivation behind the experiments. Nor can we permit the *purpose* of the embryo-destruction (i.e., to harvest stem cells) to be used to disguise the fact that *human embryos* are being created, killed, and “disaggregated.”

So, as did Glanville Williams, proponents of embryonic stem cell research and human cloning mischaracterize the reasons behind the inviolability of life principle, and fail to engage its true justification. They vaguely state their own views, without rigorously examining the “logic” behind them or the results to which they are likely to lead. They evade the scientific facts. As did Glanville Williams, they demolish straw men, and they construct hollow men to take their place. As one of the first to engage in such “advocacy scholarship,” Glanville Williams helped to usher in this age of unreason.

cloning’ means implanting or attempting to implant the product of nuclear transplantation into a uterus or the functional equivalent of a uterus.” It defines “nuclear transplantation” as follows: “The term ‘nuclear transplantation’ means transferring the nucleus of a human somatic cell into an oocyte from which the nucleus or all chromosomes have been or will be removed or rendered inert.” Thus, S. 303 confuses cloning with the transfer of the cloned human being into a uterus. It bans the transfer, not the cloning, of the embryo. In light of the undisputed facts of science discussed herein, it is difficult to believe that these errors were not intentional.