Habermas on Human Rights and Cloning: A Pragmatist Response

Jürgen Habermas has recently confirmed his status as Germany’s preeminent public philosopher by entering the debate over human cloning; his passionate opposition to this practice is structured around replies to three other German intellectuals who either condone cloning or do not oppose it on moral grounds. The statement comes in a very short essay, “An Argument Against Human Cloning: Three Replies,” originally published in the January 17-18, 1998 Süddeutsche Zeitung and reprinted in his collection The Postnational Constellation; here, Habermas replies to Elizabeth Beck Gernsheim, Dieter E. Zimmer, and Reinhard Merkel on what he sees as mainly at stake in the debate over whether cloning is morally acceptable or not. “The main issue,” he writes, “is the question of what the significance is for a person—whether it makes a morally relevant difference for her self-understanding—‘in what manner she has come to receiver her own genome’: through accident, or through a determined or arbitrary act”. In what follows, I present a critique of Habermas’s position on pragmatist lines—and specifically, lines which follow Dewey’s pragmatism, or what he called in Experience and Nature “empirical naturalism.”

First, I detail Habermas’s argument, reconstructing it with support from other of his writings; my goal here will be to show that Habermas offers three separate but overlapping arguments against cloning from (a) a constructivist perspective on human rights, (b) the moral stance based on mutual perspective-taking, and (c) the possibility of moral reciprocity between the cloned and those who clone, or indeed, any human conceived in the traditional way. The latter two of these arguments are similar in significant ways, and both depend on a view of human rights which Habermas has recently expanded in his Between Facts and Norms.

In the latter portion of the paper, I attempt to show that there are serious problems with each of his three arguments, all of which fail to take into account the consequences of the probable event of the birth of an actual cloned human. Finally, I conclude that although Habermas is perfectly correct in insisting that a Kantian kind of “weighty normative argument” against cloning has a place at the table of public deliberation about this issue, we need not resort to potentially questionable appeals to new applications of human rights which stem from an exclusively deontological moral framework in order to reasonably defer the current pursuit of cloning technology. Rather, I suggest an appeal to several widely-shared valuational judgments that are rooted in variety of cultural, ethical, and scientific standpoints, all of which would support a moratorium on cloning until further broad technological development and ethical deliberation can take place.

1. Against Human Cloning: Replies concerning rights

While rights are central to Habermas’s account of the relationship of politics and freedom, rights can only be understood as they stand in relation to the roles of discourse and democratic legitimacy in his account. Besides defining what constitutes a legal person, Habermas also accepts that rights have the typical liberal function of securing “the most extensive basic liberty compatible with a
similar liberty for others.” As Bartlett points out, this central role for rights also requires two corollaries: that rights delimit the status of their holders as members “in a voluntary association of consociates under law” and that they specify their own “actionability,” that is, the legal protection they promise for persons by the authorization of coercion. Legal rights, as rooted in a specific legal community, protect their holders via an artificial status created as the result of intersubjective agreement and negotiation; they can thus be distinguished, for Habermas and indeed virtually all Kantians, from the rights generated via moral duties and obligations, which are best conceived of as “reciprocal duties” and not constraints, and which are not spatially and historically tied to a particular community.

Rights also play a decisive part in the centrality of constitutionalism for Habermas’s democratic theory. While it is true that a communicative approach to democratic politics emphasizes “political opinion- and will-formation,” rights act fundamentally as bulwarks protecting individual liberties against the unmitigated social effects of such formation. The legal adjudicability of the limits of rights should convince us that they are not simply stark limits to liberty, for, as Habermas says, his democratic theory “conceives constitutional principles [including rights] as a consistent answer to the question of how the demanding communicative forms of democratic opinion- and will-formation can be institutionalized.” The general fact of the historical interpretation and eventual elaboration of “unsaturated” rights distinguishes the former as a presupposition of private autonomy (and thus, of any system of specifically democratic governance) from the way in which rights are actually instituted, administered, and form the basis of our self-interpretations. The actionability of rights is rooted, for Habermas, in democratic legitimacy, and likewise, legitimacy is conferred or withheld in relation to the degree of fulfillment of Habermas’s discourse principle within (at least) the formal institutions of a legal community; this is significant because it means that the discourse principle itself cannot derive the rights necessary to a given system of democratic governance without the medium of law. Habermas’s discourse principle is familiar to many but a brief summary of its main features here will be of use; I do not pretend to do full justice to his elaboration of the principle or the ethics which springs from it. Habermas says that a principle which states how norms could be taken as universally valid in an “ethics of discourse” would read thus: “Only those norms can claim to be valid that meet (or could meet) with the approval of all affected in their capacity as participants in a practical discourse.” The key idea behind such a principle (D) that funds the proposal and testing of universal norms in morality and legislation is that it itself is normatively neutral, instead relying on certain presuppositions of discourse itself by which the former would be impossible unless granted. In Habermas’s terms, (D) “...is initially indifferent vis-à-vis morality and law.” As a test for unforced communication under ideal conditions, the application of (D) would demand certain constraints on argumentation over the validity of proposed norms, most obviously, the elimination of all influences which systematically distort communication, but also those empirical factors which characterize partiality of interest and uniqueness of context. However, these latter constraints having to do less with coercion and more with the limits of any individual’s empirical knowledge can be mitigated by the recognition of a rebus sic stantibus clause—“the qualification that the validity claim of a norm that has withstood the universalization test bears a ‘time and knowledge index.’” (D) links to a principle of legitimacy in democratic politics via the form of meaningful
communication discourses in the public sphere, namely, claims involving reasons which have broadly public acceptability. While public reasons are the outcome of rationally-constructed procedures, as Bohman has pointed out, we need not overemphasize the narrowness of procedures at the cost of too restrictive a definition of what constitutes public deliberation. “Reasons formed in this way,” he says, “are more likely to result in decisions that everyone may consider legitimate in a special sense: even if there is no unanimity, citizens agree sufficiently to continue to cooperate in deliberation.” 17 On an account such as this, the generation of political decisions based on reasons acceptable to all through democratic practices and institutions, simultaneously confirms those decisions as democratically legitimate. Illegitimate decisions are so because “they are not addressed to an audience of politically equal citizens.”18

Democratic procedures for the production and testing of public reasons must meet several criteria, such as non-tyranny as regards coercive influence and publicity. Perhaps most importantly, the egalitarian basis of democracy is secured through the provision that in the institutional mechanisms and public forums for the production of public reasons, everyone’s reasons must count equally and be given consideration. 19

