Human rights and bioethics

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ABSTRACT

In the first part of this article we survey the concept of human rights from a philosophical perspective and especially in relation to the "right to healthcare". It is argued that regardless of meta-ethical debates on the nature of rights, the ethos and language of moral deliberation associated with human rights is indispensable to any ethics that places the victim and the sufferer in its centre.

In the second part we discuss the rise of the "right to privacy", particularly in the USA, as an attempt to make the element of personal free will dominate over the element of basic human interest within the structure of rights and when different rights seem to conflict.

We conclude by discussing the relationship of human rights with moral values beyond the realm of rights, mainly human dignity, free will, human rationality and response to basic human needs.

The advent of bioethics thirty years ago signalled two paradigm shifts in traditional medical ethics. First, the value of responsibility has been extended beyond the clinical encounter towards care for the environment, future generations and global crises of healthcare.[1] Second, the language of medical ethics has been recast in terms of human rights.

It is not easy to judge the acceptance of these shifts by academic bioethics. However, the "Universal Declaration in Bioethics and Human Rights" issued by UNESCO in 2005, the 1997 Oviedo Convention on Human Rights and Biomedicine and similar recent international and national declarations and laws exemplify the influence of these trends within the domains of political activity and popular discourse.

In general, human rights are invoked in three bioethical contexts: protection of humans from being harmed by biomedicine, as subjects to medical experiments—for example, the debate about the right to healthcare—and thirdly, regarding the rights of patients relative to the their healthcare services and providers.

It is a commonplace creed that healthcare professionals have a special universal and apolitical moral mission to protest violations of human rights and to minister to the victims.

HUMAN RIGHTS AND THE RIGHT TO HEALTHCARE

The historical roots of human rights lie within the High Middle Ages, but the contemporary usage of this term is traceable to the 17th century, when Europe was recovering from the catastrophes of the Thirty Years War and from over a century and a half of bloodshed in the name of religion and its most eminent values.

Locke[2] laid the foundations of a theory of human rights which are still very influential today. Although philosophers debate the extent of human rights (what may count as a right) and their exact meaning, the basic notion of rights has not changed since.

If moral decision making is about balancing arguments pro and con a certain action, the invocation of a right will almost always tip the balance to its side. In the words of the legal philosopher Dworkin,[3] rights are like "trump cards". Aside of few extraordinary circumstances, moral rights cannot be overruled, even by sophisticated and strong theological, political or even purely moral considerations. Rights are "major constraints" on action; they are "master moral concepts" and they are of eternal and universal nature, as they reflect the meeting points of the *essences of human morality* and *the very basic needs and goods of human flourishing*.

Hence, human rights are independent of merit. They are never endowed by a third party; they apply *"erga omnes"*, to everybody. For having human rights, one needs only be human.[4] Although rights may derive their moral authority from values, most often that of "human dignity", rights do not point at values, but at domains of action.

Locke mentions three rights:[4] to freedom, to property and to life. He means that no matter how good is the cause, just and powerful is a government, or pious is a church none can morally restrict the freedom of people, confiscate their personal property or take their lives.

A key feature in the Lockean concept of rights is the role of the right-holder's will and personal preferences. The rights to liberty and property are meaningless unless they protect the right-holder's personal choices where to go, what to say and how to dispose of his or her property. However, Locke contends that "man has liberty but no license", meaning that liberty is not an open permit to destroy and harm, even not one's own self.[5]

Some rights may be temporarily and proportionally suspended, such as in the context of punishment. But some infringements of human rights are so offensive so as to exclude some forms of punishment even in the judgment of the worst of criminals. Hence, many countries do not practice capital punishment; all countries in the world do not recognise slavery.

Another philosophical tradition is traceable to Hobbes[6] who argued that the drive to survive is the most basic and powerful in human nature. Rights are not natural, but artificial social constructs whose purpose is the promotion of human survival and the protection of some humans from the survival drives of others.

