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RELIGIOUS PERSPECTIVES ON HUMAN CLONING: REVISITING SAFETY AS A MORAL CONSTRAINT

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I. INTRODUCTION

In its June 1997 report, the National Bioethics Advisory Commission (NBAC) concluded that the application of somatic cell nuclear transfer technologies to human cloning is morally unacceptable at this time.¹ Given the current state of cloning research, this conclusion is based mainly on concerns of safety for the gestational mother and for “the fetus and/or potential child”² being cloned.³ Thus, safety functions, in this case, as an overriding moral constraint. In the words of James Childress, ethicist and member of the Commission, safety is a “fundamental ethical consideration Any procedure that creates a substantial risk of harm to children is morally problematic.”⁴ It is one issue on which a remarkable consensus exists among members of the NBAC, while, not unexpectedly, a plurality of views exists on the question of whether cloning ought to be permitted once safety concerns have been adequately addressed.

The NBAC’s report also includes a chapter summarizing a number of (Western) “Religious Perspectives” on the prospect of cloning humans.⁵ It is based on reports submitted either in writing to or in testimony before the Commission by scholars of the Jewish, Christian, and Islamic traditions and by religious leaders in these traditions. As noted in the report’s chapter on religious perspectives, religious views on the ethics of human cloning reveal as

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1. NATIONAL BIOETHICS ADVISORY COMMISSION, CLONING HUMAN BEINGS: REPORT AND RECOMMENDATIONS OF THE NATIONAL BIOETHICS ADVISORY COMMISSION 108 (1997) [hereinafter NBAC REPORT]. Unless otherwise noted, all references to human cloning in this article are to somatic cell nuclear transfer cloning, the specific type of cloning on which the NBAC’s report focused.

2. *Id.*

3. This conclusion implies, of course, that such cloning might go forward in the future, without undue moral concern, once the question of safety is adequately addressed; indeed, this implication is discussed explicitly in the report’s legislative recommendations. *Id.* at 109.

4. James F. Childress, *The Challenges of Public Ethics: Reflections on NBAC’s Report*, HASTINGS CTR. REP., Sept.-Oct. 1997, at 9.

5. NBAC REPORT, *supra* note 1, at 39-61.

much plurality as secular views, though they also reveal a similar consensus on the question of safety. Thus, some religious leaders and scholars argue—on religious grounds—that human cloning could be morally acceptable under certain circumstances, assuming that the circumstances under which it would be morally acceptable adequately account for the safety of the gestational mother and the fetus or potential child being cloned. However, other scholars and religious leaders argue that human cloning would be wrong under any circumstances or, as it is sometimes said, human cloning is intrinsically wrong.⁶ Yet, even their argument is not that safety is an unimportant moral constraint. Rather, they argue that human cloning is wrong even if it could be shown to be safe or, said more precisely, at least as safe as natural reproduction.

This Article considers the moral constraint that this concern for safety represents, primarily as Christian ethicists and moral theologians use the concept of safety to construct moral arguments for or against human cloning and only as it (allegedly) applies to the so-called “potential child” being cloned. With respect to the potential child being cloned, this Article argues that safety cannot, in fact, coherently be used as a moral constraint. The safety of the gestational mother is not problematic in the same way that the potential child’s safety is problematic, and thus this Article does not address it. The concern for the safety of the developing (cloned) fetus is another issue, important as it is, that this Article does not address. It turns on a related but distinct question that concerns the moral status of biological entities which emerge at various stages of early human development and are only arguably considered persons or are due the regard typically given to persons. This Article will discuss the moral status of these developing entities only to the extent needed to demonstrate how that status complicates, but does not permit us to sidestep, questions involving potential children as such.

In revisiting this particular moral constraint, this Article will not argue normatively that human cloning is morally either acceptable or unacceptable. Rather, this Article argues that those Christian moral arguments that would permit human cloning, on the assumption that the question of safety has been adequately addressed, are *undermined* by a problem that is completely ignored in the NBAC’s discussion of “Religious Perspectives” on human cloning, and mentioned only in passing in its discussion of the “Ethical Considerations” related to human cloning.⁷ Moreover, those Christian moral arguments that prohibit human cloning under any circumstances and do *not* depend on safety are undermined by the same problem because the problem undermines our ability

6. All commentators also agreed that any child brought into existence through cloning ought to be regarded as a human person. For a discussion of this point, see Childress, *supra* note 4, at 11.

