

# Journal of Contemporary Health Law & Policy (1985-2015)

---

Volume 22 | Issue 2

Article 13

---

2006

## The Transnational Perspective of the Church: The Embryonic Cloning Debate & Stem Cell Research

Robert John Araujo

Follow this and additional works at: <https://scholarship.law.edu/jchlp>

---

### Recommended Citation

Robert J. Araujo, *The Transnational Perspective of the Church: The Embryonic Cloning Debate & Stem Cell Research*, 22 J. Contemp. Health L. & Pol'y 497 (2006).

Available at: <https://scholarship.law.edu/jchlp/vol22/iss2/13>

This Comment is brought to you for free and open access by CUA Law Scholarship Repository. It has been accepted for inclusion in Journal of Contemporary Health Law & Policy (1985-2015) by an authorized editor of CUA Law Scholarship Repository. For more information, please contact [edinger@law.edu](mailto:edinger@law.edu).

# THE TRANSNATIONAL PERSPECTIVE OF THE CHURCH: THE EMBRYONIC CLONING DEBATE & STEM CELL RESEARCH\*

*Robert John Araujo, S.J.*

## INTRODUCTION

With the founding of various international organizations after the Second World War, the Holy See has been an active contributor to these institutions in the hope that intergovernmental organizations can help the development of all members of the human family. In this line, the activities of Papal diplomacy and the dicasteries of the Roman Curia have participated with their expertise in the international deliberations regarding peace and security, human development, fundamental rights, education, and scientific research. For example, during the early years of the United Nations, the Apostolic Nuncio in Paris served as the Holy See delegate-observer to the United Nations Education, Scientific, and Cultural Organization (UNESCO) from 1945 to 1953. Archbishop Angelo Giuseppe Roncalli, the future Pope John XXIII but nuncio in Paris at this time, celebrated a Mass in 1952 at the opening of the inaugural session of UNESCO, and he mentioned that Catholics can draw inspiration from UNESCO's objectives. But he also pointed out that even with a good purpose, an organization needs spiritual guidance and wisdom to succeed and this was the duty of Catholics to present to those who relied on "the most modern technical achievements" but were "immersed in technicalities."<sup>1</sup> And, of course, this type of guidance and wisdom would channel the organization's activities that were morally

---

\* This speech was presented on October 4, 2004 at the colloquium on *Ethics, Public Policy and Law: The Stem Cell Debate in the United States and the Federal Republic of Germany* sponsored by The Center for Law, Philosophy and Culture of The Catholic University of America's Columbus School of Law with The Konrad Adenaur Foundation.

1. Archbishop Angelo Giuseppe Roncalli, Homily at the Mass Celebrated for the Inaugural Session of UNESCO (November 12, 1952), *reprinted in* MISSION TO FRANCE: MEMOIRS OF A NUNCIO 1944-1953 at 161 (1966). As Archbishop Roncalli stated toward the end of his homily, "The Catholic, with his advice and his experience, will bring [those who labor at UNESCO] the aid of his vigor and maturity—in a word, the salt of the earth, the evangelical salt of the Sermon on the Mount, which imparts life and savour, and preserves against corruption, ensuring satisfactory and lasting results." *Id.*

supported because they would advance the betterment of all rather than just some.

Thus, the Holy See has pursued an avenue generally supportive of scientific research with these restrictions in mind. This is especially true of most research in the medical sciences geared to promoting human welfare.<sup>2</sup> It thus became a charter member of the International Atomic Energy Agency in 1956 to ensure that the development of atomic energy was for peaceful rather than military purposes. As the years progressed, the Holy See joined many others in its strong support of the advancement of human biological sciences. Moreover, it joined many other voices and agreed that the procurement of human stem cells, as long as they are not harvested from live embryos, that is, so-called “adult” stem cells, for medical research could provide the path for many positive breakthroughs that would sooner or later provide morally acceptable medical treatments for a wide variety of ailments but the use of embryonic stem cells was not.<sup>3</sup> These views were formally presented by the Permanent Observer of the Holy See to the United Nations when the Sixth Committee was considering an “International Convention Against the Reproductive Cloning of Human Beings” during the years 2003 and 2004.<sup>4</sup> The backdrop of these meetings was the fact that science was

---

2. See, e.g., Instruction on Respect for Human Life in Its Origin and on the Dignity of Procreation Replies to Certain Questions of the Day, Congregation for the Doctrine of the Faith, February 22, 1987.

