THE NEW
ATLANTIS
A JOURNAL OF TECHNOLOGY & SOCIETY

On Bioethics in Public

Gilbert Meilaender

From January 16, 2002, to June 11, 2009, I served on the President's Council on Bioethics. Chaired first by Leon Kass (2001–2005) and then by Edmund Pellegrino (2005–2009), the Council met thirty-six times. Of its original eighteen members, nine served throughout the life of the Council. When asked, as I often was, whether I enjoyed the experience, my standard answer was: "It depends on what day you ask me."

One thing, however, seems clear to me: The Council, both because of the way it was constituted and the way it did its work, altered—at least for a time—the character of public bioethics. As John H. Evans noted some years ago, the work of national bioethics commissions beginning in the mid-1970s moved from a bioethics focused on the ends or goals that it was right to pursue to a bioethics in which certain ends were largely assumed and debate focused on what means would best realize those ends. This much, of course, almost any observer might have noted. What gave bite to Evans's work, however, was his well-documented argument that this shift was not an inevitable result of an increasingly pluralistic society. On the contrary, it was deliberate. It was aimed at protecting scientific research from public oversight, accomplishing this by vesting responsibility for such oversight not in legislative bodies elected by the public but in advisory commissions whose members were themselves active in the field of bioethics.

That approach was altered by the President's Council. As Leon Kass, the Council's first chairman, often noted, it was a council "on" bioethics, not a council "of" bioethicists. Its members—from accomplished doctors and researchers to respected voices from philosophy, theology, and law—brought very different sorts of expertise to the Council's work. Moreover, especially when it was (in my view) at its best, the Council listened to and talked with people who were experts, people who were very knowledgeable about whatever the matter at hand was—and then did its own ethical reflection. The Council did not, at its best, simply ask others to do the ethical thinking for it.

This can be hard to do. It requires a serious willingness to try to understand those whose training and expertise are very different from

---

Gilbert Meilaender *holds the Richard and Phyllis Duesenberg Chair in Theological Ethics at Valparaiso University. His latest book is* Neither Beast nor God: The Dignity of the Human Person *(New Atlantis Books, 2009).*

one's own. It makes agreement a relatively rare achievement. Indeed, precisely by returning to a focus not just on means but also on the ends or goals of biotechnological advance, the Council almost guaranteed that consensus would not be its chief priority. Instead, exploring and examining competing goals became the primary task. Such exploration is unlikely to result in a large number of policy recommendations, but that is not its aim. The aim, rather, is to help the public and its elected representatives think about the implications of biotechnological advance for human life.

My own reflections here will focus on the critical response to the formation and beginning of the Council, the stem cell issue that dominated its initial meetings, work that took the Council in some respects beyond that initial issue and exemplified its approach to public bioethics, and the problems and possibilities of a public bioethics that is truly open to competing understandings of our humanity.

Beginnings

The President's Council on Bioethics met for the first time on January 17-18, 2002. In his televised speech of August 9, 2001 (a date that took on special significance because of the pivotal role it played in his administration's policy regarding federal funding of embryonic stem cell research) President George W. Bush had announced his intention to form such a council and had named Leon Kass to chair it. As it turned out, however, other events intervened shortly thereafter, delaying the formation of the Council and the beginning of its work until January 2002.

Although the formation of the Council was directly linked to controversies about embryonic stem cell research, and although the Council was specifically charged to monitor such research in relation to the administration's funding policy, its mandate was far more extensive. The executive order creating the Council authorized it "to undertake fundamental inquiry into the human and moral significance of developments in biomedical and behavioral science and technology" and asked it "to develop a deep and comprehensive understanding of the issues that it considers." In pursuit of such goals, the Council was specifically freed from the need "to reach a single consensus position" on the issues it took up.

From the very beginning, however, there were critics who—notwithstanding the executive order's instruction that the Council "be guided by the need to articulate fully the complex and often competing moral positions" on the issues it studied—were confident that Council membership had been heavily stacked with opponents of embryonic stem cell research and who doubted the usefulness of the kind of bioethical inquiry that characterized the Council's approach. It is worth sampling a few of the earliest critical comments.

In an article published in the *Washington Post* on the day of the Council's first meeting (when its membership had just been announced), science writer Rick Weiss outlined the expectations shared by many. "Some observers say the president's council is politically stacked," Weiss noted, and, he observed, "the council's membership includes several well-known scholars with conservative leanings." Strangely, however, in mentioning such "conservative voices" on the Council, Weiss characterized Robert P. George—a well-known professor of jurisprudence in Princeton's Department of Politics—as a "theologian" and failed to note that James Q. Wilson—though known, to be sure, as a political neoconservative—had defended human cloning in print. Francis Fukuyama was listed among the conservative voices on the Council and Rebecca Dresser among those who "carry more liberal credentials"; yet, an observer of the Council's deliberations on cloning and stem cell research would surely conclude that their views were very similar. Neither was opposed in principle to using cloned embryos for research, but each concluded that more time for public deliberation and for the establishment of a regulatory apparatus was needed before such research should proceed.