The two traditions are actually opposed to each other—according to Locke, moral rights are natural

barriers against social pressures (the theory of natural rights); whereas according to Hobbes moral rights are social constructs whose purpose is the protection of humans from human natural drives (the theory of non-natural or positive origins of rights). The contemporary legal philosopher Hart proposes a synthesis of the two traditions, arguing that there is actually only one natural right. This right is only formal—the right to equal consideration. All substantial rights, such as the right to life, property and liberty are positive legal constructs.[7]

Locke, Hobbes and other early theorists of rights spoke of what we call negative rights, this is to say, the right against interferences in the personal affairs of people. In this scheme, inaction never violates human rights.

In the past 40 years, awareness has been growing to the indirect but fateful impact of macro-economics, developmental projects and transformations of the natural environment on hundreds of millions of people no less than by the direct insults of warfare, despotism and corruption. In the spirit of the Hebrew prophets, some contemporary human rights movements such as "liberation theology" describe such indirect influences on the basic needs of people as "structural violence", and regard it as a kind of violation of negative human rights. Dispossession and dislocation are directly correlated with impaired health and with inability to afford basic healthcare.[8]

Traditional Judeo-Christian morality propositioned the duties of charity and mutual aid as society's means to cope with adversity. Atheistic and materialistic philosophies of the 19th century placed rights directly "in" human beings, as if the very presence of a basic human need, automatically and directly, and with no reference to transcendental entities and values, generates a moral duty at the level of rights. These are rights to receive action, what is called today positive rights (also known as social rights or second generation rights).[i]

Article 25 of the UN Declaration of Human Rights (1948) states that "every person has a right to a standard of living adequate for the health and wellbeing of his family including… medical care". In this spirit, free and easily accessible healthcare for all is constituted in many countries such as in the European Community and Socialist countries. Among the numerous such rights many people believe to exist is the right to benefit from infertility treatments so as to fulfil the so-called right to have children. The ever increasing expectations of citizens of such countries with regard to their rights to healthcare are borne into relief by the complete absence of healthcare services for at least one third of humanity. Hence, recognition of the "right to healthcare" is formulated in legal-practical language as a commitment to "take steps… to the maximum of the available resources" to ascertain "the full realisation of the rights recognised".[9]

Perhaps, it is useful to distinguish here between moral and political expectations of members of communities to be granted legal rights on the basis of democratic processes and the economic means of the community from recognition of a universal moral right to basic healthcare.[10] [ii]

Of all other positive rights, the right to healthcare has also been recognised as crucial since beyond the direct benefits of health, it enables people to pursue other human rights and interests—for example, a healthy childhood is necessary for gaining education, which in its own terms is necessary for self sustenance and personal fulfilment (the theory of rights as "capabilities").[11]

However, the liberal position prevalent in the USA and articulated by bioethicists such as Engelhardt,[12] is that the positive right to healthcare is not stronger than the negative right to property. Consequently, society must not tax the rich in order to finance medical care for the poor. Only by means of voluntary charity should the vision of universal healthcare be realised. From this perspective, the right to healthcare formulated by the UN is interpreted as a negative right, as it pertains to the right against interferences in people's own pursuance of healthcare and promotion of their health.

As the concept of human rights has been expanding, their division and classification has grown as well. Following the American jurist Hohfeld[13] it is customary to classify rights thus:

Liberties as rights that do not constrain the actions of others = for example, I have the liberty to ride my car in order to consult my doctor; I actually have the liberty to travel wherever I please. But if the police closes the road to private traffic, no violation of a right has been made. I could take the bus. I have no principled right to travel by car in a particular road and in a particular time.

Claims that are rights with corresponding duties = for example, my right to healthcare is also a duty incumbent upon the police not to block *all* roads and make it too difficult for people to see their doctors. Only at this level do Engelhardt and the liberals interpret the right to healthcare.

Immunities that disable harmful actions of others = for example, my health is immune to the actions of others. I may thus resort to the power of the state in order to stop a nearby factory from emitting toxic fumes.

Due to the nature of its own internal morality and to its sensitivity to the vulnerability of humans and to their special trust in medicine, biomedicine has a special duty to protect people from even indirect or mild harm.[14] [iii]

Rights as powers that correspond to liabilities (complete duties in Kantian language) = for example, in employing me as a worker, the employer took upon herself the liability to pay my salary.