3. As Pope John Paul II stated in the conclusion of his address to the 18th International Congress of the Transplantation Society, August 29, 2000, N. 8:

In concluding, I express the hope that, thanks to the work of so many generous and highly-trained people, scientific and technological research in the field of transplants will continue to progress, and extend to *experimentation with new therapies which can replace organ transplants*, as some recent developments in prosthetics seem to promise. In any event, methods that fail to respect the dignity and value of the person must always be avoided. I am thinking in particular of attempts at human cloning with a view to obtaining organs for transplants: these techniques, insofar as they involve the manipulation and destruction of human embryos, are not morally acceptable, even when their proposed goal is good in itself. Science itself points to other forms of *therapeutic intervention* which would not involve cloning or the use of embryonic cells, but rather would make use of stem cells taken from adults. This is the direction that research must follow if it wishes to respect the dignity of each and every human being, even at the embryonic stage.

*Id.* See also, Declaration on the Production and the Scientific and Therapeutic Use of Human Embryonic Cells, Pontifical Academy for Life, August 25, 2000.

4. Considerations of the Holy See on Human Cloning, A/C.6/59/INF/1, 7 October 2004.

progressing in some areas where researchers were proceeding with methods of moral uncertainty.<sup>5</sup>

As the debate intensified in the fall of 2004, the Permanent Observer of the Holy See commented that despite the title of the agenda item under which this issue was being debated, it seemed clear that the purpose of the proposed convention was to find a juridical framework permitting and accelerating the advancement of the medical science in the procurement and use of stem cells, while identifying and banning practices that would be disrespectful to human dignity.<sup>6</sup> Knowing the contributions associated with embryonic stem cell research, it was noted that the research had already progressed with adult stem cells from bone marrow, cord blood and other mature tissues; however, embryonic cloning was as yet far from delivering the progress claimed by its advocates. This would later be confirmed by the fraudulent claims made by a Korean scientist that led to his resignation and placing into question many of the claims about the merits of embryonic stem cell research that he advanced.<sup>7</sup> While there had been claims of success in developing embryonic stem cells, even in some animal experiments, this turned out not to be the case.

One important basis for the objection of using embryonic stem cells was the fact that it necessitated the creation of human embryos with the intention of destroying them. While the noble goals of aiding sick people seemed noble, this was incompatible with respect for the dignity of the human being.<sup>8</sup> Moreover, cloned embryos would be indistinguishable from embryos created by *in vitro* fertilization and could subsequently be implanted into

---

5. These concerns were noted by Pope John Paul II when he addressed International Congress of Catholic Obstetricians and Gynecologists on June 18, 2001. In his address at N. 2, the Pope stated that:

The availability of contraceptive and abortive drugs, new threats to life in the laws of some countries, some of the uses of prenatal diagnosis, the spread of *in vitro* fertilization techniques, the consequent production of embryos to deal with sterility, but also their destination to scientific research, the use of embryonic stem cells for the development of tissue for transplants to cure degenerative diseases, and projects of full or partial cloning, already done with animals: all of these have changed the situation radically.

*Id.*

6. Summary of the record of the 11th Meeting of the Sixth Committee of the United Nations General Assembly, 21 October 2004 on Agenda Item 150: International Convention Against the Reproductive Cloning of Human Beings, A/C.6/59/SR.11, 14 January 2005, N. 63.

7. See, *Korean Leaves Cloning Center in Ethics Furor*, N.Y. TIMES, Nov. 25, 2005. See also, *New Questions on a Breakthrough in Human Stem Cell Research*, N.Y. TIMES, Dec. 6, 2005.