7. NBAC REPORT, *supra* note 1, at 66.

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to make any *direct* moral reference to the potential child who might be cloned. In essence, this Article will argue that religiously-based moral arguments, both for and against human cloning, are undermined *in principle* because they do not properly account for this problem.⁸

II. THE PROBLEM OF CONTINGENT FUTURE PERSONS

The "problem," ignored in the NBAC's discussion of "Religious Perspectives" and mentioned only in passing in its discussion of "Ethical Considerations," was defined as a problem only in 1967,⁹ and is thus relatively novel. This problem is discussed in the literature under a number of different and sometimes provocative names. Gregory S. Kavka discusses it as the "futurity problem" and as "the paradox of future individuals";¹⁰ Thomas Schwartz discusses it as "the problem of the disappearing beneficiaries";¹¹ R. M. Hare discusses it as a problem of "possible people";¹² Derek Parfit discusses it as "the non-identity problem";¹³ and David Heyd discusses it as a "genesis problem."¹⁴ I call it the problem of contingent future persons.¹⁵ It arises when we are considering whether to bring a potential child—or, as I typically say, a "contingent future person"—into existence under certain conditions (to be specified below). Under these conditions, the problem of contingent future persons makes it impossible to assert coherently that such a child has been harmed or benefited by being brought into existence.

8. Secular moral arguments about human cloning that assume safety as a moral constraint, while not considered here, are undermined in the same way *if* their fundamental approach to value is "person-affecting" or "person-oriented." Here, I am assuming without argument that Western religious traditions are person-affecting or person-oriented in their fundamental approach to value. In support of this assumption for the Jewish and Christian traditions, see David Heyd, *Divine Creation and Human Procreation: Reflections on Genesis in the Light of Genesis*, in *CONTINGENT FUTURE PERSONS: ON THE ETHICS OF DECIDING WHO WILL LIVE, OR NOT, IN THE FUTURE* 57-70 (Nick Fotion & Jan C. Heller eds., 1997); Jan C. Heller, *Deciding the Timing of Children: An Ethical Challenge Only Indirectly Addressed by the Christian Tradition*, in *CONTINGENT FUTURE PERSONS: ON THE ETHICS OF DECIDING WHO WILL LIVE, OR NOT, IN THE FUTURE* 71-84 (Nick Fotion & Jan C. Heller eds., 1997).

9. Jan Narveson, *Utilitarianism and New Generations*, 76 *MIND* 62 (1967).

10. Gregory S. Kavka, *The Futurity Problem*, in *OBLIGATIONS TO FUTURE GENERATIONS* 180-203 (R.I. Sikora & Brian Barry eds., 1978); Gregory S. Kavka, *The Paradox of Future Individuals*, 11 *PHIL. & PUB. AFF.* 93-112 (1982).

11. Thomas Schwartz, *Obligations to Posterity*, in *OBLIGATIONS TO FUTURE GENERATIONS* 3-13 (R.I. Sikora & Brian Barry eds., 1978).

12. See R.M. Hare, *Possible People*, 2 *BIOETHICS* 279-93 (1988).

13. Derek Parfit, *The Non-identity Problem*, in *REASONS AND PERSONS* 351-79 (1984) [hereinafter *REASONS AND PERSONS*].

14. DAVID HEYD, *GENETHICS: MORAL ISSUES IN THE CREATION OF PEOPLE* (1992).

15. See JAN CHRISTIAN HELLER, *HUMAN GENOME RESEARCH AND THE CHALLENGE OF CONTINGENT FUTURE PERSONS* (1996).

The future child in question is potential or contingent in the sense that its future existence, and thus its identity, depends on the choices or actions of the relevant agents in question. This situation arises, claims Derek Parfit, because identity is time-dependent. By claiming that identity is time-dependent, Parfit means that the identities of particular people necessarily depend on *when* they were conceived.¹⁶ This fact may not be morally problematic for most prospective parents, but it could be under circumstances like those that surround human cloning. Here, I want merely to suggest, in an intuitive sense, how such circumstances arise and what far-reaching implications they hold by considering a case that Parfit develops but in a slightly altered form.¹⁷

Because of what we now know about reproductive biology, Parfit argues we can reasonably assert the following: if a couple (Parfit considers a teenage mother) deliberately decides to delay the conception of a potential child in order to increase the chances that it will have a “better start” or better opportunities in life, say, once the couple is better off financially, a *different* child will actually be born when they do conceive and bring the child to term (assuming that the child’s gestation and birth are unproblematic). However, because a different child is actually born in such situations, it makes no sense to claim that this particular child has benefited by not being born earlier. For if the couple had not delayed conception, this child would not exist. Said differently, no earlier “state of being” existed to which this particular child’s life can now be compared. Conversely, and more controversially, if the same couple, under the same conditions, decides *not* to delay conception, it also makes no sense to claim that the child actually brought into existence has been harmed by being born earlier, that is, by being born with fewer opportunities in life. Again, if its parents had delayed this child’s conception, a different child would have been born, and this particular child would not exist.¹⁸

This apparent inability to attribute benefit or harm to the effects of choices or actions that bring children into existence is the problem of contingent future persons. It is perplexing ethically, for it seems to remove the welfare—and thus, the safety—of these children from all moral consideration, at least to the extent that their welfare is determined by those choices or actions that bring

16. Parfit, *supra* note 13, at 351-53. This is not, of course, a claim that personal identity can be reduced to the genetic make-up of a person that is (largely) determined at conception.

17. *Id.* at 357-61.