Even more striking perhaps was the concern—front and center in Weiss's article—that the work of the Council would be taken over by religious fundamentalists (a term Weiss did not trouble himself to define in any way). Quite near the beginning of his article, Weiss first made the connection:

> In November [2001], researchers announced that they had made the first human embryo clones, giving immediacy to warnings by religious conservatives and others that science is no longer serving the nation's moral will. At the same time, the United States was fighting a war to free a faraway nation from the grip of religious conservatives who were denounced for imposing their moral code on others.

The implication was unmistakable: While United States military forces were fighting against religious thinkers who wanted to impose their moral views on others, the President's Council might be in service of home-grown religious conservatives equally eager to impose their moral views in domestic politics. Lest anyone should miss the point, Weiss later cited "experts" who suggested that, were the Council to argue that "human embryos are inherently deserving of protections," it "could legitimize an effort to codify fundamentalist views into law." Evidently there were no grounds other than such (still undefined) fundamentalist ones on the basis of which one might oppose research that destroys human embryos.

Equally noteworthy was University of Pennsylvania professor Arthur Caplan's MSNBC column of January 17, 2002 characterizing the newly appointed body as "a council of clones"—that is, clones of Leon Kass, with respect to their views—"stacked with members who lean to the political right" and who "will rely on religious rather than secular principles" in their bioethical deliberations. The notion, mentioned by both Weiss and Caplan, that the Council's membership was stacked proved to be rather far from the mark. Even apart from that simple matter of fact, however, other unspoken and unargued assumptions of Caplan's commentary are worth noting. An unwary reader might suppose that previous national bioethics bodies had been characterized by a wide spectrum of opinion on disputed matters, whereas in truth none ever had the deep divisions that the President's Council displayed in its deliberations about cloning embryos for research. An unwary reader might also suppose that the question of how religious beliefs ought (or, evidently in Caplan's view, ought not) enter into public debate was a settled question, whereas in truth it continues to be a topic on which philosophers, political theorists, and public intellectuals hold a variety of different positions.

It should have been possible for someone quite skeptical of directions the Council was likely to take to offer a more nuanced analysis of its membership—as an early piece by Ronald Bailey demonstrates. Writing on the website of *Reason* magazine, Bailey analyzed what he could find of the views and writings of Council members, offering "educated guesses" about their positions on three related issues: embryonic stem cell research, therapeutic cloning (as it was then called), and reproductive cloning (as it was then called). His predictions—that the Council would be at least 16-2 against reproductive cloning, 10-8 against therapeutic cloning, and split 9-9 on embryonic stem cell research—while not completely accurate, were remarkably prescient. Of course, Bailey would not ordinarily be characterized as a bioethicist. Perhaps a certain critical distance, free of any sense that it would have been better had he himself been a Council member, accounts at least partially for the accuracy of his assessment.

There were, to be sure, knowledgeable bioethicists who did not fully accept characterizations of the Council such as those given by Weiss and Caplan. Thus, for example, Case Western professor Stuart Youngner noted that one could reasonably argue that the Council's membership

Members of the President's Council on Bioethics

Leon R. Kass, M.D., Ph.D. – chairman (2002–2005), member (2005–2007)
Edmund D. Pellegrino, M.D. – chairman (2005–2009)

Elizabeth H. Blackburn, Ph.D., D.Sc. (2002–2004)
Floyd E. Bloom, M.D. (2006–2009)
Benjamin S. Carson, Sr., M.D. (2004–2009)
Stephen L. Carter, J.D. (2002)
Rebecca S. Dresser, J.D., M.S. (2002–2009)
Nicholas N. Eberstadt, Ph.D. (2006–2009)
Jean Bethke Elshtain, Ph.D. (2008–2009)
Daniel W. Foster, M.D. (2002–2009)
Francis Fukuyama, Ph.D. (2002–2005)
Michael S. Gazzaniga, Ph.D. (2002–2009)
Robert P. George, J.D., D.Phil (2002–2009)
Mary Ann Glendon, J.D., M.Comp.L. (2002–2005)
Alfonso Gómez-Lobo, Dr. Phil. (2002–2009)
William B. Hurlbut, M.D. (2002–2009)
Charles Krauthammer, M.D. (2002–2006)
Donald W. Landry, M.D., Ph.D. (2008–2009)
Peter Augustine Lawler, Ph.D. (2004–2009)
William F. May, Ph.D. (2002–2004)
Paul R. McHugh, M.D. (2002–2009)
Gilbert C. Meilaender, Ph.D. (2002–2009)
Janet D. Rowley, M.D. (2002–2009)
Michael J. Sandel, D.Phil. (2002–2005)
Diana J. Schaub, Ph.D. (2004–2009)
Carl E. Schneider, J.D. (2006–2009)
James Q. Wilson, Ph.D. (2002–2005)

Editor's Note: All the Council reports mentioned in this essay are available on our website at *TheNewAtlantis.com/pcbe.*

reflected more diverse professional backgrounds than had been the case with previous national bioethics bodies. Nevertheless, other voices were louder and, in some cases—such as Glenn McGee's attacks on Leon Kass in the pages of the *American Journal of Bioethics* and its blog—so mean-spirited and petty that one could scarcely account for them on intellectual or academic grounds.