We have seen that philosophers debate whether natural conditions, such as bad health, can make people and agencies, who have never implicated themselves with the life of the sick, responsible for the care of the latter. Many believe that the values of human solidarity and human vulnerability entail such an automatic obligation, at least with regard to society. Put in other words, the right to healthcare is a positive right, a kind of power, which creates liability only for society as a whole, usually at the level of national states, and not on single individuals. Although every person has a duty to indirectly share the burden of healthcare for the needy (usually by means of paying taxes), not a single person has a principled duty to cope with the medical needs of unrelated persons.

Another way to look at the debate on the right to healthcare is through the discourse on the relationship between rights and justice. Rawls,[15] following a tradition that is traceable to Thomas Aquinas and reaffirmed by the Pope in 1967, holds

[i] The reader is advised not to confuse two different meanings of the word "positive". In the first usage in this paper, "positive" is opposed to "natural"; whereas now the very same word is employed with a completely different meaning – "positive", meaning active action, as opposed to "negative", meaning inaction.

[ii] For a somewhat middle position claiming relatively varying levels of strong positive rights within sovereign states and a "minimal humanitarian morality" governing all people see Nagel.[9]

[iii] Compare this to Kramer's discussion of pollution and immunity in order to realise the difference between legal and moral rights, and between ordinary industry and health damages brought on people by biomedicine. Considerations of enforcement, tort and criminal law regarding observance and violations of rights often involve considerations separate from the authority, structure and content of moral rights.[13]

that rights are founded in Justice and conferring rights in a manner that violates justice is meaningless.[16]

Nozick,[17] on the other hand, holds that basic human rights are natural and inviolable, whereas the concept of justice is a positive and pragmatic social construction. Although it might promote justice to forcibly shift moneys from the rich to the poor and sick, this would violate the natural liberty of the rich to dispose of their own property at will.

Alas, it is now well established that free healthcare services cannot solve alone the world's major health problems, such as malnutrition, malaria and HIV. Observance of human rights not related directly to health, particularly women's rights in matters of sexuality, personal property and education (literacy) have been found indispensable to the betterment of the health of whole populations.[18]

Since the Second World War, a very strong duty-based sensibility of ethics has been developing in Europe. According to Jewish-Catholic philosopher Simone Weil,[19] the Lockean language of rights is misleading since it represents them as if they were a sort of external appendages that are attached to the people who possess them. She argues that the phenomenology of duty and consciences is the primary psycho-spiritual source of ethics, and that rights are mere derivative from duties. Hence only from our duty to respect the lives of all other people, do we claim a right to our own lives. Levinas' ethics has contributed much to the recognition of the deep and imperative link between the vital needs of all people and peoples and the virtue of responsibility.[1]

In the past 30 years, a debate has been growing whether non-human entities, mainly animals, have moral rights and how such rights stand in relation to human rights.[20 21]

Another debate deals with the question whether future generations are entitled to human rights, which we must now respect.[22]

In recent years, it has been argued that rights set limits on tolerance and multiculturalism. Violation of so-called "urgent" human rights must be fought against.[23] The conceptual dilemma may be thus construed. On the one hand we may invest rights with extraordinary moral power, even to the extent of waging wars against societies that systematically disrespect them. In such a paradigm moral rights must be very few and very fundamental, such as the right to life and bodily integrity. On the other hand, it would be absurd to argue that the recent expansion of human rights also feeds intolerance by encouraging struggles against anybody who does not respect one of the numerous human rights, which have been recognised by international conventions and declarations.

Philosophers also debate whether people can freely waive their own moral rights, such as to give up on their right to life. Even those who acknowledge the alienability of human rights assert that they must be "hard to lose". Today, a nearly universal consensus prevails against the possibility of irrevocable promise to waive human rights. For example, a person cannot put himself in a position that binds him to put his life at risk or to submit to a sexual relationship sometime in the future. Such interferences and uses of rights, when permissible at all, require full consent in real time. Therefore, requests for cessation of life-saving medical care or donations of organs from living people typically require strict processes examining the depth and authenticity of the choice made and the relative value of the goal served by that choice.