8. A/C.6/59/SR.11, *supra* note 6, N. 65.

wombs. After implantation, they could be brought to birth, and this is a result that has been universally condemned. Consequently, it has been noted that it would be impossible to enforce the prohibition of one type of cloning (reproductive cloning) while permitting another (scientific or research cloning) since they both begin in the same fashion and generate human embryos.<sup>9</sup> In the eyes of many, a distinction had to be made between science that was ethically responsible and science that was not.<sup>10</sup> To substantiate its position, the Holy See circulated at the UN a paper calling attention to the scientific basis of its claims.<sup>11</sup>

From the medical and scientific perspective, it is vital to be clear on the nature of the embryo: "It is to be remembered that at all stages the embryo is a living organism, that is, it is a going concern with adequate mechanisms for its maintenance...."<sup>12</sup> As O'Rahilly and Müller state in their 1996 *Human Embryology and Teratology*, "life is continuous, as is also human life, so that the question 'When does (human) life begin?' is meaningless in terms of ontogeny. Although life is a continuous process, fertilization is a critical landmark because, under ordinary circumstances, a new genetically distinct human organism is thereby formed."<sup>13</sup> Similarly, the authors of another prominent medical text book on human embryology have stated that:

The intricate processes by which a baby develops from a single cell are miraculous.... *Human development is a continuous process* that begins when an oocyte (ovum[egg]) from a female is fertilized by a sperm (spermatozoon) from a male. Cell division, cell migration, programmed cell death, differentiation, growth, and cell rearrangement transform the fertilized oocyte, a highly specialized, totipotent cell—a zygote—into a multi-cellular human being.<sup>14</sup>

#### ESSENTIAL DISTINCTIONS WITHIN CLONING

There is a need to be clear about the meaning of terms used in the debates surrounding human cloning. While most of us may not have foreseen the scientific development of human cloning technology even a few years ago,

---

9. *Id.*

10. *Id.* at N. 66.

11. Considerations of the Holy See on Human Cloning, A/C.6/59/INF/1, 7 October 2004.

12. RONAN R. O'RAHILLY, M.D. & FABIOLA MÜLLER, DR. RER. NAT., *HUMAN EMBRYOLOGY AND TERATOLOGY* (Wiley-Liss, 2d ed. 1996) (quoting Heuser and Streeter)

13. *Id.* at 8.

14. MOORE & PERSAUD, *THE DEVELOPING HUMAN: CLINICALLY ORIENTED EMBRYOLOGY 2* (7th ed. 2003) (Italics in the original).

we can neither ignore nor deny generally the important contributions that scientific development makes to human beings and their improvement on numerous fronts.<sup>15</sup> But science can be used in ways not geared to the service of humanity. It can be misguided thereby harming rather than advancing the individual and the common good. While those who support embryonic stem cell research argue that the goal is to aid humans plagued by diseases that presently escape cures, their project can be used in such a way as to constitute a disservice to human beings. Pictures of German medical officers watching adults and children suffer cruelly in the name of “science” come to mind.

It is evident that humans have realized that not only can they reproduce themselves in the manner relied on for thousands of years, but they can also duplicate themselves through *in vitro* techniques. There exists on the not-too-distant horizon the ability to reproduce human tissue through morally acceptable adult stem cell cloning.<sup>16</sup> Other developing technologies continue to be a source of promise for therapies that could alleviate many ailments that plague humanity through the replication of human tissue. The fundamental distinction between this bio-technology, i.e., adult stem cell cloning, and the one that I shall address and critique—embryonic cloning—is that a new human existence is not generated with adult stem cell cloning; however, new life is created with embryonic cloning. In the case of cloning technologies that employ the adjectives “reproductive,” “therapeutic,” “scientific,” or “research,” a new human life is brought into the world through the creation of an embryo through somatic cell nuclear transfer (SCNT) or similar technologies. They generate an embryo like the embryo that any person was earlier in the earliest stages of human life.<sup>17</sup>

Embryonic cloning raises critical issues in bioethics and morality. The cloning techniques I just listed are alike in that they require the creation of new human embryos. In “reproductive” cloning, the goal is to develop a child who will eventually become a mature adult. The embryo is implanted in a womb (human or artificial) and promoted through nine months of development until the baby’s birth. Hollywood did this in the film “The Boys from Brazil” where Dr. Joseph Mengele, the notorious Nazi doctor,

---

15. “But what emerges first and foremost from the progress of scientific knowledge and the inventions of technology is the infinite greatness of God Himself, who created both man and the universe.” *Pacem in Terris*, No. 3.