Even years later, after the Council had completed its work and the record should have been clear, a commentator such as Notre Dame professor Cathleen Kaveny, writing in *Commonweal*, could continue to characterize the Council as monochromatic—or, to the degree that it was diverse, as divided simply between "secular liberals" and "religious conservatives" (a characterization that cannot withstand serious examination).

The criticism that relatively few members of the Council had made their academic reputations as "bioethicists" is one that was made repeatedly as the Council did its work. The point of such an observation is generally to note that politics and political convictions, rather than the presumably disinterested thinking of academic bioethicists, had been allowed to hijack debate about important issues. But this raises—and begs—large questions about how public bioethics should be done.

The Council began its work focusing on debates surrounding the use (and destruction) of human embryos in research. Among the questions this raises is, of course, that of the status of human embryos and their place within the human community. Fundamental to our public arguments here has been a question of membership within the community and entitlement to its protection. Surely that is—and is properly—a political question. Whose good counts in the common good? Anyone who wants to pretend that this is a question for bioethics but not for politics needs to think longer and more carefully about the nature of political argument. Moreover, any notion that those who engage professionally in academic bioethics come free of normative commitments, able to adjudicate conflicting views without themselves being parties to the conflict, is unlikely to persuade many people who have been paying attention.

Thus, for example, in February 2006 Arthur Caplan, director of the University of Pennsylvania Center for Bioethics, e-mailed "friends" of the Center to detail ways in which the Center was "playing a key role in insuring that ideology does not overwhelm sound science." He listed a number of occasions when the Center's faculty had advised, among others, "policymakers." Their efforts, he suggested, were increasing the chances that elected officials "will support potentially life-saving [embryonic stem cell] research." None of this is surprising or illegitimate in an appeal for support, of course, but it stands in some tension with a claim that others have "politicized" bioethics. As I noted above, the extensive social science research of John H. Evans has detailed ways in which the early development of bioethics in this country was intended to protect scientific research from public oversight. And more recently the philosopher George Khushf, after surveying extensively several controversies in bioethics, has suggested that when the interests of researchers are at stake, "they use the social status of their expertise to advance an ideology that works against a liberal exchange of ideas." This is quite a different reading of the facts than Caplan's suggestion that bioethicists are "insuring that ideology does not overwhelm sound science."

One more early response to the Council is worth noting, for it reveals a certain mindset. The Council devoted an entire session—the second session of its very first meeting—to a discussion of Nathaniel Hawthorne's short story "The Birth-Mark." Commenting on this session in *The New Yorker*—in a short "Talk of the Town" piece titled "Science Fiction"—Jerome Groopman characterized this as beginning "not with facts but with fiction." Is it not puzzling to find Groopman—in *The New Yorker*, a distinguished literary magazine—expressing the desire that our policy on stem cell research be "based on fact, not on literature or aesthetics"? There is, of course, a serious point here that might be argued (though Groopman only asserts and does not trouble himself to argue). One might argue that there is no bioethical wisdom to be gained through the study of literature. I think such a view would be mistaken, but it could certainly be put forward with serious arguments. What is very strange, however, is that this view should be given expression in the pages of *The New Yorker*, perhaps our most well known literary magazine—which can only leave one to wonder what might have moved Groopman to this sort of criticism or *The New Yorker* to print it.

Stem Cells and Cloning

The speech of President Bush on August 9, 2001, in which he announced his intention to establish the President's Council on Bioethics, was not primarily about the Council. It was about stem cell research—or, more precisely, about whether and to what degree the federal government should provide funding to support such research. The issue was not the morality, legality, or even wisdom of stem cell research, which was not prohibited by law and could be funded privately. At stake was simply the administration's policy with respect to federally funded research that could not be undertaken without the destruction of human embryos.

Thinking—and arguing—about that policy, however, immersed the Council in the subject of human cloning and the meaning of human embryonic life, matters that continued to haunt the Council throughout its tenure. Well before the Council came into existence, Congress had already prohibited (through what is known as the "Dickey Amendment," first enacted in 1995) the use of federal funds to support research that destroyed human embryos. With the announcement in 1997 of the cloning of the lamb Dolly, the question of embryo-destructive research suddenly was intertwined with the seeming possibility of human cloning. For one way—indeed, in certain important respects, the preferred way—to get embryos for research is to clone them.

In any case, the intertwining of these issues meant that the focus of debates about cloning had shifted. In the immediate aftermath of the Dolly announcement, the question "shall we clone?" had been taken to mean: Shall we try to produce through gestation and live birth a cloned human being (in the way a sheep had been cloned to produce Dolly)? To that question the vast majority of people answered no. Without necessarily being fully able to articulate their reasons, many turned against the very idea of such cloning.

From the perspective of researchers, however, this provided an occasion to reopen the question of funding for embryo-destructive research. To the question, "shall we clone?" they replied, "certainly not." By that, however, they still meant only, "We should not clone a human embryo, implant and gestate it, and bring it to live birth." But, they suggested, we should be able to clone embryos for use in research, as long as those embryos were not implanted, gestated, or brought to live birth. That is, some in the research and bioethics communities used the occasion of Dolly's birth to reopen the question that Congress had tried to close with respect to federal funding of embryo-destructive research. Indeed, it was precisely cloned embryos that were of most interest to researchers, because of their potential for producing exactly the disease models researchers wanted to study.