In summary, a moral human right is a moral quality of a person, which belongs to him or her solely by virtue of being human. This quality has a special moral power forcing all others to refrain from action (in the case of negative rights) or to take action (in the case of positive rights) in protection and in the benefit of some very basic human goods of the right-holder and especially in accordance with the right holder's personal choices and values. The power of rights is of a special kind, as it most usually trumps over other and opposing moral considerations.

Some prominent schools of ethics, notably Utilitarianism, reject the whole idea of human rights, or regard it as an instrument in the service of other, more authentic values and more systematically developed moral theories. However, nobody belittles the language of human rights, as it always brings the victims of action or inaction to light, offering moral (and hopefully legal) empowerment to even the weakest and most wretched, on the basis of universal equality of all humans.

Suppose that the roots of our drive to act morally lie in a recognition of the existence of a new kind of power, a power completely different from natural forces, forces imitating them (such as the intervention of deities) and even from the encounter with the whole of existence or whatever might transcend it.[24 25 iv] This raw recognition is in need of much elaboration and processing prior to taking real actions. Since power could be dangerous, misleading and even corrupting, of all ethical boxes available, where is it safest to keep the special power of morality and to derive sustenance from its sources? It seems that the language of rights keeps this moral power as closely as possible to vivid awareness of the fate of sufferers, closer than it is to sensibilities of care, virtue and duty, closer than it is from awe in front of the Sublime, love of God, sense of personal and communal identities and even from the common good and the dictates of reason. The role of these elements in ethics is possibly undeniable; their theoretical rigour and psychological authenticity are possibly stronger than any theory of rights. However, genuine commitment to human rights compels us to begin every moral deliberation and every enterprise and initiative by checking their potential impact on right bearers. Indeed, the lay, legal and academic discourse on human rights has become so strong, as to thrust human needs and misery onto the agenda of those who otherwise do not pay attention to it at all.

PERSONAL AUTONOMY AND THE RIGHT TO PRIVACY

Since there is no hierarchical order of human rights, and all enjoy equal standing as "master moral concepts", it has been the legal tradition in the West to resolve situations of conflict among rights by casuistic, case-by-case analysis and deliberation.[26 27 v]

In contemporary bioethics one particular right has gained a special prominence among other human rights pertaining to the human body. This refers to the "right to privacy", which is an extension of the Lockean right to liberty, and is actually a manifestation of the value of respect for personal autonomy. It is conceptualised as a privileged territory in which personal choices reign supreme.[28]

The right to privacy was first recognised in 1965 by the US Supreme Court who ruled that the state cannot interfere with patients' right to consult their doctors about contraception.[29]

[iv] Consider what Zubiri calls "the power of reality", Heidegger's Dassein, Levinas' the Other, Jaspers' the Transcendence etc. Rawls, for example, refers to the "sentiment" of morality as a kind of special power. [23 24]

[v] Ethics is founded on the assumption that rights and human primary goods never *apriori* collide with each other and conflicts among rights are mere circumstantial accidents. See Barilan supra. This point addresses Steiner's concern with the "compossibility" of interest-rights. [25 26]

Soon after, people's claims for rights to choose abortion, infertility treatments, genetic selection of embryos and even euthanasia have been formulated in terms of the right to privacy. In its name the US Supreme Court abolished laws against inter-racial marriages, but declined in 1986 (Bowers vs Hardwick) to declare illegal a law against homosexual intercourse between consenting adults. Choice of sexual partners, decisions regarding procreation and one's personal style in seeking medical help and following medical advice have always been intimate affairs of people and characterised by high interpersonal variability. Past attempts to regulate such issues by the power of law and police have resulted in shameful outcomes. However, the protection of intimate personal choices by promotion of the right to privacy over other rights is highly contestable, particularly when privacy clashes with the value of life or the right to life.