So constitutionally-guaranteed rights, as rules which determine the effective limits of state inference in certain basic human activities, serve a constitutive role in democratic legal orders; they make possible legal status, equivalency of expectation as regards adjudication of claims, and universality of application of law; in short, they assist in securing the political equality of citizens. 20 However, by their very nature, Habermas claims, rights are always undeterdetermined by their function in any given state’s legal order. Rights always point toward universality of application, and such application does not respect historically arbitrary national borders:

…[B]asic rights enjoy a privileged status even within the ensemble of constitutional norms. On the one hand, liberal and social basic rights have the form of general norms addressed to citizens in their capacity as human beings (not merely as members of a state). Though human rights are for the time being only realized within the framework of a nation[al] legal order, within this sphere of validity they ground rights for all persons and not merely for citizens. The further normal legislation exhausts the implications of human rights, the more the legal status of resident aliens comes to resemble that of citizens. 21

If human rights are grounded in norms which are discursively valid given (D) and its application to issues of democratic legitimacy, then they cannot be restricted from broader application than to a specific state, Habermas says. “Basic rights are equipped with a universal validity claim because they can be justified exclusively from the moral point of view.” 22 A Kantian view of the place of legitimate rights in an egalitarian democracy where the rule of law allows for certain decisions to be made through a representative judiciary will then hold that “the universalistic principles of an egalitarian legal order permit only those decision competencies that are capable of harmonizing with the mutual respect for the equal autonomy of each citizen.” 23

Replies involving perspective-taking and reciprocity

With the aid of this background regarding the place of human rights in a discursive democracy, let
us examine the specific arguments that Habermas makes in “Against Human Cloning.” In his consideration of the preferability of a legitimate legal-political mandate regarding this issue, Habermas seems to imply that we will ultimately need to rely on an argument based on the application of the constraints dictated by human rights in deciding “the question of whether a society ought to refrain from doing something that it has the power to do….24 Habermas sees this as fundamentally a question of constitutional, rather than juridical law, since it is notoriously difficult to adjudicate rights claims which have an addressee but no subject, that is, no one whose rights have been injured. Habermas himself points this out in his response to Reinhard Merkel, who in turn maintains that an existing cloned human could not make a claim to injury of their rights based merely on their creation. Indeed, their creation would in many (but not all) ways be dependent on the action of the creator;25 any rights claims submitted for adjudication from a cloned human depend at least on the fact that they are a living human. Jurisprudence would logically demand that an action—the creation of a cloned human—cannot at the same time be both culpable, as well as the only grounds for imputing that culpability, namely the beginning of the clone’s life.

Habermas sidesteps this difficult issue—and rightly so—in order to argue that the proper juridical perspective from which to view a ban on cloning is one internal to juridical practice. If it is within the province of constitutional law to take preemptive action against a potential future situation which could produce a juridical conflict or even paralysis, Habermas argues, we ought to take that action; in the case we are considering, the dire situation is the introduction of an “unprecedented decision competence”26 in the form of a human whose genetic makeup has been wholly determined by the decisions of others. However, we need not put ourselves in the position of a judge on the threshold of a decision concerning a cloned human such as the patenting of its genetic code, or perhaps a demand from the cloned child to be “divorced” from his or her parents. Habermas asks us to simply consider the potential impact of the previously nonexistent factors that, like other known psychological and biological factors, deeply influence every living human’s self-understanding. He says:

The arbitrary disposition over the genetic makeup of another person would introduce a previously unknown relationship between producer and produced, between genetic copy and original. This relation of dependency deviates from all known interpersonal relationships insofar as it fundamentally resists being transformed into a relation of equals, between normatively equal partners deserving of equal treatment.27

This part of Habermas’s argument is extremely important for understanding how he interprets human rights in terms of a moral stance based on perspective-taking, and the possibility of reciprocity between all those whom human rights apply to.

Habermas’s logic of perspective-taking is heavily indebted to the social pragmatism of G.H. Mead28 and, in particular, to the bifunctionality of the “I-me” complex that Mead identified as both the center of individual identity and the locus for socialization. As Habermas interprets Mead:

the ‘I,’ which is the aspect in which the knowing subject comes upon itself in its self-reflection, has always already been objectified into a ‘me’ that is merely observed. The self that is made into an object must indeed presuppose the spontaneous I or the self of self-reflection, but the latter is not given in conscious experience.29
The “me” of this complex of the self reflects what Mead calls the “attitudes” of others, what Habermas would want to refer to as “shared norms.” In highly articulated social groups which are differentiated by practices funded by varying norms and values, the “me” reflects an abstracted sample of “attitudes” common to the group as a whole; this is the “generalized other.” For Habermas, the ethical significance of autonomy also attaches to this process of socialization:

What appears historically as societal differentiation is mirrored ontogenetically in the course of an ever more differentiated perception of, and confrontation with, diversified and tension-filled normative expectations. The internalizing processing of these conflicts leads to an autonomization of the self: to a certain extent the individual itself must first posit itself as a spontaneously acting (selbsttätig) subject. To this extent, individuality is not conceived primarily as singularity, nor as an ascriptive feature, but as one’s own achievement—and individuation is conceived as the self-realization of the individual (des Einzelnen).

What is important in this view of the impact of taking the attitude of the generalized other is how autonomous we conceive the “internalizing processing” of conflicts of “diversified and tension-filled normative expectations,” in turn, to be. While this question cannot be pursued in this paper, what Habermas’s appropriation of Mead does reflect is that our individual self-understandings are inelimitably social in character. They are, as it were, formed of pieces of the imaginative cloth that we take others to be woven out of, and the “me” of the self-complex represents the supreme values of the society that we have been socialized into, regardless of its geographical or cultural extent. Equally, the “I” must mediate its relationship with the seemingly necessary presuppositions of living and communicating in such a society: it will, as Mead says, refuse to commit “suicide of the self” in following a course of realization which stands in opposition to many of its strongly-held beliefs. The values of the “I” are those “which are found in the attitude of the artists, the inventor, the scientist in his discovery, in general in the action of the ‘I’ which cannot be calculated and which involves of reconstruction of society, and so of the ‘me’ which belongs to that society.”

