

Legislate in Haste, Repent at Leisure

Every once in a while, members of the U.S. Congress see, and then seize, the opportunity to pass a law that seems certain to make them popular. Some of these responses to expressions of public will are sensible, even splendid, like the recent emergency appropriation in the wake of terrorist attacks on Washington and New York. But the long-range consequences of decisions to criminalize unpopular behavior—desecrating the flag, for example; or drinking alcohol—are likely to prove troublesome. Congress is now pondering a bill that would ban research on human cloning, subjecting scientists to criminal as well as civil penalties. The legislation is gathering widespread support after its House passage, but it deserves a skeptical second thought.

The sources of its appeal are obvious. Cloning human beings for reproductive purposes is, in the view of nearly everybody, something we shouldn't want to do. The ultimate vision of an industry established to fulfill narcissistic ambitions for self-perpetuation is singularly unattractive. Furthermore, there are well-founded biological reasons to fear that it may not work out well.* Finally, it is linked (and often confounded) in the public mind with the stem cell issue and thus with the heavily contested ethical terrain of abortion rights.

But the provisions of HR 2505, the Human Cloning Prohibition Act, passed on 31 July by the House of Representatives and awaiting hearings in the Senate, are dangerously broad. Not only would it ban efforts directed at the creation of cloned human children, it would interdict a wide range of experimental procedures that might, in the near future, become both medically useful and morally acceptable. Suppose, for example, that it turned out to be scientifically interesting and of potential clinical importance to create new stem cell lines by transferring nuclei from various adult tissues into early-stage cells that had been obtained from discarded embryos from in vitro fertilization. Obtaining the embryos would be perfectly legal as long as federal funds were not used to support the work. But if the cells were then modified by nuclear transfer, the scientist performing the experiment could be subject to up to 10 years in jail and a civil penalty of at least \$1 million, even though the goal had nothing to do with reproductive cloning.

Even for reproductive cloning, the moral horizon may not be as clear as it now seems. Imagine that in the future there is a childless woman with an infertile dying husband, whom she loves deeply. Imagine also that the technology for cloning by nuclear transfer is perfected and is without risk. Should a law passed now forbid her to have a child cloned from one of her husband's cells in that distant future? The question is not whether that is something most people would want to do. The question, rather, is whether society ought to prevent it a priori by making it a criminal offense.

At various times in the history of the United States, Congress has passed laws making the desecration of the American flag a criminal offense. Each time it has seemed to reflect the overwhelming will not only of the members but of the people. In the aftermath, however, customs and public acceptance changed. Proud Americans who are now wearing flag-decorated clothing in the aftermath of the assault the country received on 11 September, and advertisers who are including the flag in published proclamations of their loyalty, would probably be surprised to learn that early in this century both would have been against the law. As for prohibition, the Volstead Act that established it eventually came to be seen as an unwise and damaging congressional overreaction to a widespread popular concern.

Serious infirmities underlie the superficial popularity of the cloning legislation Congress now proposes to enact. A lesson we have learned over and over again in making science policy (and beneath its ethical clothing, the new law makes science policy) is that we can seldom comprehend the twists and turns our subject will take. Another lesson from history is that Congress, having taken a particular course, has great difficulty in reversing it. This overbroad and unwise legislation is therefore likely to cement in place restrictions that could seriously inhibit medical progress. It would be a good idea to kill it now.

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*W. M. Rideout III *et al.*, *Science* 293, 1093 (2001).