In 1978, a Pennsylvania court ruled that a person cannot be coerced to donate bone marrow (a procedure that entails only very mild pain and no risk at all) even though his own marrow was the only one that could save the life of a sick cousin. The judge wrote, "For society to sink its teeth into the jugular vein of one of its members and suck from it sustenance for another member, is revolting to our hard-wrought concepts of jurisprudence".[29]

What about women who seek abortion on the grounds of bodily integrity? The Supreme Court of the US ruled in the famous 1973 Roe vs Wade decision that until the stage of viability (seventh month) the right to privacy trumps over society's moral interest in the protection of fetal life[vi]; only when the fetus is viable, does the balance shift direction and women's privacy (but not their right to life) is weaker than society's interest in the fetus' life.

Why should a fully legal person not have the right to the bone marrow of another, whereas the unborn may stay in a woman's body against her will? How is it possible that removal of a few centilitres of bone marrow is more offensive than full occupancy of another person's body? Besides, in the name of self-defense a person may kill a rapist if this is the only means to stop the rape. This right to self-defense is apparently not diminished even if the attacker is psychotic and consequently as morally innocent as a baby. Why should a woman subject her body to a long presence of a person she does not want, and not accept an hour of unwanted sex for the sake of saving innocent human life?

The more we ponder such questions, the more we realise that the language of rights is not much of help when rights themselves are at the heart of a moral conflict. Moral rights are "high priority norms" relative to other norms. Who will set priorities among rights themselves? If rights are the simplest and most fundamental building blocks of our ethics, no answer is forthcoming.

The liberal language of rights posits the "right to privacy" as a super-master concept, as a trump card that is even more powerful than other trump cards, a notion that invites a sort of infinite regression from a group of "master concepts" to another even more powerful "master concepts", and it thus nullifies the whole idea behind the special power of moral rights. Moreover, it posits the right to privacy as the only one that really trumps all other moral considerations and rights. But why should the right to privacy prevail? We can take seriously the things we care most about only if we have reasons to believe that what makes them worth caring about goes beyond the mere fact that we care about them. Privacy is a formal right and it is highly idiosyncratic. It is open to accommodate almost every claim finding refuge within its privileged territory merely for being one's own choice and regardless of other explanations. Beyond its strength relative to other rights, the supremacy of the reign of privacy is more of a legal tyranny threatening to silence interpersonal deliberations on issues that are so much part of human identity and existence. This seems to be the dissolution of ethics rather than its reinforcement.

The special merit of the language of rights is evident when a right is a lonely player among various competing interests, arguments and values. For resolving conflicts among rights, we need moral paradigms that transcend the notion of rights altogether, yet, without diminishing the centrality of rights in the defence and promotion of the very basics of human needs, goods and values.

CONCLUSION: HUMAN RIGHTS AND MORAL VALUES

Human rights are made of a combination of two ingredients: a basic human interest (or: good) and free will (or: choice) relative to the interest.[30] [vii] When a person's choice is unknown and in the case of mentally incompetent persons, proxy-decision makers try to project what the person's choice would be, or what choice better promotes the overall interests of the right holder.

In matters of negative liberties, we can imagine a sovereignty of free will in allocated domains of privacy (even though we may not agree with certain private choices), under which people would do whatever they please, enjoying immunity from interference. Alas, one significant difference between "positive" and "negative" rights is the moral probity of the ultimate act in question. We cannot hold something as a positive moral right—for example, healthcare—unless we believe it to be good. On the other hand, when we hold freedom of speech as a negative right, we do not have to morally accept everything people say or publish. Rather, the mettle of respect for negative rights is typically tested by people's liberty to act and speak in ways others deem immoral and inappropriate (yet, without interference with the rights of others).

It follows that we can see how a mere personal will might create a negative right of tolerant inaction. We can also see how basic human interests, such as health, might create a duty of the kind of a power-right, at least on behalf of those accepted as patients. But why should medicine be morally obliged to take active action only in response to the private will of persons, even of patients?

Since the times of Hippocrates medicine has not been practiced as a private matter. Rather, being aware of the vulnerability of private life, medical ethics took special care to regulate even the most isolated and intimate doctor–patient interactions. That's why consensual sex between doctor and patient is universally criminalised and not protected under the liberty of privacy.[32] Possibly, two friends smoking marijuana at home is a private issue to be ignored; but a doctor prescribing marijuana to a patient is acting in the name of medicine as a social and moral undertaking. More controversial medical interventions such as abortion and assisted death cannot be carried out competently and safely in private, and without the direct and indirect involvements of nurses, pharmacists, technicians and the biomedical establishment as a whole. Moreover, patients are not content with mere tolerance of their life-and-death choices; many of them care deeply that their

[vi] By this choice of words, the court begged the question whether the fetus has a right to life.