18. Parfit argues in this case that the logic of the problem is constrained by the claim that the child’s life must be at least minimally “worth living.” Not everyone is convinced this argument can be sustained, however, and even Parfit seems to think the claim is weak. At one point he says, “I also will call certain lives ‘worth living.’ This description can be ignored by those who believe that there could not be lives that are not worth living.” *Id.* at 358.

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them into existence.¹⁹ Thus, on the one hand, because the potential children in question cannot benefit by those choices or actions that bring them into existence, the problem of contingent future persons seems to undermine moral arguments that might motivate us to make their lives better. On the other hand, because potential children cannot be harmed by those choices or actions that bring them into existence, the problem seems to undermine moral arguments that might be used to constrain those choices or actions on our part that either are aimed at or result in making their lives worse.

Concerns for the welfare of persons routinely arise in consequentialist or goal-based moral arguments that are based in an approach to value that is oriented toward the interests of particular persons, whether present or future. An approach to value is concerned with the very nature of value, with the most basic or fundamental conditions under which value can be attributed to any object. One such approach (of only two), discussed in the literature as a "person-oriented" or "person-affecting" approach to value, requires, as a condition of attributing value to an object, that a person exists for whom the object can be valuable. This may seem like a self-obvious requirement, but the alternative approach does not require the prior existence of persons. It is typically discussed as an "impersonal" approach to value, and it is not concerned with the effects of our choices or actions on particular persons.²⁰ In any case, when a person-oriented approach to value is used by agents in moral arguments to make choices about present or future persons, those persons either must already exist, or they must exist in the future *independent* of the agents' choices or actions, if value is to be attributed to them. This, of course, is exactly what is at issue with potential future persons: their existence is dependent on or contingent on the agents' choices or actions, and thus they may or may not exist in the future.

Further, lest we think that the problem of contingent future persons is only an issue for person-oriented consequentialist or goal-based moral arguments, the problem also seems to undermine what are technically referred to as person-oriented deontological moral arguments. The latter are moral arguments that need not refer to the alleged harms or benefits visited on future children as a result of our actions, but may refer instead to something about such children as (future) persons that requires them to be brought into existence in certain ways or under certain circumstances—for instance, that they possess certain rights or that certain duties or obligations are owed them. David Heyd argues convincingly that when such deontological arguments are applied to those

19. Of course, once they come into existence, they would typically enjoy the same rights as any other child.

20. For a more complete discussion of these two approaches, see Parfit, *supra* note 13; HEYD, *supra* note 14; HELLER, *supra* note 15.

choices or actions that bring *potential* children into existence, they result in a form of moral reasoning that is “viciously circular” and thus self-defeating.²¹ Such arguments become circular because the problem of contingent future persons also undermines our ability to make any direct moral reference to the potential child who might come into existence as a result of the choices or actions we are trying to evaluate. We can use Parfit’s case again to get an intuitive appreciation for such arguments and their implications.

Thus, in considering whether to bring a potential child into existence sooner or later, some might argue either that the potential child has a right (as a potential person) to be brought into existence with a basic set of opportunities intact, or some might argue that, because of what is owed to children generally (as persons), the couple is obligated to bring the child into existence only when a basic set of opportunities can be guaranteed. Examples of such arguments can be found in the NBAC’s report. It discusses Hans Jonas’s claim that children have a right to “ignorance” about their futures and Joel Feinberg’s claim that children have a right to an “open future.” The report also discusses Martha Nussbaum’s claim that cloning might violate some vague quality she calls “separateness.”²² However, in all such cases, the argument becomes hopelessly circular because the alleged subject of the rights or duties does not yet exist as a person to whom those rights can be ascribed or those duties can be owed. Further, and more importantly, this subject may *never* exist. Said differently, because the choice or action we are trying to evaluate is the one that makes it possible for a potential person to become a subject of rights or duties, we cannot refer to those rights or duties when trying to decide whether to bring that subject into existence. In such cases, agents cannot coherently make any *direct* moral reference to the potential child who may or may not be brought into existence. Heyd puts it this way: “existence is not a moral predicate; to be cannot in itself be either good or bad, a subject of duty or prohibition, a right or a wrong.”²³

Now, one may respond in a number of ways to this problem of contingent future persons. Though none of the responses are altogether satisfying, some mitigate the harsher implications of this problem for those potential children who are actually brought into existence. But before we consider these responses, we need to see how or to what extent human cloning gives rise to the problem of contingent future persons, and we then need to review in somewhat more depth how the problem undermines Christian moral arguments about human cloning.

21. HEYD, *supra* note 14, at 39-64.

22. NBAC REPORT, *supra* note 1, at 66-67. In my estimation, the problem of contingent future persons renders all such claims as highly suspect. I discuss similar, religiously-based arguments later in this article. See *infra* Part IV.