Rights, for Mead, and the need for the consideration of the perspectives of others in attaching universality and impartiality to rights, for Habermas, stem from the realization of the individual “I-me” self-complex that every other social self shares certain presuppositions with it about what is necessary for the development of our self-understandings. Perspective-taking or the adoption of the attitude of the generalized other, Singer notes, is the same thing as “to have the same expectations of each [member of the community] and to hold all to have the same responsibilities, to recognize them as having the same rights and the same obligation to respect them.” As necessary to the coordinated social criticism of those “I’s motivated by the need for social reconstruction, perspective-taking takes the form of reflective consideration of those adopted attitudes which are crucial to our self-understanding through socialization as well as of those new attitudes inspired by our continued social penetration into an increasingly pluralistic and complex shared society. It also provides a way to link democratic equality to an ethic of reciprocity, which is crucial to Habermas’s arguments against cloning, and will be discussed below.

Habermas’s questioning of the possibility of a “decision competence” for judges hearing cases
involving cloned humans touches on concerns about the ethical implications of perspective-taking. Specifically, his fear is that in cloning, we may be creating a situation in which the self-understanding of cloned human is directly imperilled by their inability (in practice and theory) to take the perspective of natural-born humans, and specifically, that of their creator(s). Habermas puts the question raised in this way:

The main issue is the question of what the significance is for a person—whether it makes a morally relevant difference for her self-understanding—‘in what manner she has come to receive her own genome’: through accident, or through a determined or arbitrary act. In order to bring the right phenomena into focus we have to assume the perspective of an actor who wishes to know who he is and how he should live his life. 37

While, he admits, “one’s genome certainly fixes the conditions for identity formation,” one’s existential and cultural matrix, especially during the pre-adult years forming the crucible of identity, impacts on even similar genomes in vastly different ways, 38 perhaps even in ways too diverse to predict. However, it seems uncontestable that, for “an actor who wishes to know who he is and how he should live his life,” the fact of one’s origin has significance for one’s very basic “consciousness of freedom with which persons will perform their routine actions.” 39 We should read here that for a clone, there would be some, and perhaps disastrous peril to the autonomization process that Habermas described in his interpretation of Mead’s “I-me.” This failure can, in turn, be described as a gap in the normal process of attitude-internalization leading to the adoption of the attitude of the generalized other; in other words, it is a failure of perspective-taking for which the cloned human cannot be held responsible:

The arbitrary disposition over the genetic makeup of another person would introduce a previously unknown relationship between producer and produced, between a genetic copy and original. This relation of dependency deviates from all known interpersonal relationship insofar as it fundamentally resists being transformed into a relation of equals, between normatively equal partners deserving of equal treatment. The designer fixes the initial shape of his product irrevocably and asymmetrically—without any possibility for a change of roles. 40

A cloned human’s “encounter [with] a foreign intention in the mirror image of her own predispositions” 41 produces a double effect: it irretrievably disrupts the ability of the clone to see herself as autonomously shaping her own self-understanding as well as putting the clone’s creator in a position of power over the clone. Typically, contingencies in the life of a non-genetically or -reproductively-engineered human can be taken as either the “givens of birth,” the inherent arbitrariness of living in the world, or the interaction of both. With the intentions of a creator standing in the place of the first of these kinds of contingencies, a typical “zone of inaccessibility” has been accessed, and this constitutes the “morally and legally relevant difference” in the two births. 42 “Inaccessibility” as used by Habermas is a reference to areas of our historical life which have not, and indeed (heretofore, anyway) could not be explained by reference to the intentions of others having lasting causal impact on us. Another way of putting this is that part of our autonomy, as human, is that significant portions of our life history are “removed from the grasp of another person with whom we are, normatively regarded, on an equal footing.” 43 Following this train of thought to argue that the moral and legal relationship of reciprocity between creator and clone
cannot come into being, Habermas makes an analogy between the cloner and the clone and the master-slave relationship. Clearly, if cloning, like “slavery is a legal relationship signifying that one person disposes over another as property,” then, “it therefore cannot be harmonized with the currently valid concepts of constitutional law: human rights and human dignity.” If this analogy holds true for creator and clone, there is a fundamental disproportion in their significant relationships which deny the basic intersubjective premise of a universal morality; for Kant, this premise is the possibility of reciprocal recognition. In turn, reciprocity is unlimited by specific historical communities: its logic inevitably leads us to positing an “unlimited communication community” to which our claims for recognition are addressed, and which, in turn, demands recognition from us, if in no other way that the mutual acknowledgment of certain universally binding norms. “Because of [the] intersubjective relations inscribed in moral norms,” Habermas tells us, “no norm, regardless of whether it involves negative or positive rights and duties, can be justified or applied privately in the solitary monologue of the soul with itself.”

In the case of cloning, this view dictates that the interdependent necessities of ethical self-understanding and being part of a moral community are injured because the exact degree of responsibility for one’s own actions imputable to the clone (as to the slave) is questionable. The rule, “No person may so dispose over another person, may so control his possibilities for acting, in such a way that the dependent person is deprived of an essential part of his freedom,” becomes the central pillar of Habermas’s argument, and one that allows him to indict the intentions of scientists and cloning technology in the same way that previous generations have indicted slave owners and traders, paternalistic and misogynistic husbands and fathers, and the corporate marketing establishments who, unsatisfied with meeting consumer demand, manipulate public opinion to manufacture new demands. The relationship between a human clone and his creator is more significant, however, for being unbreakable: “For the clone...a judgment that another person has passed upon him prior to his birth hardens into an irreversible code.” These arguments, taken together, suggest two similar interpretations of Habermas’s central point of opposition to cloning. The first of these, which we may call the “hard case” against cloning, is that the very creation of a human clone fundamentally blocks their autonomy, “destroy[ing] an essential presupposition of responsible action.” The second of these interpretations, perhaps called the “soft case,” would be that the creation of a clone is a serious impediment to the clone’s satisfactorily achieving some kind of self-understanding, thus deforming their identity and possibility for respect and self-respect. If we subsume either of these interpretations under Habermas’s assumption that “the universalistic principles of an egalitarian legal order permit only those decision competencies that are capable of harmonizing with the mutual respect for the equal autonomy of each citizen,” then clearly cloning cannot be allowed on either moral or legal grounds.

In a rhetorical flourish near the beginning of his presentation of these arguments, Habermas guesses that his position may be important because it can be identified with the “rational kernel” at the heart of “the archaic revulsion provoked by the vision of cloned human replicas.” In this, Habermas echoes the view of the much more reactionary and frankly neo-Luddite Leon Kass, who argues for our acknowledging the “wisdom of repugnance” we feel about cloning. While Kass recognizes that “revulsion is not an argument,” a sentiment that Habermas would share, he does maintain that “in crucial cases…repugnance is the emotional expression of deep wisdom, beyond reason’s power fully to articulate it.” Given the Deweyan pragmatist’s abiding interest in the power of the
affective in human experience, it seems to me that the endpoint of a pragmatic response to Habermas ought to be to see if there are sufficient reasons to accept his rational reconstruction of the “kernel” of this brand of revulsion, or if Habermas’s rights-based argument is an after-the-fact rationalization of an inarticulable fear better left handled by psychologists than philosophers. Wherever a pragmatist response to Habermas may begin, I suggest that it end with a suggestion of a path between these two alternatives.