[vii] A legal right may have only one of these elements. For a recent and comprehensive discussion of this issue as well as the Hohfeldian paradigm. "The nature of rights" see Wenar[30] who discusses neither bioethical questions, nor the "right to privacy".

meditated decisions be endorsed morally by society as genuine human interests. Hence, moral and practical constraints render virtually every human-right issue within biomedicine a matter of positive rights rather than of mere negative rights.[33] [viii]

Indeed, the struggle for legalisation of assisted suicide, abortion and other alleged rights with a strong will component has been characterised by polemic recourse to basic human interests such as human dignity and bodily integrity no less than by promotion of respect for personal autonomy and mere privacy. Even the strongest "will" theorists of rights do not vindicate a right to receive assisted death for reasons such as bankruptcy or romantic love. The notion of "death with dignity" is a clear attempt to couple a personal will with a basic human interest—good death. Understanding of such a concept requires thick descriptive and evaluative conceptualisation of the human life cycle, the moral psychology of people, cultural perceptions of dying and the like. In this vein, the US Supreme Judges (in Planned Parenthood vs Casey, 1992) described the privacy right in the abortion question as "the right to define one's own concept of existence, of meaning, of the universe and of the mystery of human life".[ix]

Thomas Aquinas, Kant and other Western thinkers regarded human dignity as a combination of human rationality in general and personal free will. The blend of "interest" and "wills" within moral rights seems to echo this paradigm, yet without commitment to specific metaphysical and ethical doctrines.

Another tradition regards human dignity as special intimate and symbolic care of the human person and body. Allocation of individual names (rather than referring to people by serial numbers), medical confidentiality and covering the naked body with decent cloths are three examples of care which is respectful of the dignity of persons, even those people who are mentally incompetent to appreciate such respect.

The moral power of human rights lies in the association of some very fundamental moral values: rationality, free will and dignity, with the moral appeal[34] [x] of basic human interests, such as life, bodily integrity and freedom from suffering. The cultural power of this ethos stems from placing the potential victim in the heart of ethical deliberation and political activity. However, this ethos is far from clarifying the weight of each element relative to the others.

Perhaps, future philosophical work might come by with a balancing formula; perhaps relentless searches for it might dissolve the alliance altogether. Another possibility is that chronic tensions among these elements and particularly between the highly subjective "will" and the relatively objective values actually nourish healthy processes of moral growth.

For the time being we conclude that in cases of conflict among rights and within the internal structure of rights, the invocation of human rights adds more flare to the debate than substance.

In cases such as healthcare for the needy, however, the interest element, the will element, as well as the values of dignity and rationality, all ally together in the formation of one of the most powerful moral claims we can ever think of.

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34. **see Daniels N.** Wide reflective equilibrium and theory acceptance in ethics. *J Philos* 1979;**76**:256–82.

[viii] Since 1973 the legal situation of abortion in America is of a kind of "negative right".[32]

[ix] See more on these issues in articles by Dworkin in The New York Review of Books, 13 Aug 1993 and 31 May 2007.

[x] We are careful not to raise meta-ethical claims regarding either self-evident moral truths or intuitionism. A moral appeal is a motivating moral sentiment such as empathy or a *primae facie* rational consideration, a considered judgment in terms of reflective equilibrium.[33]

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BOOK REVIEW

Illegal beings. Human cloning and the law.

Authored by Kerry Lynn Macintosh. Cambridge University Press, Cambridge, 2005, pp 286. ISBN 0521853281

A Professor of Law at Santa Clara University, Kerry Lynn Mackintosh presents us with a rigorously structured book on anticloning legislation. Although written for US readers and thus focusing on US context and legislation, the book is very much relevant internationally, due to the similarities between the various anticloning legislative endeavours and (in particular) between their underlying premises.