23. HEYD, *supra* note 14, at 124.

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III. SOMATIC CELL NUCLEAR TRANSFER CLONING IN HUMANS

Empirically, the problem of contingent future persons can arise in any number of ways, both for individual agents and for policy makers (an important dimension of the problem not considered here). However, as we saw above, only one fundamental condition must be satisfied for it to arise in a general sense: the relevant agents must be able to exercise sufficient control over the timing of a potential child's conception such that a decision to delay conception results in a different child—that is, a child with a different identity—actually coming into existence.²⁴ With respect to the possibility of extending somatic cell nuclear transfer cloning to humans, this condition can be satisfied if we make two reasonable assumptions.

First, we must assume that the processes by which a cloned human embryo comes into existence—that is, when the transplanted somatic nuclear material has been successfully reactivated—are sufficiently analogous to the natural and artificial processes that permit the joining of a human egg and sperm, and thus something akin to “conception.” With this first assumption, we are merely trying to locate a point in time at which we can meaningfully speak about a new human embryo. I trust that it is not necessary to argue here, science fiction and popular accounts of human cloning notwithstanding, that the resulting embryo would in fact be a *new* biological entity. Any other position is unjustifiably reductive. It is also not necessary that we be convinced that this new biological entity is or is not a person, or that it does or does not deserve to be treated as if it were a person. One's views on the moral status of these entities do not materially affect the problem of contingent future persons. All that is required is that we believe we have something that potentially could, given certain conditions sufficiently under our control, become a person. *If we believe the entity in question is a person or should be treated as if it were a person, then this belief changes what agents can justifiably do to it, but this belief does not affect the question of whether it is harmed or benefited by being brought into existence as that entity.*

In any case, if this first assumption can be accepted, then, second, we must assume that the relevant agents (e.g., researchers, clinicians, a gestational mother whose consent must be obtained) can sufficiently control the timing of this reactivation such that to change that timing would result in a different child being born. Here, we might imagine clinicians, working under laboratory conditions, who decide to bring a healthy child into existence through cloning, but who then decide to delay the reactivation process, say, in order to obtain

24. The action could also result in different *numbers* of children being born, but this is a complication I ignore in this article.

better cellular material with which to work and thereby increase their chances of having a healthy child. In such a scenario, a different child would result (assuming, again, that transfer, gestation, and birth were successful).

Granting these two assumptions, we may conclude that human cloning can satisfy the condition for the problem of contingent future persons to arise, at least for *some* cloned children (we might also imagine scenarios associated with human cloning that would not satisfy this condition).²⁵ And, if this is the case, we are now in a position to ask whether safety can coherently serve as a moral constraint on these actions. Said differently, if it can be demonstrated that cloning poses risks that are higher than “normal” for a potential child that comes into existence through cloning, can this finding count as a moral reason *not* to clone this child? Or, conversely, if it can be demonstrated that cloning poses risks that are not higher than “normal,” can this finding count as a reason *to permit* the cloning of this child?

Insofar as our moral concerns are directed toward the safety of the particular potential child that might come into existence through cloning, it should be obvious by now that the answer to both of these questions is no. The cloned child cannot be harmed *or* benefited by being brought into existence in any particular way or under any given set of circumstances, including cloning. The problem of contingent future persons simply removes such a child from moral consideration, and this implies that its (alleged) safety cannot coherently

25. For instance, if a cloned embryo were created, then for some reason frozen and thawed before transfer (assuming this could be done successfully), it is arguable whether simply changing the timing of a potential child's eventual *birth* (rather than its conception) would appreciably affect the identity of the resulting child. Because the resulting child's identity is not determined simply by its genetic make-up at conception, to make such a determination we would need to determine whether developmental and environmental factors were sufficiently changed as to appreciably affect its identity. This said, if the treatment of embryos that have been cloned and then frozen, thawed and transferred to a uterus does *not* satisfy the necessary condition for the problem to arise, then we are simply thrown back on more familiar types of argumentation ethically. The debate in such cases will be about what is owed these biological entities. If we believe human personhood can be attributed to cloned embryos or that they ought to be treated as if they were persons, then they will have moral (and perhaps legal) claims against us, and we will have obligations to them. The point is that future children, or the entities that will become future children, *can* be morally considerable in traditional terms providing the relevant agents cannot change the identities of these future children with the actions they are trying to evaluate. Technically, then, there are two classes of future persons that need to be distinguished: what I call contingent future persons and non-contingent future persons. The latter, which we are not discussing here, do not exist yet but will, and thus ought to be treated morally like any other person is treated, with the possible exception of being subject to a social “discount rate” because in some cases they will live in the rather distant future.

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serve as a moral constraint on the agents who control the processes by which it is brought into existence. This same problem undermines Christian moral arguments that refer to the potential child who might or might not be brought into existence as a clone, and it is to these I now turn.