2. Pragmatic Considerations about Cloning

Perhaps one place for such a response to start is in the consideration that pragmatic philosophy, as practiced by Dewey at least, embraces a working method which bridges critical first- and third-person perspectives by offering a critique of traditions of thinking as well as contemporary ideas that is both immanent and transcendent at the same time. Admittedly, Dewey’s idea of philosophical critique—“immanent” or “transcendent”—is throughgoingly instrumentalist in nature, as ideas are conceived by him as tools which do either a worse or a better job of fulfilling the tasks they were set out to help accomplish. And indeed, it must be philosophy as method, rather than as system of logical truths that Dewey advocates, since the former will give us “a philosophy which shall be instrumental rather than final, and instrumental not to establishing and warranting any particular set of truths, but instrumental in furnishing points of view and working ideas which may clarify and illuminate the actual and concrete course of life.” 55 Dewey closely follows James in holding that this method is the best one for philosophy’s melioristic function of mediating the weight of tradition in its friction with the need for change. 56

The use of a method akin to Dewey’s in consideration of Habermas’s argument against human cloning suggests that the proper starting point for critique is to take seriously Habermas’s reliance on a conception of the place of democratically-legitimated human rights in forbidding a burgeoning technological practice which seems, at least on the face of it, to have certain positive implications for the health sciences and the “genetic enhancement of families.” 57 However, Dewey’s take on the status of rights, and more importantly for the pragmatist, what they can be used to legitimately permit and forbid, is quite different than that of Habermas. In his 1896 lectures on political ethics, 58 for example, he defines the rights of persons in terms of status, where status is taken to mean “a definite system of objects, control over which is assured to the individual by society.” 59 Dewey describes the “rights revolution” of modernity as a shift in the conception of how status is determined; formerly, it had been via “physical” conditions such as birth and blood. However, “In mobile society,” Dewey says, doubtlessly thinking of Locke, “the individual, in working out his experience, finds what objects he can control, and so through himself determines his status.” 60 Rights determined in this way take the familiar negative (in rem) and positive (in personam) forms, 61 as well as having both a distinctively antecedent (or proactive) and a remedial character. These two aspects of rights are important for Dewey’s idea of conflict adjudication; he says:

The legislative and judicial functions represent the two phases: the first to avoid conflict by anticipation, and the latter to reconstruct where conflict occurs. The decision of the conflict defines the rights. The conflict arises because of the very indefiniteness of the right. 62
He is also quite clear in these lectures about the interpenetration of personal, or private rights and political rights. The only reason to believe that the latter are actually subordinate to the former, he says, would be as a corollary to the Enlightenment idea that individuals had an existence separate from, and often in opposition to, all of society; of course, Dewey rejects this view in many of his works. However, the American political experience, in which Dewey grounds much of his theory of democracy, illustrates how influential the norms of discussion, publicity, and communication that emerged from the eighteenth-century public sphere were to the creation of modern regimes of rights. The founding fathers of America were convinced, Dewey says in a 1952 contribution to a UNESCO symposium on democracy, that the value of free and open communication was “so basic and so intrinsic that political activity must not be allowed to infringe upon them.” Such rights are, despite the fact of being prepolitical, not an inherent limitation of democratic political action, because their special status should be conceived of as “a determination of the conditions under which and of the way in which genuinely democratic activity might best be assured.”

However, to take the reasoning for the special status of rights regarding publicity and discussion as a kind of quasi-transcendental condition for political action would, I think, to be reading a Kantian motivation into Dewey that simply is not there. Rather, as Seigfried points out in his commentary on Dewey’s UNESCO paper (his last addressing of the subject of rights), Dewey’s explanation of the evolution of rights shares the broader motivation for the rights-oriented content in the United Nations Charter as well as the Universal Declaration of Human Rights in that both are based in significant historical events (in the latter case, the tragedies of the Second World War) and the desire to create legal instruments to avoid such horrors in the future. This, with other considerations about epistemic pluralism in today’s world, leads Seigfried to the understanding that the reason for the creation and enforcement of the most basic of rights, communication rights, would be the continuance of the promotion of inquiry in all aspects of life, all across the globe: “…[T]he conditions that guide and control our deliberations and dialogues…are (1) concrete, existential conflict situations that call for inquiry and (2) the determination to resolve them with the resources at our disposal.” These conditions, he points out, are “strictly empirical,” responsive to and willing allow in new developments in ethical and value theory, as well as political, social, scientific, and technological changes that are judged to be of relevance.

If we were to ask, in the spirit of Dewey, what rights are violated by the creation of human clones, what would be the response? While it seems absurd to say that unborn or—perhaps, to avoid entering another wholly different dispute—unconceived future generations currently possess the right to life, clearly this right would apply after birth. If this is the case, Dewey says in the 1897 lectures, much is implicated in this most basic of rights:

In one sense this right is secured, however, only as one has the others. Give the individual a right to life and you create a demand for the right to property, to free locomotion, etc. Each right is taken as a means to a further end. The right to life represents the fundamental means to be utilized.

Because rights help define what it is to be a legally unimpugnable individual, and (for the social pragmatist) the individual is always an individual-in-association, the mere fact of the living individual human person demands certain other “sociability” rights which partially define the structure of contemporary Western societies—property, contract, and the like. From this we may
correctly deduce that the cross-dependency of personal and political rights and historical political and social structures means, for the pragmatist, that transcendental arguments for justification of rights may indeed weaken, rather than strengthen the rights cause. The social nature of rights is not inherently a limitation, as James Tufts, Dewey’s collaborator on the widely successful Ethics textbook (1908, revised 1932) says:

Any right includes within itself an intimate unity the individual and social aspects of activity upon which we have been insisting. As a capacity for exercise of power, it resides in and proceeds from some special agent, some individual. As exemption from restraint, a secured release from obstruction, it indicates at least the permission and sufferance of society, a tacit social assent and confirmation; while any more positive and energetic effort on the part of the community to guarantee and safeguard it, indicates an active acknowledgment on the part of society that the free exercise of individuals of the power in question is positively in its own interest. 69