16. For those interested in the scientific and medical details, the President’s Commission on Bioethics maintains a useful website which can be consulted to learn more about human cloning. See, <http://www.bioethics.gov/>.

17. As Heuster and Street declared in 1941, “It is to be remembered that at all stages the embryo is living organism, that is, it is a going concern with adequate mechanisms for its maintenance as of that time.” RONAN R. O’RAHILLY, M.D. & FABIOLA MÜLLER, DR. RER. NAT., *HUMAN EMBRYOLOGY AND TERATOLOGY* (Wiley-Liss, 2d ed. 1996).

escapes to South America with a sample of Adolph Hitler's DNA and clones many new young Hitlers. While some organizations like the Raelians have claimed to have reproduced a cloned human baby, evidence supporting these claims has not materialized as of yet. "Research" cloning differs from "reproductive" cloning only in the context of the objective. Whereas reproductive cloning is directed toward the end of producing a new walking, talking person, the objective of "research" cloning differs in that the embryo is generated so as to extract stem cells from the evolving human life. While this embryo is cloned to enable the extraction of cellular material, its inevitable destiny is to be ultimately and premeditatively destroyed. However its brother or sister embryo may be destined for reproductive ends. But in the final analysis, the difference between "reproductive" cloning and "research" cloning is non-existent. The distinction is only in the objective of the procedure but not the procedure itself.

The cloned human embryo is a human being. From the very beginning of its existence, it is a unique human life that will eventually mature through its natural progression in which every person has joined. It is at the entrance of the continuum of human life. This human life has commenced the natural vocation of fetus, birth, maturation, and death. Unlike those of us who continued this natural progression, the embryo produced for "research" is destined for a planned, premature death when the stem cells necessary for the research to proceed, but which are also necessary of the embryo to continue his or her life, are removed from the embryo.

In many discussions by intelligent, often highly educated people throughout the world today, the reality and the science of human embryology is often disregarded when the case of embryonic stem cell research is under discussion. I suspect that a source of this view is related to the thinking—or lack of thinking—taken by pro-abortion advocates who use language that denies the scientific reality of the human life the procedures which they advocate will take. While formulaic norms about human existence may be limited in both value and scope, there is something to be said about the intersection of right reason of the Catholic intellectual tradition and the formulation of ethical norms that guide the moral reasoning essential to sound scientific research.

Does the right reason that directs us to the transcendent, moral order justify research on embryos that inevitably leads to their destruction? The drive to conduct such destructive experimentation on the nascent human life of cloned embryos is strong in our world today. But such research, if it were permitted to continue, defies the dignity to which each human being, each person is entitled. And this explication underlies the position which the Holy See has advanced in the international debates which have taken place over the past several years.

## SOME IMMEDIATE PROBLEMS

To ban “reproductive” cloning only, without prohibiting “research” cloning, would be to allow the production of individual human lives with the intention of destroying these lives as part of the process of using them for scientific research. The early human embryo, not yet implanted into a womb (natural or artificial), is nonetheless a human individual, with a human life, and evolving as an autonomous organism towards its full development into a human foetus. Its location does not determine the reality of its ontological nature. Destroying this embryo is therefore a grave moral disorder, since it is the deliberate suppression of an innocent human being. It is the view of the Holy See that any possible attempt to limit a ban on human cloning to that undertaken for reproductive purposes would be nearly impossible to enforce since human embryos cloned for research purposes would be widely available and would have the potential to be brought to birth simply by transfer to a womb using procedures employed for artificially assisted reproduction. The temptation to do this surely exists.

Another major problem involves the number of human eggs that would be needed to carry on the research necessary to advance the claims of advocates for embryonic stem cell research. Pressure on women to donate eggs and to increase their egg production through financial and other incentives would likely emerge. The recent revelations of the current scandal emerging from the Korean program sponsored by Seoul National University and the Korean national government support the grave concerns about the pressures applied to women to donate, sell, or provide eggs through other means.<sup>18</sup> Associated with the problems of egg collection is the potential use for “drug therapies” that would increase the promotion of egg production but carrying grievous health risks for the woman who takes such drugs in order to increase her egg production. In short, serious are the problems associated with securing the vast number of human eggs that would be needed and the exploitation of the women who might be induced to supply them. This process would use the body of women as a reservoir of eggs without any consideration being given to the number of donations and her procreative future. She would become one stage in an assembly line of human life destined for destruction.