This gave rise to the linguistic distinction between "therapeutic" and "reproductive" cloning, a distinction that eventually proved unsatisfactory for both its defenders and its critics. For critics of the language, it seemed to confuse rather than clarify the issue. From the view that an embryo is a human being in its earliest stage of development, all cloning is reproductive. Moreover, to call research cloning therapeutic was deceptive in several ways. The research was unlikely to be therapeutic for anyone for quite some time—if ever—and it was, of course, just the opposite of therapeutic for the embryos that would be produced, used, and in the process destroyed.

Proponents of the research also discovered that the language did not serve their purposes as well as they might have hoped. Their hope had been that negative reverberations (in the public mind) of the term "cloning" would be overcome by the positive tone of the word "therapeutic." This did not prove to be the case, and proponents soon switched from talk of "therapeutic cloning" to the more technical "somatic cell nuclear transfer." Thus, for example, in 2002 the National Academy of Sciences released a report titled "Scientific and Medical Aspects of Human Reproductive Cloning." Characterizing human reproductive cloning as "an assisted reproductive technology that would be carried out with the goal of creating a human being," the report then pivoted terminologically: "There is a very different procedure, here termed nuclear transplantation to produce stem cells—but variously called nonreproductive cloning, therapeutic cloning, research cloning, or somatic cell nuclear transfer (SCNT) to produce stem cells—whose aim is the creation of embryonic stem (ES) cells for clinical and research purposes."

An intriguing if little noticed aspect of the Academies report was that, in its eagerness to cordon off a safe space for research cloning, it called for a legislative ban on reproductive cloning—called, that is, for legislative control of something research science might well attempt. That makes it very hard to argue that the Bush administration was anti-science simply because it set limits on the kind of research it would fund. If we take the Academies report at face value, and not as simply a strategic move, then the question of whether government could and should regulate research was settled. The only question was which research should be regulated and with what limits. The report was also interesting—and disturbing—in the implications of its call for legislation. To argue that we should proceed with research cloning while legally prohibiting reproductive cloning was, in effect, to argue that all cloned embryos produced for use in research must be destroyed. It was a call to create a class of human beings whose destruction is required by law. Opponents of embryo-destructive research were often thought to be little more than abortion opponents in disguise. Perhaps sometimes they were. But we should note that creating a class of human beings whom it is a crime *not* to destroy goes well beyond our abortion law, which permits but does not require destruction of fetal life.

Why Words Matter

The attempt to sanitize the act of reproductive cloning by labeling it a "very different procedure" called "nuclear transplantation to produce stem cells" was a misstep from the outset. Whether the aim is to engage in research or to produce a child, the initial act and the product of that act are the same. The difference—whether to implant and gestate the embryo produced by that initial act—is a matter of will and choice, depending on the purposes we have in mind. This became quite clear in the Council's second meeting (February 13, 2002) when it heard from Dr. Irving

Weissman, a distinguished researcher at Stanford University and chairman of the committee that drafted the National Academies report. I put to Dr. Weissman the following query:

> The Academies report discusses two procedures which it says are very different from each other. First, human reproductive cloning and, second, nuclear transplantation to produce stem cells. Suppose we are shown externalized in the laboratory two cloned blastocysts X and Y. We are not told which is X and which is Y but we are told that X is the result of procedure one and Y is the result of procedure two, and we are asked to examine the blastocyst[s] and determine which is X and which is Y. On what basis could we make that determination?

The point, of course, is that it would be impossible to make the requested determination, for the two procedures—despite the different names given them—are not "very different" but are the same, as are their products. Dr. Weissman's reply implicitly acknowledged this, for he was able to find a difference only in our purposes—that is, in our intent, will, and choice, but not in the act itself. He said:

> I would use an analogy, which is based on my background. I grew up in Montana and we grew up with rifles, which we used for many purposes. The rifle is the same as you know, whether you intend to use it to kill a person or for target practice the rifle is the same. That is not the crime. That is not the issue. So it is not visually what you can see or even by genotyping what you can see. The purpose is the important point here.

The analogy is more clarifying than Dr. Weissman imagined. One might shoot to kill for quite different reasons—intending to show mercy in one instance, desiring to be in on the kill in another. But in both cases one does shoot to kill, though, of course, our moral evaluation of the acts may be different in the two cases. Likewise, both so-called reproductive cloning and that purportedly "very different procedure" called somatic cell nuclear transfer begin by doing the same thing—producing an embryo, whether for use in assisted reproduction or for use in research aimed at developing therapies for the suffering.

Perhaps it is no surprise that the Council spent almost an entire hour-and-a-half session debating terminology—talking not about cloning but about what language to use when talking about cloning. This was, in my view, time well spent, and there are lessons to be learned from it. One of the most useful things a body such as the Council can do is seek clarity in ways that may benefit public deliberation and debate more generally. In July 2002, the Council released its first report, *Human Cloning and Human Dignity*. Chapter three of the report is titled simply "On Terminology" and contains a long discussion of the terminological tangles into which a lack of clarity can lead us. This chapter's discussion was not a surreptitious attempt to choose terminology that would, in effect, decide the matter in favor of one view. Its aim was to sort out the terminological puzzles that often got in the way of shared understanding and clear disagreement.