This point is in no way lost on Habermas, who claims, for example, that both liberal and communitarian/republican approaches to the concept of rights “fail to grasp the intersubjective meaning of a system of rights that citizens mutually accord one another.” 70 However this is only decisive for Habermas in the case of civil rights—classed by him as those rights which ensure opportunity of participation and communication. This separation seems to be a logical application of Habermas’s “two-track” view of institutional procedures in a democracy: “they must be open to inputs from an informal public sphere, and, at the same time, be structured to provide reasonable discursive criteria.” 71 David Ingram puts this in a different but enlightening way when he states that:

Although concretely binding obligations exist only in the form of conventionally agreed upon rights (as communitarians and civic republicans insist), the dialogic norm under which we consent to them ideally urges the progressive augmentation of freedom and equality in a manner that transcends what any right actually prescribes…72

Which is more primary, then, on Habermas’s view of human rights: their quasi-transcendental character, grounded in a universal morality as presuppositions of a ever-broadening legal order, or their intersubjective roots, and thus changeable character? Are these two characters compatible with one another? While investigating possible answers to these questions falls outside the scope of this paper, it seems clear that in the case of human cloning, where rights are not assignable to a living subject before an actual cloning operation, the source of justification of rights claims is extraordinarily important. If we privilege the transcendental character of the human right to fundamentally determine one’s own ethical self-understanding and also agree with Habermas that cloning violates that right by definition, then we will a solid case against cloning. If, however, we take the pragmatist stance that any right regarding ethical self-understanding is, at least to a degree, “open-ended” not only because we have no intersubjective consensus on all that constitutes or is even universally relevant to one’s ethical self-understanding, but also that such a consensus does not appear to be in sight, then we would not consider the invocation of a human right forbidding the creation of clones to be the proper argument against this procedure. Another way of putting this latter point is that if we can conceive of situations in which certain genetic determinations made on behalf of the cloned humans would not substantially affect the clone’s self-understanding, or would
affect him or her in a positive way, then the worries which motivate the leap to human rights seem, if not to dissolve, to at least be mitigated by empirically feasible future scenarios. I consider several of these scenarios below in trying to assess whether or not the creation of a clone would imperil perspective-taking and reciprocity, two of the ethically relevant aspects of our self-understanding.

In general, however, the pragmatist’s instrumental view of rights seems to raise worries about the status of rights analogous to those doubts expressed at the end of section one when it was asked whether Habermas’s argument more resembles the “rational kernel” in the anti-clone repugnance, or an ad hoc rationalization of that same repugnance. Here, the question is, “Which is more primary—rights in their juridical or constitutional role?” Asking this question is the same thing, I contend, as asking whether human rights ought to be considered, like civil rights, to be refined indicators of contextually-bound social norms and values, or whether they can be absolutely prohibitive of certain practices in a stronger, and perhaps transcendental sense. Habermas addresses this question in some detail in a central chapter of Between Facts and Norms that examines criticisms of the nature and function of constitutional courts. There, he says:

…[B]asic rights acquire a different meaning, either deontological or axiological, depending on whether one, like [Ronald] Dworkin, conceives them as binding legal principles, or, like [Robert] Alexy, as optimizable legal values. As norms, they regulate a matter in the equal interest of all; as values, they enter into a configuration with other values to comprise a symbolic order expressing their identity and form of life of a particular legal community. No doubt values or teleological contents also find their way into law, but law defined through a system of rights domesticates, as it were, the policy goals and value orientations of the legislator through the strict priority of normative points of view.

One problem with constitutional courts, like courts deeply affected by shifts to welfare-state law in liberal countries, is that they appear to run the risk of decreasing the total freedom of individual citizens because individual cases before such judiciaries would be decided in their normative relation to the whole of the constitution, rather than to contemporary values attaching to democratic legitimation. Dewey would agree with this, but would not see the necessity of the materialization of the positive effects that Habermas says such courts also entail, namely that, “the context-dependence of a norm application oriented by the whole of the constitution can reinforce the freedom and responsibility of communicatively acting subjects in nonformalized spheres of action.” Instead, Dewey would suggest that reliance on lower-level juridical interpretation of basic rights in contextually-bounded cases, while perhaps less efficient for binding the legal code overall over time, simulates deliberation better in its restricted and formal sphere through allowing for frequent challenges to the established normative order. Often, these challenges are motivated by difficulties in reconciling important and widespread schemes of value with certain normative presuppositions of the law; indeed, legal challenges to existing bans on human cloning will take just this perspective in terms of the defense of, among other values, the positive “genetic enhancement” of families and the securing of the ability to reproduce.

Finally, how restrictive a constitutional order is about allowing such challenges to be escalated, particularly ones which are mirrored in the prevalency of public discourse about a contested issue (and clearly, cloning is one of these), will have serious impact on how we apply Mead’s model of
taking the attitude of the generalized other to judges making decisions regarding the status and extent of human rights. In a recent exchange with Robert Brandom over whether or not the latter’s theory of “deontic scorekeeping” accurately models how a normative order is established from the giving and taking of reasons, Habermas once again invokes Mead’s theory of intersubjective perspective-taking and the taking of the attitude of the generalized other. However, in emphasizing, as he does in many of his analyses, the sources of social coordination in Mead, Habermas has the tendency to de-emphasize the sources of social discontent and the partial ability of Mead’s “I” to distance itself from the value- and norm-oriented presuppositions of its fellows in order to critique the existing order. This “reactive part of the self,” as Campbell calls it, is capable of a limited transcending of normative expectations. “We need to recognize…” Campbell says, that this aspect of the self grows slowly, by means of the gradual realization of the degree to which our actions are ordered for us by society’s customs, a realization that takes place largely through encounters with other possible modes of living. And we need to recognize as well the individual difficult of balancing the knowledge of other modes of living against our own frequent sacralizations without succumbing to some form of crippling relativism.

The “me” can only be considered static without the “I,” and indeed, the “I” is required in its ability to transcend and critique the presuppositions of the self’s current social situation in the service of self-realization in general. If we re-interpret this fundamental point back into the juridical metaphor, as Habermas has chosen to do in his debate with Brandom, we would find that a legitimate judiciary based on an appropriate theory of perspective-taking would be one which would accept, and indeed welcome all formally ordered challenges to the existing legal order; combined with Dewey’s instrumental view of constitutions (and indeed, all law, even that which guarantees rights, as Seigfried’s points above show), this illustrates that even quasi-transcendental bases for particular legal guarantees must themselves be questioned from a variety of standpoints in the public sphere. This view also gives us the advantage of being able to avoid, in principle as well as securely in practice, that reification of human rights and the legal documents in which they are embedded which Ignatieff has recently called “human rights as idolatry.” The potential for this kind of reification is no less for the fact that it may be couched in performative presuppositions rather than in some “natural” property common to all humans, as Locke and others might have had it.