Associated with the number of eggs needed for stem cell research requiring the production of new human embryos are the catalysts for a global market in human life. Human cloning would encourage the development of a trade in cloned human embryos and their derivatives for scientific research or for industrial research and development purposes. The massive demand for human eggs would disproportionately affect the poor and marginalized of the world bringing a new type of injustice and

---

18. See, e.g., Paul Elias, *Ethics Charges Jeopardize International Cloning Program*, BOSTON GLOBE, Nov. 14, 2005.



discrimination into existence. Women from developing countries might be more likely to serve as sources for eggs in order to receive a small compensation that could mean much to her and her family if she has one. The likelihood of a disproportionate impact on poorer countries would be further enhanced if the fruits of the research essentially serve the more wealthy members of developed countries who have the ability to pay for the expensive “therapies” that might result from embryonic stem cell research. The world has made great progress in eradicating slavery even though this curse still exists and flourishes in parts of the world today. But while progress may be made on reducing traditional forms of slavery, a new form of slavery would be involved in the market of human embryos needed for stem cell research since human life, like slaves of the present and past, would become a commodity available for purchase on sale on a global market.

One other immediate concern accompanies these problems. Scientists have made great strides in mapping the human genome. With the securing of a thriving industry in manufacturing embryos for research purposes, there would lurk the temptation for genetic manipulation. In other words, the manufacturing of embryos for research could open doors for altering the genetic code or other forms of genetic manipulation to produce a more perfect embryo that would in turn produce more perfect stem cells. The foundation for creation of a super-race looms in the future.

#### INHERENT DIGNITY OF HUMAN LIFE

During the United Nations debates of which the Holy See was a part from late 2002 to early 2005, statements from a variety of delegations that this is a “complex” issue. We have also heard pleas that we must avoid divisiveness, that we must not impose views, and that we must strive toward a consensus. We have also been reminded that the matter of research cloning must be sensitive to diverse belief systems and religious perspectives, cultures, and personal circumstances. It has been stated on several occasions that while we must move quickly to ban human reproductive cloning we must, on the contrary, move slowly on human research cloning.

Yet much of this discussion conflicts with international recognition of the right to life that exists within the realm of the international order. Skeptics might dismiss the argument that there is a right to life, but as will be seen, it exists and is recognized. Sadly, like the juridical prohibitions against slavery and the slave trade, the juridical right to life is frequently ignored, often with impunity. Let us now turn to the juridical record of the right to life.

The principle of the “right to life” is addressed in: Article 3 of the Universal Declaration of Human Rights, Article 6 of the Convention on the Rights of the Child, Article 6 of the International Covenant on Civil and Political Rights, Article 2 of the European Convention on Human Rights,

and Article 4 of the American Convention on Human Rights. With two exceptions, no state party to Convention on the Rights of the Child expressed a different view that would limit the right to life to a child only after its birth. Those exceptions were: the United Kingdom and China on behalf of Hong Kong. In its declarations, the United Kingdom asserted that it interprets the Convention in such a way as to apply “only following a live birth.” The People’s Republic of China on behalf of the Hong Kong Special Administrative Region also interpreted the Convention as applicable “only following a live birth.”

It needs to be noted at this stage that the United Kingdom’s and China’s understanding of the Convention is inconsistent with the actual language of the Convention. Article 6 of Convention on the Rights of the Child declares that “States Parties recognize that *every child* has the *inherent right to life*. States Parties shall *ensure* to the maximum extent possible the *survival and development* of the child.” (italics added) The core term “child” as defined by Article 1 of the Convention “means *every* human being below the age of eighteen years....” There is no qualification that this means every human being “after birth.” In fact, such a construction limiting the human being as someone “after birth” conflicts with the ninth preambular paragraph of the Convention (“Bearing in mind that, as indicated in the Declaration of the Rights of the Child, ‘the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth’”) in which it is understood that the child lives a part of its life “before birth” and the rest of its life “after birth.” It needs to be emphasized that the interpretations of the United Kingdom and China (on behalf of Hong Kong) are inconsistent with Article 31 of the Vienna Convention on the Law of Treaties addressing the object and purpose of the instrument which cannot be limited by reservations or declarations. Both the United Kingdom and China are Parties to the Vienna Convention on the law of Treaties. Neither of these two other States has made a reservation or declaration to the Vienna Convention on the Law of Treaties that would alter this point.