IV. RELIGIOUS PERSPECTIVES ON CLONING

Western religious perspectives on human cloning are summarized under three themes in the NBAC's report: "responsible human dominion over nature," "human dignity," and "procreation and families." Each of these themes is correctly said to be based on or inferred from the biblical claim that humans are created in the "image of God." I argue elsewhere, however, that the objections to human cloning offered by Christian ethicists and moral theologians and summarized under these three themes are not, on their own terms, finally persuasive—that is, they fail to give Christian agents clear and consistent moral guidance.²⁶ For example, objections to human cloning made under "responsible human dominion over nature" fail to tell Christians whether human cloning ought to be regarded as an appropriate expression of the image of God in humans or as inappropriate expression of human *hubris* or pride. Objections made under "human dignity" fail to tell Christians exactly what it is about cloning that violates human dignity. Finally, those objections made under "procreation and families" fail to tell Christians how human cloning will undermine the identity formation of cloned children or the relational and social qualities of family life.²⁷

This being said, I here attempt to make an even stronger argument. I argue that *any* Christian moral argument that attempts to refer directly to a potential child who might or might not be cloned is undermined *in principle*. This argument can be made because Christian moral arguments also assume a person-oriented approach to value, which subjects them to the same limitations faced by any other moral argument based in a person-oriented approach.

Recall that a person-oriented approach to value formally characterizes the fundamental condition under which value can be attributed to any object, and that condition is simply that some person must exist for whom the object can be

26. See Jan C. Heller, *Religiously-Based Objections to Human Cloning: Are They Sustainable?*, in *BIOMEDICAL ETHICS REVIEWS: CLONING* (James Humber & Robert Almeder eds., forthcoming).

27. The claim that humans are created in the image of God is probably best used to make arguments that humans have moral responsibility and dignity. However, I believe it offers very little direction in telling Christians *how to exercise* that responsibility or *how to promote* human dignity. In the end, then, Christian claims about the application of somatic cell nuclear transfer cloning to humans are probably best viewed as a set of moral intuitions seeking reasons or grounds, rather than as moral arguments as such. Jewish and Islamic arguments may be somewhat more persuasive on their own terms, though I am not competent to discuss those arguments in any depth.

valuable. However, substantively, agents can employ at least two person-oriented approaches to value in making moral arguments in person-oriented terms. These are typically discussed as anthropocentric and theocentric approaches to value. As their names imply, an anthropocentric approach requires the existence of some *human* person for value to be attributed to an object, whereas a theocentric approach requires only the existence of a personal *God* (readers not trained in theology should understand that the terms “personal” and “existence” are used analogically in this context).

The Christian approach to value is theocentric, and thus God’s existence is all that is required for some object to be valued—as evidenced in the first creation myth in *Genesis*, where God pronounces creation “good” *before* humans are created. Thus, when Christian agents—because they are not God but, as morally responsible beings, are created “like God” or in God’s “image”—are making value judgments or moral arguments about a particular object, they must make an interpretation about how God values the object in question. Typically, these interpretations refer to a standard set of “sources,” such as Scripture, authoritative teaching traditions, and experience or “reason” broadly construed. Of course, the interpretations of these sources may differ through time and space, and even when agreement exists on their interpretations, they may be given different weights. Thus, this process of moral “discernment” can and often does lead to conflicting interpretations about how God values a particular object. Nevertheless, about persons in general, the Christian tradition is clear. Human persons and the conditions under which they exist are thought to be of central importance to God and to God’s purposes for the world. The centrality of human persons to God’s purposes is one reason why Christians (along with Jews and Muslims) do not debate whether a cloned human child would, in fact, be a person. It is also one reason why the safety of these cloned human children is—intuitively, at least—so very important to Christians.

But we must remind ourselves that we are not inquiring about what is owed a cloned human child that already exists; rather, we are asking whether what is owed such a child can be used to evaluate those choices or actions that brought it into existence. Unfortunately, the answer again is no, for Christian moral arguments that use a theocentric approach to value are subject to the same limitations we saw above: they cannot make any direct reference to the child who might be brought into existence by a particular choice or action.

Imagine what might be required of Christian agents to overcome such limitations. In order to argue that some potential child ought or ought not be brought into existence because it was “conceived” by cloning (and thus might suffer certain harms, enjoy certain benefits, or have certain rights violated thereby), Christians would need to produce an interpretation of how God valued one potential child’s existence over some other (or no) potential child’s

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existence. I cannot see how such an argument could be made, especially if we assume, as most Christians do, that God values persons equally—when they become persons—because all are created in the image of God. Potential children, of course, do not possess the image of God, because they are not yet persons. Moreover, if an interpretation could be made that God does, in fact, value some potential children more than others (say, because they are “chosen” by God in a covenant ceremony with their ancestors), then the Christian agents in question would still need to tell us how they know that God values *these* and not *those* particular potential children, all of whom could be included in a set of the “chosen.” And finally, if we were persuaded that these Christian agents do indeed know which *particular* potential children God values from a set of the chosen, the status of the potential children in question would simply change from that of potential or contingent future persons, about whom some choice for existence or non-existence must be made, to “actual” (Heyd’s term) or “non-contingent” future persons (my term), about whom no choice is required for existence. In other words, we are no longer concerned with potential children, but future children who will come into existence because God has determined it. By that determination, then, they are rendered morally considerable as future persons in ways that potential persons are not.