Up until this point, I have taken as central Habermas’s idea that human cloning is first and foremost a violation of human rights. If, however, we follow the pragmatist in seeing that concrete and shared needs may demand inquiry into any aspect of our shared life, including our legal traditions, then we will want to examine the reasons for thinking that such an act is by its very nature an injury to human autonomy. Further, if we accept that the nature and application of rights should continue to be a subject for further deliberation, then good reasons which establish that there is no necessary connection between cloning and violations of human rights may convince that Habermas’s position is too demanding and thus unwieldy in the complex considerations of ethics, shared interests, science and technology that surround the cloning debate. In what follows, I want to present various empirically feasible scenarios which might undercut the fears motivating Habermas’s view that clones might be socially “wounded” in their capacities for reciprocity and perspective-taking, and we at a loss for a proper “decision competency” in our similar capacites.
toward them. I also suggest some considerations against cloning that Habermas does not include in his arguments that provide a broad-based, normatively pluralist case against the current desirability of producing human clones.

**Pragmatic considerations for continuing the cloning debate**

A common characterization of deontological moral and political theory is that it is an exercise in overcoming, if not history, at least the arbitrariness or randomness of history. In Rawls’s theory of justice, for example, this takes the form of the decision procedure called by him the Original Position, a procedure which employs the veil of ignorance to disregard as irrelevant to our choice of principles of justice a variety of truths about each of us outside of our status as rational and self-interested agents. 82 These kind of procedures have a turn of fortune in Habermas’s position on cloning, because the invocation of universal human rights is used as an argument against not *arbitrariness*, but against *determination*. This is vaguely ironic, but philosophically sound because in both Rawls and Habermas, the intent is to secure the agent’s position as a rational chooser apart from coercive or irrelevant (those we cannot all share) influences. An argument that the standard procedure for cloning—that is, the transplantation of nuclear material with certain known genetic characteristics into an egg, followed by the enculturation of the egg so as to start cell division and eventual transplantation to a woman’s womb83—determines the eventual cloned human produced so as to obviate their autonomy will have to show how their self-understanding, powers of rational choice, or both, will be significantly impaired by being created via this procedure. I want to maintain that Habermas has given us good reasons to think that this might be so, but failed to consider a whole host of other reasons as to why the the moral status of the agency of the cloned human might be little worse than any non-cloned human.

First, there is the vagueness of the statement, “…[T]he universalistic principles of an egalitarian legal order permit only those decision competencies that are capable of harmonizing with the mutual respect for the equal autonomy of each citizen.” 84 Perhaps we would be better to say “*legitimate those decision competencies*,” since it seems clear that, even if Habermas’s reasoning were used to ground a ban on human cloning, that the very real possibility of clones being produced outside the scope of the ban would put strain on the meaning of the phrase in the original. This is so because the restriction on the production of unknown decision competencies is a prohibition internal to the legal order itself, but the truth is that the *need* for such production is also at the mercy of events which may be outside the scope of that order. In other words, the production of a human clone and the possible need for jurisprudence in reference to its situation creates a demand for the creation of decision competence in the case(s) regarding the clone; in face of this need, we can neither deny the clone basic rights (for clearly, it satisfies the criteria for being a part of humanity) nor defer in making judicial decisions regarding him simply because of a lack of decision competence due to the historical lack of existence of the experience of cloned human to refer to. Would such decision competence be impossible to generate over time? This turns out to be an absurd question, given the wealth of valuable related cases in which decision competencies do exist, such as in cases of gene therapy, pre-birth genetic testing, choice of gametes, gestational carrying, surrogacy, and DNA banking. 85 More broadly, the “adoption model” of mediating the tension between reproductive rights and the best interest of children can be used to generate concrete data by which to decide either adoption—or, as McGee and Wilmut suggest analogically—cloning rights on a case-by-case basis. 86 We should expect the generation of decision competencies to
mirror the progression of jurisprudence in other areas of health medicine, combining insights from bioethical and technical sources with the current state of interpretation of the norms implicated in human rights discourse.

This discussion suggests that our society and its legal order has the resources within it to decide hard cases concerning the generation of human clones, and in many cases, may decide them wisely. However, Habermas has also drawn our attention to the position of the human clone himself and his self-understanding; does the clone find himself in a unique and unenviable position regarding two of the most important sources of personal autonomy, the expectation of reciprocity and the ability to take the perspective of others and acknowledge that others have taken his perspective (the “soft case”)? Or is the clone’s autonomy fundamentally undermined by these considerations (the “hard case”)?

Despite Habermas’s acknowledgment that our self-understandings are dependent on many things including one’s genome but also “on interpretive patterns that predominate within a culture,” he certainly sounds like a genetic determinist might in the rest of his argument. Certainly, our possibility for a satisfactory self-understanding is not inherently in danger because of genetic manipulation, as cases of simpler manipulations through gene therapy show. Also, it could be the case that a clone could be ignorant of their status as a clone and still form a satisfactory and coherent self-understanding. I do not advance this latter judgment to claim something like “ignorance is bliss,” but rather to point out that having one’s genome determined by the intentions of another does not serve as a “marker” which must, like Hester Prynne’s scarlet letter “A,” represent us to the interpretive community and, through them, influence our self-understanding. This distinguishes the cloning of human organisms sharply from Habermas’s preferred analogy, that of slavery. Because any given master-slave relationship would be dependent both on the recognition of that relationship by both parties, as well as by intersubjective recognition of the intimations of that relation by the wider community, it is impossible by the definition of the institution of slavery to not have such a relation affect one’s self-understanding. Even if the clone were to be aware of his origin (and we would generally think it preferable that he would be, although perhaps not always, as in some cases of anonymous birth mothers of adopted children), only a viewpoint that favored the model of genetic determinism would imply that knowledge of genetic tampering would inhibit a clone’s self-understanding.