The juridical argument that there is a universal right to life is compelling. Any justification for tampering with, let alone destroying human life would conflict with this principle. Magnifying the problems with embryonic stem cell research is the impropriety of creating life for its planned destruction, regardless of whether profit from the associated research is realized or not. As can be seen from my earlier discussion, the argument that the embryo is nascent human life is based on accepted scientific and medical fact not the “matters of ethics and religious belief” as one critic suggested.<sup>19</sup> Human

---

19. See, Statement of the Permanent Representative of Singapore to the United Nations, Ad Hoc Committee on An International Convention Against the Reproductive

cloning associated with embryonic stem cell research involves the creation of human embryos. This is the story of the beginning of human life in which every reader of the symposium participated earlier in his or her path of development. Human life is not a local issue, not a national issue, not a regional issue. It is a universal issue.

#### THE INTERNATIONAL COMMUNITY RESPONDS POLITICALLY BUT NOT JURIDICALLY

The international debates that took place at the UN from late 2002 until 2005 raised arguments, pro and con, about embryonic cloning. All participants appeared to be united in the opposition to reproductive cloning as I have explained it. However, opinions were divided on research cloning involving the making of embryos that would provide the stem cells necessary for further research. Inevitably, these embryos would die as a result of the extraction of their stem cells which are the guarantors of their continued development and growth.

During the final stages of the international debate, some countries expressed the views held by Lord May, President of the Royal Society (the United Kingdom's National Academy of Science) that the banning of research cloning involving the creation of new embryos would be "an act of intellectual vandalism comparable to papal censorship of Galileo and Copernicus."<sup>20</sup> When he signed his recantation of the heliocentric theory, it was subsequently reported by supporters of his work that Galileo uttered, "And yet... it [the Earth] moves."<sup>21</sup>

The international community was at an impasse at the conclusion of the fall 2004 debates when this conference was held to draft a convention on the regulation of human embryonic cloning. While it did not seem possible for the participants to continue work on juridical instrument, there was some hope that a declaration might pave the way for some guidance on the matter until the day when it would be possible to return to the treaty drafting table. With this hope, the General Assembly adopted the United Nations Declaration on Human Cloning on March 8, 2005.<sup>22</sup> The declaration was

---

Cloning of Human Beings, United Nations General Assembly, 59th Session, Sixth Committee, 21 October 2004, N. 3.

20. See, Statement of the Permanent Mission of Singapore to the United Nations, Ad Hoc Committee on An International Convention Against the Reproductive Cloning of Human Beings, United Nations General Assembly, 58th Session, Sixth Committee, 29 September 2003, N. 6.

21. N. 24348, *The Columbia World of Quotations*, Columbia University Press (1996).

22. GA Resolution 59/280, 8 March 2005.

adopted by a vote since adoption by consensus (i.e., without a vote) was not possible.<sup>23</sup> The declaration stated that Member States of the UN are called upon to take the following substantive actions:

[A]dopt all measures necessary to protect adequately human life;

[P]rohibit all forms of human cloning that are incompatible with human dignity and the protection of human life;

[A]dopt measures to prohibit genetic engineering contrary to human dignity;

[T]ake measures to prevent the exploitation of women<sup>24</sup>

While not imposing juridical obligations, the declaration was one step forward toward the objective of protecting all nascent human life from destruction caused by embryonic stem cell research. Recalling the views of those who assert that this type of regulation was akin to “papal censorship,” we must not forget that undisputed science demonstrates that the human embryo is human life, and this life is one in which we all shared at the beginning of our own respective existence. To borrow from Galileo, it might thus be said of the embryo that would be slated for destruction by stem cell research, “And yet... it lives.” It is not simply a clump of cells that can be exploited and then discarded. It is a human life that lives. And all humanity is called to protect this precious gift of human life not only for now but for our future posterity as well.

---

23. The vote was 84 in favor, 34 against, with 37 abstentions. GA Press Release 10333, 8 March 2005.

24. GA Resolution 59/280, 8 March 2005.