The point, of course, is that Christians simply cannot refer directly to the potential children who might or might not exist, and even if they, in some way, can claim to know the intentions of God in this regard, this knowledge would simply change the status of the future persons in question and render them actual or non-contingent future persons. Thus, the problem of contingent future persons truly undermines all references to these potential persons by Christians, and this includes references to their safety made in consequentialist or goal-based moral arguments as well as references to a potential child made in deontological rights-based or duty-based moral arguments.

V. SOME IMPLICATIONS FOR ARGUMENTS ABOUT HUMAN CLONING

Now, what implications does the above discussion hold for the substantive arguments that are made by Christians about cloning and summarized in the NBAC’s report? Note that not all arguments made by Christians about human cloning refer to potential cloned children, and thus only some of the arguments developed under the three themes are relevant to the discussion here. For example, warnings not to “play God” are problematic because they are too indeterminate, not because they necessarily refer to the potential child that might be created by cloning. That is, these warnings do not tell us whether creating a cloned child is inappropriately playing God or, as one theologian notes, quite appropriately “playing human” (by which he means that cloning could be viewed

as an acceptable expression of God's "image" and creativity in human beings).²⁸ The same could be said about the discussions of "the quest for knowledge" and of "human destiny." Here, Christian moral arguments are again too indeterminate. Christians cannot, on the basis of these arguments, decide whether the quest for knowledge about human cloning is appropriate or inappropriate, or whether being created in the image of God imparts to them a destiny that includes or excludes such technological achievements as human cloning. However, this being said, the arguments about the relationship of humans to the rest of creation and arguments about human dignity deserve more comment. These two issues will illustrate in more depth the implications of Christian moral arguments that attempt to refer to a potential child.

The NBAC's report discusses, under the heading of "responsible dominion," three "models" or ways of interpreting the biblical claim that humans are to exercise "dominion . . . over every living thing that moveth upon the earth."²⁹ The three models discussed, from least to most permissive, are "stewardship," "partnership," and "created co-creators."³⁰ They represent three competing interpretations of the meaning of being created in God's image. Now, I do not believe it is possible to decide, on scriptural grounds, which model ought to "trump" the others; nevertheless, Christian agents using one of these models might have occasion to make moral arguments about future persons. For example, it might be argued that being a good steward requires agents to consider the rights of future children to a world with certain resources intact. But, on the basis of the discussion above, I suggest that arguments about stewardship cannot be made with respect to potential children at all, whether created through cloning or by natural means. They cannot be said to have interests or rights, nor can Christians plausibly be said to have duties or obligations to them.

This said, Christians *can* plausibly claim that their tradition gives them reasons to be good stewards of creation generally. And in being good stewards in this general sense, resources might be protected for anyone who is born in the future, and this might be good for the potential children who are actually brought into existence. Nevertheless, it could not be a reason to bring or not to bring these potential children into the world. Moreover, if a "hard choice"

28. NBAC REPORT, *supra* note 1, at 44-49 (citing TED PETERS, PLAYING GOD? GENETIC DISCRIMINATION AND HUMAN FREEDOM (1997)).

29. *Genesis* 1:28 (KJV).

30. NBAC REPORT, *supra* note 1, at 46-47.

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had to be made between expending resources for the currently living or for future actual or non-contingent persons and potential persons who may or may not exist, these potential persons could make *no* claim on Christians. Similar conclusions can be drawn about the claim that cloning violates the “dignity” of potential children.

Some Christians have claimed that cloning violates human dignity. One Roman Catholic commentator, quoted in the NBAC’s report, argues that human cloning would violate human dignity because it would “jeopardize the personal and unique identity of the clone (or clones) as well as the person whose genome was thus duplicated.”³¹ Again, I believe this argument is hard to sustain on its own terms; that is, I do not believe a credible argument can be advanced to show how being a clone would jeopardize the “personal and unique” identity of the cloned child, much less the person whose genome is cloned. The argument is philosophically reductive, and it overlooks the many non-genetic factors involved in forming human identity.

Nevertheless, even if this claim were not reductive, it could still be interpreted in at least two ways that are relevant for my purposes. First, the claim that cloning violates human dignity could be a claim that the rights of a potential child not to be cloned have been violated when that potential child is brought into existence as a clone. If this is what the claim means, then we saw above that it cannot be sustained. It leads to a self-defeating, circular argument. Second, the claim could refer to some “objective” moral norm or standard that is part of the “natural law” given by God to humans to guide their choices and actions. This second type of claim needs to be sorted out a bit, and again Heyd’s work is helpful.

Heyd argues that we must distinguish between an objectivity of value “that exists independent of ‘any mind whatsoever’” and an objectivity of value that is a “common standard ‘valid for all minds.’”³² The former is a reference to the “nature of value” and as such refers to the impersonal approach to value. The latter is a reference to the “perspective” agents ought to adopt in trying to ground particular value judgments and as such refers to the claim that such grounds ought to be common for all agents.