Pragmatists, who as a rule are avid deployers of the implications of Darwin’s theory of evolution, have an advantage here. Dewey in particular, was aware that our natural-born capacities, and thus our genetic inheritance, is only one part, and indeed the smaller part, of our evolution as an organism. His more incisive statements of the organism-environment interplay which produces mature organisms are augmented by the story of the evolution of meaning found in Experience and Nature, which explains how human development is doubly conditioned by our “natural” as well as our “social” environment. If there would be good reason to believe that our nascent capacities (or, perhaps more properly in the context of the cloning debate, the source of those capacities) are capable of validating or invalidating our status as autonomous beings, then we would be wise to pay more attention to them. However, Dewey has already produced various arguments against this view in, amongst other places, Democracy and Education. Barbara Katz Rothman echoes this view that the possibilities for further growth of a maturing human may eclipse a fact about our origins when she says:
On a more mundane, work-a-day level, the DNA is called a code, an encyclopedia, an instruction kit, a program, and most often, a blueprint. Well, sure. I started out as a little cell with a nucleus of DNA and here I am. Those must have been plans in there. But it took about fifty years to get where I am now, and I think that’s worth thinking about. When you have the code or the plans for a person, you don’t have the person. If you take my very DNA and clone it, make copies, and let those copies grow into people, it will take fifty years for them to get where I am now. And a lot happens in those fifty years.

To be fair to Habermas, however, it may seem that this balancing act of growth through interaction with the environment versus nascent “given” misses the point; indeed, Habermas himself, in his reply to Merkel, emphasizes that his argument is not centered on the “composition of inherited predispositions,” but rather on the self-understanding of the cloned human who “encounters a foreign intention in the mirror image of her own predispositions.” If we are to take the role of perspective-taking in socialization seriously, we will recognize that the cloned human’s reaction to her encounter with a “foreign intention” will be strongly conditioned by society’s attitude toward clones and cloning procedures. Because, as I have already mentioned, the possibility of clones being created outside the ban is a very real one, it seems to me that societal attitudes, particularly our ethical ones, need to take into consideration not only our principles about the rights of all humans, but also the consequences of actual creation of clones. I doubt that we will produce a flexible and satisfactory ethical view if we adhere to rather rigid principles which assume that the ban on the creation of cloned humans itself creates such a force of obligation that no clones would ever be born. Dewey seems to be quite clear that new developments in science and technology are themselves capable of changing our interests and desires; otherwise, “desire and knowledge exist in separate non-communicating compartments.” If there is no ultimate disconnect between our desires and our moral sense, then these considerations ask us to consider, at the very least, that we be open to new evidence which would change our minds about the feasibility of controversial procedures such as cloning. This is one pragmatist response to what I have been calling Habermas’s “soft case.”

Further, I would maintain that the assumption that Habermas’s “hard case” rests on, which differentiates him from a pragmatist such as Dewey is the former’s belief that autonomy can be conceived of as an all-or-nothing kind of thing. This is a drastic oversimplification of Habermas’s actual view, but it does pinpoint the fact that, for the Kantian ethicist, autonomy is equated with the fulfillment of certain idealized presuppositions, many of which we encountered in the first section of this paper. Dewey, for his part, treats these kind of ideals as special kinds of ends-in-view which have a stable base of intersubjective support; they are relevant to freedom only inasmuch as they allow us to intelligently form habits which benefit us in the long and short term, to rid ourself of “bad habits” of action as well as thought, and to influence the formation of habits of others in ways that have the broad, experimental appeal of “this has worked for us, perhaps you should try it, too.”

Our freedom or lack thereof cannot be tied to the actions of another if we have it within our power to overcome the influence of that other. While an unprecedented and perhaps even highly unpleasant fact about my origins may form my self-understanding, there is no completely convincing reason that the long-term impact of that fact on me will be wholly negative, much less impede my freedom. Conditions of arbitrary power, disorted communication, and subordination
may impede me in my intended pragmatic role as an intelligent actor, but facts about the intentions of others which led to actions beyond my control may have a variety of impacts on me, many of which will depend on the norms and values of my socialization. In short, Dewey and those who accept the idea of a “continuum” of freedom would be willing to admit something that Habermas could not—that it might be possible for a cloned human with a satisfactory self-understanding to be “more free” than a natural-born human who considers herself to be constrained, oppressed, and ignorant.

Conclusion

A positive pragmatist position in regard to the admissibility of human cloning must, as in every other area in which practical decisions with far-reaching public consequences are made, take its support from a plurality of norms embedded in diverse areas of knowledge, both expert and non-expert. In general, I think that Saatkamp has provided pragmatists considering difficult issues in the areas of genetic engineering with four excellent guidelines for focusing deliberation:

..[P]ragmatism advises us (1) to not overlook the complexity of the interplay between genotype, environment, and culture, (2) to pursue not only the genetic base for complex human actions, but also the environmental and cultural forces, (3) to focus on the responsibility of ameliorating the human condition by intelligently utilizing scientific and cultural knowledge, and (4) to redirect current research to understanding the development of responsible individuals within the biological and social commonalities. 95

These guidelines allow us to see the benefits of various cloning technologies and to envision potential applications of reproductive cloning which would, if balanced by juridical consideration of the interests of the cloned child, expand reproductive rights as well. However, Saatkamp’s advice also entails that we currently weigh the arguments for and against reproductive cloning, a work of deliberation that would, I suspect, produce the recommendation of an indefinite moratorium on reproductive cloning. Considerations that currently mitigate against this practice include: perils to the safety of the cloned child and its birth mother (primarily), the incompleteness of basic knowledge of genome location/functions (which will be filled out by the completion of the Human Genome Project), the cost of the procedure, the general problem of world overpopulation (to which successful human cloning indirectly adds), and the lack of reconciliation between differing ethical and religious views on this issue. To this list, we might add the conclusion of this paper that we are still in a debate about a very basic aspect of how we consider clones legally, and that is, what relationship potential cloned humans would have to human rights. As we have seen, Habermas thinks that the presuppositions of our human rights regime forbid the creation of clones, while the Deweyan pragmatist considers that a wide range of normative appeals currently do not support deploying the technology, and so a moratorium rather than a ban is what is called for.

In conclusion, one thing (among many others) that Habermas and the pragmatist will agree upon in our postmetaphysical discussion of the implications of new genetic technologies is that “What gives life value is not its mere existence but its quality.” 96 Aside from the questionable appeal that a potential clone has the human right not to be brought into existence, the application of this “quality of life” principle to the issue of human cloning seems to reside in future agreements to a debate about whether the autonomy of a cloned human is intrinsically injured by its creation, or, perhaps
more broadly, whether a clone has the possibility of a high quality of life regardless of her origin. The pragmatist differs from Habermas in saying that this debate cannot yet be closed given the current state of our artificial reproduction technology, our knowledge of the human genome, our lack of experience of the consequences of creating and socializing cloned humans, and, most importantly, considerably more extensive public debate about all aspects of this extraordinarily important issue.