Probably no terminology can do perfectly everything we want it to accomplish. But the Council, looking for a way to recognize both that the initial act remains the same (whatever our purposes) but also that the purposes make a difference in our overall moral judgment, finally chose to distinguish between *cloning-to-produce-children* and *cloning-for-biomedical-research*. All of this was, as I have noted, simply prolegomenon to the central moral debate about how to evaluate cloning-for-biomedical-research. On that issue, contrary to many of the early predictions by detractors, the Council was deeply divided, though hardly along a fault line separating religious conservatives from secular liberals. Chapter six of the report incarnated that divide, making, as best we were able, the moral case both for and against cloning-for-biomedical-research.

That chapter, together with the chapter on terminology, constitute lasting contributions of the Council and evidence that its approach can enrich public awareness and understanding. On the actual policy question itself, the deep divisions were apparent. Ten members of the Council supported a moratorium on cloning-for-biomedical-research, and seven favored moving ahead with such research, though only after regulatory controls were in place. (One of the original eighteen members had resigned and not yet been replaced before the report was released.) It was, however, possible for everyone to claim a victory, if such claims matter. Because three of the ten-person majority favored a moratorium but not a permanent ban on cloning-for-biomedical-research, its advocates could—and did—emphasize that a majority of the Council opposed a ban.

One other element of the Council's approach was clearly evident in this first report. All members were offered the opportunity to append "personal statements" to the report, and fourteen elected to do so. The executive order establishing the Council had charged it "to develop a deep and comprehensive understanding of the issues that it considers" and had freed it of any need "to reach a single consensus position" on those issues. In the first instance, therefore, the Council's role was not policy-making but educative, aimed less at solving than at unpacking the complexities posed by advances in biotechnology. Therefore, chapter six explored in detail—and made as good a case as we were able—for *each* of the opposed positions on cloning-for-biomedical-research. Not content with that display of differences, most of us chose to append personal statements, providing our own angle on some aspect of the issue.

This is very far from attempting to tell elected officials what they ought to decide. Perhaps it may seem to some to be too chaotic, almost a *reductio ad absurdum* of the decision to eschew methods aimed primarily at achieving consensus. But it is also enriching in many ways, and *Human Cloning and Human Dignity* continues to provide a useful illustration of a way to do public bioethics that captures some of its richness and seeks to develop the rare ability actually to understand a disagreement.

Policy and Philosophy

The Council's term was to expire on September 30, 2009. But on June 10, 2009, Council members received letters from the White House informing them that their service on the Council would end the following day. In an article in the *New York Times*, an administration press officer was quoted as saying that the Council had been "a philosophically leaning advisory group" rather than (what was evidently now desired) one offering "practical policy options."

This was not an entirely accurate assessment. *Human Cloning and Human Dignity* had, after all, set forth a (majority and minority) case for two different policy options. Likewise, *Reproduction & Responsibility* (a report published in March 2004) had concluded with a discussion of policy options and recommendations and, even, recommended legislative measures. Nevertheless, it is surely true that the Council focused less on policy recommendations than on exploration of what is at stake in biotechnological advance. If there is loss in such an approach, there is also gain, as we can see by considering three Council reports: *Beyond Therapy* (October 2003), *Alternative Sources of Human Pluripotent Stem Cells* (May 2005), and *Controversies in the Determination of Death* (December 2008). I will comment briefly on the second and third of these and in more detail on the first.

If I want to drive quickly from Chicago to Indianapolis, the obvious route for most of the way is Interstate 65. If, however, I'm told that I may not take that route, but I very much want to get to Indianapolis, I will look for alternatives. I will do my best to see whether there is not some other way to achieve my objective while still adhering to the instruction that puts I-65 off limits for my travel. In some respects, this is what the Bush administration policy with respect to federal funding of embryonic stem cell research did. It recognized the importance of the goal and, by placing one route to that goal largely off limits, it encouraged researchers—and all of us—to think creatively about alternatives.

That kind of thinking is the point of a short Council report with the ungainly title *Alternative Sources of Human Pluripotent Stem Cells.* The Council began here with a commitment to two goods that had seemed incompatible in the stem cell debate: the advance of scientific research in order to better the human condition, and a defense of the dignity of every human life. Perhaps in some circumstances these are and must remain simply incompatible, but we should not ignore the possibility that the aims of research may be advanced in ways that do not violate the consciences of a significant number of American citizens.

To that end, *Alternative Sources* examined four proposals that had been advanced by serious thinkers—proposals for means by which pluripotent human stem cells (capable of doing almost anything that an embryonic stem cell can do) might be obtained without the destruction of embryos. Here I will not discuss or examine the four proposals themselves, though it is worth noting that the fourth of them—somatic cell dedifferentiation—is roughly the method that has recently succeeded in producing induced pluripotent stem cells. The report examined all four methods, with an eye to considering both their scientific feasibility and their ethical acceptability. No policy proposals were offered; instead, the Council endorsed the proposals as "worthy of further public discussion" and encouraged their "scientific exploration in accordance with the preliminary ethical judgments" offered in the report.