The book is divided into three parts. In Part I, Macintosh identifies and discusses the five most common sources of objections to human cloning, and shows what the endorsement of each of these objections presupposes and suggests about cloning and clones: human cloning (1) offends God and nature (clones are grotesque, immoral and dangerous), (2) reduces humans to the level of manmade objects (clones are soulless, inert, unfeeling and inferior), (3) produces beings who lack individuality, copies (clones are evil, unoriginal, fraudulent, inferior, zombie-like, constrained, pathetic, disturbed, disgusting, identity thieves, destroyers, a threat to democratic values and subhuman), (4) threatens the survival of humanity, by causing overpopulation, diminishing diversity, facilitating programmes of eugenics or genetic engineering (clones are multitudinous, rapacious, dirty, diseased, dangerous, criminal, superior, arrogant, unfair and capable of destroying humanity), (5) is not safe (clones are grotesquely oversized, deformed, flawed at the epigenetic level and prematurely old and deceitful). A chapter is dedicated to rejecting each of these objections, with a special focus on the identity fallacy (the individuality objection).

In part II, Macintosh discusses the matter of anticloning legislation and shows how such legislation is enshrined in the abovementioned five types of objections. In this part she offers a seductive and persuasive parallel between the legal endeavour to banning cloning and American antimiscegenation laws, both being examples of enforcement of existential segregation—that is, legislation meant to prevent the birth of certain people considered inferior, flawed etc. The author reviews the historical context of American antimiscegenation legislation, revealing its striking similarity with the present anticloning legal efforts: miscegenation has been forbidden because: it is ''unnatural'', ''productive of deplorable results'', who are ''generally sickly and effeminate'', ''inferior in physical development and strength'' and who will ''have difficulty in being accepted by society'', and will experience ''feelings of inferiority'', it ''violates the will of God'' and corrupts blood (quoted from Court speeches in the States of Georgia, Louisiana, Virginia). A moderate anticloning policy, which forbids reproductive cloning but allows therapeutic cloning, makes things even worse, by enforcing the belief that human clones can only be conceived to be killed (a consequence unparalleled even by the antimiscegenation laws).

The costs of a federal (and to various degrees, of a state, or an international) ban on human reproductive cloning are, in Macintosh's view, depending on their content, (a) violation of procreative freedom (of parents), (b) loss of scientific freedom (of researchers), (c) loss of human resources (the clones), (d) exclusion of citizens at the national border (the clones), (e) legal stigma (on the clones), (f) loss of parents, funds and assets (of the clones), (g) loss of medical and personal history (of the clones), (h) living a lie (parents and clones), (i) isolation (of the clones), (j) undermining of egalitarianism (where parents and clones are the victims).

Part III is written as an ''advice manual'' for human clones seeking justice in the US in the future, and its main claim is that US anticloning laws constitute violation of the equal protection guarantee.

Illegal beings shows us that, should we have believed that there is nothing ''fresh'' to say about the ethics of human reproductive cloning (at least not until we will have any news on the science of human cloning), we would have been utterly wrong: instead of focusing on the pros and cons of cloning as such, Macintosh brilliantly succeeds in exposing the flaws and harmful consequences of anticloning legislation as ''existential segregation''.[i] Unfortunately, to conclude with the author's words, ''if one believes that human clones are dangerous and defective copies, one is going to perceive every cost that a national ban would impose on human clones, from nonexistence to legal stigma to passing to isolation, as entirely justified and a benefit to everyone else. To put it another way, if most of the costs of anticloning laws would fall on a small and unpopular group of human clones and their parents, who cares?''[1]

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REFERENCE

1. **Macintosh KL.** *Illegal Beings. Human Cloning and the Law,* Cambridge University Press, Cambridge:130.

[i] Of course this is not the first time someone has accused anticloning policy of being bad policy. However the breadth and depth of Macintosh's analysis recommends her book as one of the most thorough endeavour, to this purpose.

CORRECTION

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There were several errors in the references of an article published in the May issue of the journal (Barilan YM, Brusa M. Human rights and bioethics. *J Med Ethics* 2008;**34**:379–83). A corrected pdf is available online at http://jme.bmj.com/supplemental.