Kevin Decker
St. Louis University

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MIT Press), 163-72.


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**Notes**

1. Clarity in what follows demands the acknowledgment that Habermas opposes “the duplication of the genome of a mature human organism,” and not the process of cloning itself in many of its other facets, such as therapeutic cloning utilizing patients’ own cells to restore nerve cells or treat diabetes; Jürgen Habermas, “An Argument Against Human Cloning: Three Replies,” in *The Postnational Constellation: Political Essays*, translated and edited by Max Pensky (Cambridge: MIT Press, 2001), 171. It should be noted that many of even the most cloning-technology enthusiastic scientists also warn against the viability of reproductive cloning on grounds of safety and, by extension, ethics; see Cibelli, Lanza and West, “The First Cloned Human Embryo,” *Scientific American* 286 (1), 45.

2. Ibid., 170.


8. Ibid.

9. For Habermas, private autonomy is constituted by three types of rights: (a) negative liberties, (b) rights of membership in a political community, and (c) rights empowering individuals to sue for the rights in (a) and (b). Rehg fleshes out the content of this typology thus: “By way of illustration, one can note that rights to personal dignity, life, liberty, bodily integrity, etc., interpret the first category. The category of membership rights includes the various laws and rights that define the status of members in a legal community. Here Habermas includes prohibitions against extradition, rights of political asylum, and so on. Finally, the third category finds expression in due process rights: the prohibition against retroactive punishment, etc”; in Rehg, “Against Subordination: Morality, Discourse, and Decision in the Legal Theory of Jürgen Habermas,” Cardozo Law Review 17 (4-5), March 1996, 1154.

10. Ibid., 128.

11. Ibid.

12. This task has been ably achieved by William Rehg, Insight and Solidarity: The Discourse Ethics of Jürgen Habermas (Berkeley: University of California Press, 1994).


14. “Every argumentation, regardless of the context in which it occurs, rests on pragmatic presuppositions from whose propositional content the principle of universalism (U) can be derived”; Habermas (1990), 82.

15. Ibid., 121.


17. Bohman, Public Deliberation (Cambridge: MIT Press, 1996), 31, 26. In contesting Habermas’s criteria for consensus as too demanding, Bohman claims, rather, that “continuing the conversation” on equitable terms of the exchange of public reasons is what we ought to expect from a theory of deliberative democracy. Since deliberation is merely one mode of action, and while important, not sufficient to characterize all the areas in which action needs to be taken to resolve problematic situations, I do not see that pragmatist can be satisfied by stopping with this claim about ongoing deliberation. With Hans Seigfried, I also “…cannot see how we can hope to generate understanding among different cultures by merely keeping conversation adrift, without aiming at warranted assertions as a basis for consent about how to settle, avoid, or at least contain conflicts in a multicultural world of tensions”; Seigfried, “Human Rights, Ends-in-View, and Controlled Inquiry: A Response to Paul Chevigny’s Dialogue Rights,” in The Journal of Speculative Philosophy 12 (3), 1998, 175.
18. Ibid., 26.

19. Ibid., 36.


21. Ibid.

22. Ibid., 191.


24. Ibid., 165.

25. Ibid., 171.

26. Ibid., 172.

27. Ibid., 170-71.


30. Mead (1934), 154.


32. See Mead (1934), 222 ff.

33. Ibid., 214.

34. Ibid.


38. Ibid.

39. Ibid; see also ibid., 166, where Habermas writes, “Before we scrutinize the way that we might see cloned human beings, we would have to ask how they would see themselves—and whether it is a view that we ought to impose on them.”

40. Ibid., 170-71.

41. Ibid., 171.

42. Ibid., 168.

43. Ibid.

44. Ibid., 164.

45. Ibid.


47. Ibid., 64.


49. Ibid., 164-65.

50. Ibid., 164.

51. Ibid., 167.

52. Ibid., 163.


54. Ibid., 156.


57. A phrase that Glenn McGee uses glibly as the title of his essay in Pragmatic Bioethics, ed. Glenn McGee (Nashville: Vanderbilt University Press, 1999) with the following justification: “I
argue at length that attempts to distinguish between conventional development of potential and artificial enhancement rely on an outmoded account of human nature and genetic causality, and that species-typical functioning misses the point that health and illness are experienced and defined in terms of their meaning in human social experience” (168-69).


60. Ibid.

61. Dewey is concerned, even here, to characterize the ethical content of legal rights in terms of the future—in other words, in terms of the consequences they may bring about and the goals that they are set up initially to achieve. Interestingly, he sees only the in personam or positive rights as so characterized, and because positive rights “relate to the future” and “involve...development to some end,” they invariably come into conflict with in rem rights; ibid., 162.

62. Ibid.

63. This fact of interpenetration also makes it fruitless to establish a lexical or hierarchical ordering of rights since “it is fallacious that one right can be realized without others”; ibid., 163.


65. Ibid.


67. Ibid., 165.

68. Habermas also acknowledges this fact, but from the standpoint of a legal hermeneutic rather than empirical contestation of the limits of rights, as Dewey implies here and in his *Ethics* (see note 11); see Habermas (1996), 121-2.


70. Habermas (1996), 271; also see Bartlett (2000), 370.


73. Habermas (2001a), 170.


75. Ibid., 256.

76. Ibid., 246.


79. Ibid., 202.


84. Habermas (2001a), 167.


86. McGee and Wilmut, “Cloning and the Adoption Model,” in *The Human Cloning Debate*, edited by Glenn McGee (Berkeley, CA: Berkeley Hill s Books, 1998). This model endorses thorough information-gathering about prospective parents which is subject to judicial review between the right to have a non-naturally born child is granted: “Parents who seek to adopt children are required, in virtually every nation, to seek prior approval from a regional authority or court. In many nations applicants are required to undergo psychological testing, home visits or other pre-screening. In most cases these pre-screens take place before a particular child has been identified for adoption; in many cases the pre-screen is independent and antecedent to the identification of a pregnant birth parent,” 101.


88. See the National Bioethics Advisory Commission, “The Science and Application of Cloning,” in
Clones and Clones, edited by Nussbaum and Sunstein (New York: W.W. Norton, 1998). The committee’s corrective to this idea is explained in this way: “Although genes play an essential role in the formation of physical and behavioral characteristics, each individual is, in fact, the result of a complex interaction between his and her genes and the environment within they develop, beginning at the time of fertilization and continuing throughout life,” 39.


92. Habermas (2001a), 171.


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