Now, insofar as the claim that cloning objectively violates human dignity is a claim that value exists independently of any mind, including God’s, this is a claim about the impersonal nature of value and, as such, is incompatible with a person-oriented theocentric approach to value. But of course, for a Roman

31. *Id.* at 50.

32. HEYD, *supra* note 14, at 82.

Catholic commentator, it is *not* this sort of claim. Thus, insofar as it is a claim about how value judgments ought to be justified, it is a claim that is entirely compatible with the tradition, though not one that is universally shared by all adherents. Our question, then, is whether the objectivity of value, as it is used in this context, can overcome the problem of contingent future persons. Unfortunately, it cannot. For even if *all* agents agreed to treat value in objective terms, the potential persons in question can have value for these agents in person-oriented terms *only after* they are brought into existence. Any other argument, as we saw above, becomes hopelessly circular.

Analogous claims can be made about the other arguments advanced by Christians and summarized in the NBAC's report, but these two examples are enough to demonstrate how the discussion would proceed. Thus, the problem of contingent future persons seems to leave Christians in a very ambiguous situation morally, for it is counter-intuitive that the choices or actions that hold such dramatic implications for the well-being of some future child cannot be subject to moral constraint. What we need to consider now is whether any responses overcome or get around the problem of contingent future persons. That is, are there responses that Christians could offer that would make this situation less ambiguous? There are, but as I suggested above, none of them is altogether satisfying.

VI. SOME POSSIBLE RESPONSES

The first response is perhaps the least satisfying in moral terms and the most satisfying in rational terms. It is simply to accept the logic of the problem of contingent future persons and claim, on the basis of this logic, that agents have a *carte blanche* with regard to the choices or actions that bring future children into existence. If such children cannot be harmed or benefited by the choices or actions that bring them into existence, then agents are simply and utterly unconstrained with respect to these children. But most philosophers and ethicists (though not all)³³ reject this response, for it leaves those potential children brought into existence without any moral protection. Christians are likely to reject it as well and for the same reason. This response also assumes that all moral constraints must be person-oriented, and this is not true, as the second possible response suggests.

The second response requires that Christians abandon the person-oriented theocentric approach to value that is assumed in their moral arguments, and adopt in its place the one and only alternative approach mentioned above, namely, the impersonal approach. The impersonal approach to value does permit

33. NBAC REPORT, *supra* note 1, at 66 n.2.

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agents to consider directly the existence of potential persons as variables in their moral considerations, though not as future persons as such (for it too is subject to the problem of contingent future persons), but as persons who might possess or embody certain values that agents impersonally intend to realize or maximize. Thus, for agents using an impersonal approach, the *safety* of potential children might be a value that agents would want to maximize in any choice or action that brings such children into existence, even though the safety of particular potential *persons* brought into existence could not be a relevant value. These agents might argue, for example, that safety ought to be maximized for *whomever* is brought into existence, by *whatever* means, and if safety cannot be assured in human cloning, then agents ought not to clone children until it can be.

An impersonal argument of this type, however, is extremely problematic for Christians (and for Jews and Muslims too, though I do not consider those traditions here). Most problematic for Christians is the theological implication of an impersonal approach to value. This approach does not require the existence of a God who is the author or source of value, for the impersonal approach, considered theologically, implies that God is subject (like other agents) to some impersonal scheme of value, rather than being the author or source of value. Christians are not likely to be persuaded to adopt such an approach to value that undermines some of their most basic beliefs about God as the Creator.

Joel Feinberg suggests a third possible response. He is concerned with how we, in a liberal society, ought morally to justify legal constraints on agents who might deliberately or carelessly produce children under less than optimal conditions (what Feinberg calls "welfare-connected non-grievance evils").³⁴ His moral arguments clearly fall under what I discussed above as a person-oriented deontological argument; that is, he is concerned generally with the interests and rights of particular persons that ought to be safeguarded in a liberal society. In any case, Feinberg essentially treats cases involving potential children who might "negligently" be brought into the world as a special case, one falling outside the usual moral constraints of liberalism, but nonetheless requiring legal constraint in a liberal society. Indeed, he recommends that we carve out a "clear categorical exception" to liberalism for such cases. Thus, Feinberg acknowledges that it makes no sense to claim that bringing such children into the world harms *them*, though he still wants to claim that the interests of such children have been adversely affected by being born and, thereby, forced to exist in a "harmful condition." The moral argument he proposes against such "harmless wrongdoing" is that it "wantonly introduces a

34. See JOEL FEINBERG, HARMLESS WRONGDOING, 4 THE MORAL LIMITS OF THE CRIMINAL LAW 25-33, 325-28 (1988).

certain amount of avoidable human suffering [elsewhere he says 'evil'] into the world."³⁵