Would it really have been better—of more use in public discussion—had the Council proposed a practical policy option rather than this examination of alternatives? If an attempt to satisfy several different, and possibly conflicting, concerns of citizens is itself a public good, then here is a model worth considering. It does more than simply take differing views into consideration. By waiting patiently and prescinding from hasty attempts at closure, it may find ways to do justice to the conscientious commitments of many citizens. There is, of course, no guarantee that this will or must happen, but *Alternative Sources* offers at least a hopeful illustration of what may sometimes be possible.

Controversies in the Determination of Death, released rather late in the Council's tenure and after Edmund Pellegrino had replaced Leon Kass as chairman, is a deeply philosophical exploration of the definition of death—once again, with no policy prescriptions offered. This does not mean, however, that the report has no practical implications.

Physicians generally had determined death—and often still do—by observing the permanent loss of heart and lung activity. But for the last half century or so, the use of respirators has made possible continuation of cardiovascular activity even when all capacity for brain activity has been permanently lost. Hence, in both medicine and law there had developed increasing reliance on a neurological rather than a cardiovascular standard for determining death. A person who had suffered irreversible loss of all brain activity was deemed dead, even if mechanical ventilation meant that heart and lung activity was sustained in the corpse (which did not, therefore, look the way we expect a corpse to look). Many of the organs used for transplant have been taken from just such corpses, for the continued activity of heart and lungs means that the organs do not deteriorate but remain in a condition suitable for transplant. Indeed, without the newer neurological standard for determining death, there would surely be far fewer organs available for transplant.

The fact that thinking in terms of "brain death" increases the possibilities for transplantation is not itself, however, a good reason to use the neurological standard. Moreover, the rationale for using it—namely, that a body that has suffered irreversible loss of all brain activity can no longer function as an integrated whole—had never been entirely persuasive and had increasingly been confronted with troubling counter-examples. This did not necessarily mean that the standard was mistaken, but it did mean that the understanding of death on which it depended needed examination and, perhaps, better formulation.

That is what *Controversies in the Determination of Death* seeks to do. Not to offer judgments about transplant policy. Not to suppose that the meaning of death is a purely empirical matter for medicine alone to contemplate. But, rather, to think again about what it means that an organism is living—and what, then, it means that an organism dies. Eventually, the Council concluded that the earlier rationale, which emphasized the necessity of brain activity for the body to function as an integrated whole, could not be sustained. In its place the Council offered a somewhat different—and, it must be said, more complicated—description of how any living organism works to sustain itself through an openness to its environment and an inner drive that moves it to engage with that environment. This happens most obviously for human beings through consciousness, but engagement with the world may take place even when one is unconscious but continues spontaneously to exhibit an inner drive to breathe and take in oxygen from the environment.

One might, of course, say that this leaves everything—with respect to policy—in place, and so, in a sense, it does. But the report acknowledges a deep philosophical puzzle in our current approach to transplantation, a puzzle that cannot in honesty be ignored. It thinks through that puzzle and offers a better—though more complex—way of thinking about what it means for human beings to live and to die. Perhaps it is good that our society should seek clarity about the meaning of death, even if that clarity asks us to do more than just continue transplanting organs in search of a few more years—even if it asks us to pause and think carefully about death, that most philosophical of subjects.

Beyond Policy

Of all the reports issued by the President's Council, perhaps none better exemplifies the manner in which the Council reshaped the nature of public bioethics than *Beyond Therapy*. It bears the impress of some long-standing concerns of Leon Kass, the Council's first chairman, but not only his concerns. For example, Council member Michael Sandel, drawing extensively on much of the material developed in Council meetings, wrote first an article in the *Atlantic* and then a book, each titled "The Case Against Perfection."

Surely, *Beyond Therapy* is not the sort of report we had come to expect from national bioethics commissions. Although it takes up several different issues, it is really one long, sustained, often philosophical argument, which makes no policy recommendations at all. I sometimes thought that the report might better be titled "Toward Perfection," for it is about what it means to be the sort of beings we are, with the limits inherent in our humanity, but also with limitless aspirations to surpass those boundaries in various ways.

Nor is surpassing them always or necessarily a bad thing. When, seeking to better our lives, we use our freedom—which is also a central characteristic of our humanity—to transcend limits that once seemed simply given, we often accomplish much that is good. But, of course, there may be limits that ought not be surpassed—sorrows that it is good to experience, bodily decline that is built into the trajectory of a truly human life, a child we have been given rather than the child we might have hoped to fashion.

We can become inhuman in either of two ways—by acting in a manner that is less than human, or by striving to be more than human. In

Human Cloning and Human Dignity, the Council had turned its attention to action that would be less than human in our treatment of the weakest and most vulnerable among us. In *Beyond Therapy*, attention shifted to the temptation to be more than human in the pursuit of our limitless desire for perfection.

The heart of the report lies in chapters two through five, which treat successively the topics of better children, superior performance, ageless bodies, and happy souls. It is noteworthy, however, that the report is not organized around the standard issues of eugenics, enhancement, and the uses of technology. On the contrary, it is organized around common, perfectly understandable, and (in many respects) quite appropriate human desires—for healthy and successful children, for excellent performance in the tasks we undertake, for more years of life and more life in the years we have, and for the sort of flourishing that comes from inner peace. In service of these almost limitless desires, we may make use of a wide array of different technologies.

We can select the sex, perhaps even some traits, of our children and use drugs to enhance their attention and regulate their behavior. We can look upon our bodies as simply another piece of equipment to be improved in ways that are not really self-involving. In the quest to find ways to retard aging, we can easily confuse (quantitatively) more of this life with the (qualitatively) different life that our hearts truly desire. We can use drugs that blunt memories or that enhance mood to medicalize much of life.

A reader of *Beyond Therapy* may begin to see the folly of depicting the Council's work as perpetuation of the culture wars by other means. If those on the right characteristically fear that biotechnological advances may undermine the natural order, and those on the left characteristically fear that biotechnological advances are the product of a market mentality that reduces every human good to a commodity, how shall we pigeonhole *Beyond Therapy*—in which both sorts of concern are manifestly present? Both are present because *Beyond Therapy* is not a policy primer but an invitation to reflect on where we are going, before we simply arrive and are surprised to find that our destination was unanticipated and is now troubling.

Helping us to think about such questions is the true contribution of *Beyond Therapy*. Indeed, policy recommendations, eschewed by the report, might, by focusing attention on themselves, have undermined the invitation to reflection. But there is also a deeper reason why the report offers no recommendations. The problem *Beyond Therapy* explores—our limitless desires and our aspiration to be, perhaps, more than human—is not the sort of problem a policy can solve. Of course, thinking more clearly and carefully will also not solve that problem; hence, there are limits to what the report itself can hope to accomplish. The problem, and any "solution," go much deeper. We should, therefore, turn to *Beyond Therapy* not as a solution to the problem of limitless desire, but, rather, as an invitation to think together about what it means to be human. In so doing, we may come not only to understand but also to honor and appreciate some of the limits that characterize our humanity.

Problems and Possibilities

Doing bioethics in public, in the way the President's Council attempted it, brings with it certain risks and problems. When we seek not a lowest-common-denominator policy but, instead, discussion of morally complex questions by people who bring to that discussion very different normative commitments, those who are unwilling to enter into a discussion not guaranteed to culminate in a policy proposal, or those made uneasy by the kind of give-and-take such argument entails, may be dissatisfied.

In 2002, during some of the work preparatory to the writing of *Beyond Therapy*, the Council heard from various experts about research into pharmacological means of enhancing memory and blunting traumatic memories. Dr. James McGaugh, director of the Center for the Neurobiology of Learning and Memory at the University of California at Irvine, spoke at length to the Council about the possibility of relieving post-traumatic stress disorder through drugs that hinder the consolidation of memories. In the conversation that followed his presentation, Dr. McGaugh on several occasions recognized that, although there are obvious benefits to relieving strong memories of remembered trauma, there may also be reasons why we should remember trauma. That is a "judgment call," or a "tradeoff question," he noted at several points in the conversation.

Ironically, however, Dr. McGaugh's own memory of the session seems to have been blunted. After the Council had, in *Beyond Therapy*, developed some of those reasons why we might hesitate simply to give a drug (were it available) to weaken traumatic memories, he recalled his presentation and commented: "They didn't say anything at the time but later they went ballistic on it." Anyone interested might look at section II ("Memory and Happiness") of chapter five of *Beyond Therapy*. My own view is that, if this is what Dr. McGaugh calls going "ballistic," he has spent insufficient time in conversations in which people reflect critically on normative questions.

A society eager to forge ahead with publicly supported pharmacological research must also ask itself—in advance—some of the questions that chapter raises. Does memory-blunting risk falsifying our perception of the world? Does it risk making us too comfortable with some of the terrible things that happen in our world? Does a truthful identity seek to integrate rather than edit out the pain and unhappiness of life? Even while stating that there is "little doubt" that some memories are so painful and intrusive that the impulse to relieve them is "fully understandable," the Council also invited the American public to think to think prospectively rather than only retrospectively about the moral significance of memory and research into pharmacological means of blunting it. That is, the Council thought of the task of public bioethics not as protecting scientific research from oversight but as enriching public deliberation about the place of research in our common life together.

If researchers do not always appreciate this, neither do bioethicists. Locked into a particular angle of vision, they may be disturbed to find in the Council's approach what Ruth Macklin calls "sharp differences from those found in books and articles by mainstream bioethicists." Professor Macklin, herself certainly a mainstream bioethicist, criticizes the Council's use of "poetic and metaphoric language" in place of "empirical evidence and reasoned arguments." To take an example dear to my own heart, Macklin criticizes an essay of mine (published in these pages; see "Bioethics and the Character of Human Life" [Spring 2003]), in which I use a poem to help illustrate what it means to speak of a child as a "gift." Such language, however, is hardly intended to eliminate reasoned argument; on the contrary, without it we are unable to explore the full meaning and significance of procreation as a human activity—in order then to go on and argue about it. Thus, describing children as "gifts" does not make the description true, but it offers a way of thinking that can be discussed and examined as we seek to learn the truth.