Now, by Feinberg's own admission, this response to the problem of contingent future persons is an "untidy solution." Unfortunately, I do not believe it is a solution at all. For an agent to be blamed morally, and perhaps even held criminally liable, for deliberately or negligently bringing a child into existence under less than optimal conditions because it introduces an avoidable "suffering" or "evil" into the world imposes an *impersonal* solution on a problem that Feinberg originally poses in person-oriented terms. Indeed, in a later article, he seems to acknowledge this possibility.³⁶ Nevertheless, the two fundamental approaches to value are exhaustive and mutually exclusive.³⁷ Thus, it may indeed be evil to bring such children into existence when it can be avoided, but it can be evil only in impersonal terms. It cannot be evil in person-oriented terms, at least for the child produced, even if he or she suffers tragically. The child has been *neither* harmed *nor* wronged by being brought into existence under less than optimal conditions, and the fact that this is counter-intuitive for Feinberg (and, indeed, for most us) does not make it any less true. In person-oriented terms, a future child can be "wronged" only if its future existence is not contingent in the relevant sense, and irrationally mixing person-oriented and impersonal approaches to value when "special cases" arise will inevitably lead to conflict situations where a choice between the two approaches will be forced.³⁸

A fourth response is available to Christians, however. Morally, it requires that Christians consider the existence of potential children *indirectly*. This option is also suggested by David Heyd's work.³⁹ By treating potential children indirectly, Heyd acknowledges that potential children cannot be considered directly (or as such) in person-oriented terms. Treating them indirectly implies that we can consider potential children only from the

35. *Id.* at 326.

36. See Joel Feinberg, *Wrongful Life and the Counterfactual Element in Harming*, 1 SOCIAL PHIL. & POL'Y 4, 174 n.29 (1986). I want to thank Professor Bonnie Steinbock for directing me to Feinberg's texts, though the interpretations of them are entirely my own.

37. See HEYD, *supra* note 14, at 80-90.

38. Having said this, I should point out that Feinberg's so-called solution is not an uncommon one; indeed, it may be the solution adopted by the NBAC in its short discussion of Parfit's non-identity problem. NBAC REPORT, *supra* note 1, at 66 n.2. This solution amounts to asserting, in the face of the problem of contingent future persons, that potential children can be harmed or wronged by being brought into existence. Yes, it is true, as the report claims, that Parfit is unhappy with his own conclusions about the non-identity problem. But that does not make the problem less of a problem for him, or for us.

39. See generally HEYD, *supra* note 14. I develop this option for Christians in more depth in Heller, *supra* note 8.

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perspective of *other persons* who may be affected positively or negatively by the choices or actions that bring these potential children into existence. These "other persons" could include the agents that bring them into existence; they could include groups of persons, even society in general, who may be forced to bear the opportunity costs of the choice to clone humans or the costs of human cloning experiments that are not entirely successful; and, finally, they could even include actual or non-contingent future persons whose existence does not depend on the choices or actions in the relevant sense, but whose interests will be affected in some way by them.

However, the indirect treatment of the choices and actions that bring potential persons into existence is not without its own limitations. It assumes that what matters morally are those present and future persons *affected* by the existence of the potential persons. Thus, if potential cloned persons are to be protected as they come into existence, the persons affected by that choice must have *interests* in seeing that the cloned child has the best set of opportunities and the best overall health that science can provide. In other words, it assumes that most agents will not *want* to produce a cloned child that is not at least as well off (statistically) as most naturally conceived children are at birth. This will be a safe assumption in the vast majority of cases, but there may be exceptions. For example, suppose agents are less interested in the product of their cloning efforts and more interested, say, in perfecting the techniques of cloning or in their own professional advancement. Such agents may not have a strong enough interest in being careful with the life they produce and thus might produce a cloned child who is born with a considerably reduced set of opportunities in life. Of course, other persons, such as the prospective parents, may be harmed or wronged by such carelessness, and these persons would then possibly have a claim against these agents. The fear of such a claim might work indirectly to protect potential cloned children brought into existence through these agents' research. Thus, the indirect response does offer *some* moral guidance for Christian agents, as well as some *indirect* protection to cloned children. What it does *not* offer—and this is the point, of course—is any direct way to reference the potential child who might or might not be brought into existence by human cloning. A potential cloned child has no moral standing in traditional person-oriented theocentric terms until after it is brought into existence.

VII. CONCLUSION

This Article has argued that the problem of contingent future persons undermines, in principle, those Christian moral arguments that permit human cloning on the assumption that the question of safety has been adequately addressed, as well as those that prohibit human cloning by reference to the rights of a potential cloned child or to the duties or obligations owed a potential cloned child. A potential cloned child cannot be harmed or benefited by being brought

into existence as a clone, and neither can it be wronged. However, because Christian moral arguments are fundamentally person-oriented or person-affecting and theocentric and hold persons to be central to God's purposes for the world, these arguments can refer to potential cloned children indirectly. Stated differently, they can refer to those present and non-contingent future persons who are affected by bringing a potential cloned child into existence. Such indirect reference offers some, albeit limited, protection to those potential cloned children actually brought into existence, and, in some cases, it may be enough to constrain agents altogether. If not, however, there is little more that Christians can offer morally.