Macklin's objection goes deeper, however. She seems to believe that to speak of a child as a gift is inescapably religious language and, as such, can only be a "conversation stopper" in gatherings that are not themselves explicitly religious. I'm not certain what I think of the first of these two claims. It may be that, plumbed to its depths, characterizing children as gifts is intelligible only in the context of religious belief. It may be—but not all agree. Michael Sandel observes, reasonably enough, that "we commonly speak of an athlete's gift, or a musician's, without making any assumption about whether or not the gift comes from God. What we mean is simply that the talent in question is not wholly the athlete's or the musician's own doing; whether he has nature, fortune, or God to thank for it, the talent is an endowment that exceeds his control."

But it is Macklin's second claim that is the more important. Let us suppose that speaking of children as gifts does, when fully explicated, draw upon the language of religion. Why need such talk be ruled out of public bioethical discussion? Why need it be a conversation stopper when not all share those beliefs? Though Macklin no doubt sincerely thinks that her views are based solely on "empirical evidence and reasoned argument," one seldom has to press very hard on such views to find in them a buried metaphysic (as, for example, the language of autonomy implies). All angles of vision, including purportedly empirical ones, are theory-laden from the outset. We can make our language less interesting, but not less metaphorical.

Moreover, language that draws on a wide array of humanistic perspectives does several important things. It challenges us to ponder whether a world in which we had no sense of our own and others' "giftedness" would really be a better world. It undergirds, as Sandel notes, a certain humility about our possibilities, it suggests limits to human responsibility, and it encourages us to think of ourselves in solidarity with those less fortunate. But it does more than challenge us. It also offers to enlarge our vision of what it means to be human. It is precisely the function of imaginative language to uncover meanings we might otherwise overlook.

Ethics and Public Deliberation

If this language often has its roots in religious thought, then our public deliberations about bioethics need to be open to such thought. Those deliberations would be impoverished were we, for example, to follow the prescription of bioethicist James Nelson, who writes that moral reasoning demands "that individuals set aside the most personally distinctive features of how they engage with the world." What we owe each other, on the contrary, is precisely the best reasons we can produce, whether they prove to be personally distinctive or not. Acknowledging this will help to keep us from falling into the trap of supposing that debate about a matter such as embryo research is a merely scientific question. It is not. It is about the nature of human life and about the role and limits of scientific research.

In his *Leviathan*, Thomas Hobbes observed that "the doctrine of right and wrong, is perpetually disputed, both by the pen and the sword: whereas the doctrine of lines, and figures, is not so." Why? Why, Hobbes asks, do we constantly dispute about moral matters but not about mathematics or science? Because, he suggests, in matters mathematical and scientific our interests are seldom involved and truth is "a thing that crosses no man's ambition, profit or lust." Suppose, however, that our interests were on one occasion or another involved, that we had a stake in the truth of some mathematical or scientific dispute; then, Hobbes suggests, we would treat science as we do morality. "For I doubt not, but if it had been a thing contrary to any man's right of dominion, or to the interest of men that have dominion, that the three angles of a triangle, should be equal to two angles of a square; that doctrine should have been, if not disputed, yet by the burning of all books of geometry, suppressed, as far as he whom it concerned was able." We need not be quite as suspicious as Hobbes to see that, in many of the important bioethical debates, "interests" and agendas of various sorts are involved—and involved on every side of the arguments.

The desire to fix in advance the limits of acceptable argument manifests a kind of nervousness and anxiety about democratic discourse, which almost always—and certainly when important matters are at stake—involves a conflict of visions and wills. That is the very stuff of a shared moral life, and a vision such as Nelson's is unworthy of public deliberation in a great nation. A body such as the President's Council, enjoined to eschew consensus and to think through and articulate our disagreements, can make a contribution to our public deliberations very different from what is contributed by a consensus (and, very probably, lowest-common-denominator) policy recommendation. The latter invites only acceptance or rejection; it does not inspire to fresh or more expansive reflection, nor does it open up much space for those who would speak out of very different normative traditions.

Among those different traditions will, of course, be religious angles of vision. There is no reason to exclude them from the conversation. To be sure, when as a Christian I enter into such conversation, I do not speak merely on behalf of a particular religious interest group. Rather, beginning from a particular standpoint, I seek to learn and articulate an understanding of what is, quite simply, human. An epistemologically particular starting point may be a place from which to see what is ontologically universal. We all begin from such particular standpoints. That is not problematic; it is the human condition. What is problematic is a failure to acknowledge that we do so.

We all have a stake, therefore, in how public bioethical debate is structured. Indeed, it may be that we should care more about how it is structured than about what is decided on any given occasion. The conversation and the arguments never reach a definitive end. But a public conversation that leaves policy-making to elected officials, who can be held accountable, and that is designed to focus not just on means but also on the ends or goals of biotechnological advance—a conversation, that is, about matters on which one can safely predict we are not all likely to agree—provides all citizens an opportunity to reflect upon who we are as a people and how we may best structure our common life on matters of great moral significance.