

## In Judaism, Playing God Is Good

BY MICHAEL J. BROYDE

Few sheep have created the sensation Dolly did when a laboratory in Scotland announced that she had been cloned. There was an immediate ethical outcry against the possibility of human cloning. There were suggestions that human cloning be banned in the United States and it already is in parts of Europe. Movie plots about clones — long shelved because of lack of interest — have been revived by Hollywood, and sales of the cloning classic *The Boys from Brazil* are way up. Even the President's Commission on Biomedical Ethics proposed that cloning of humans be prohibited.

In the eyes of Jewish law, new technologies — and particularly new reproductive technologies — are neither prohibited nor permissible by definition, but rather subject to a case-by-case analysis. Every legal, religious or ethical system has to insist that advances in technology be evaluated against the touchstones of its moral systems. In the Jewish tradition, that touchstone is *halacha*: the corpus of Jewish law and ethics.

In the case of cloning — as with all advances in reproductive technology — the Jewish tradition is caught between two obligations: (1) the obligation to be fruit-

ful and multiply, and to help those who are unable to do so; and (2) the obligation to adhere to an inherent moral conservatism associated with the belief that there is an objective God-given morality, and that not everything that humanity wants or can do is proper.

Serious discussions about cloning are few and far between. Before these issues are addressed, one point needs to be emphasized: a clone will not be identical to the one it is cloned from. People are unique individuals, and just as identical twins — two people with identical genetic codes — are two different people, so too a human who is cloned would be a unique individual, with a special identity. For that reason, a clone of Einstein would not be an Einstein, and a clone of Hitler might be a nice person. Nature and Nurture work together in mysterious ways. This is precisely the notion of *tzelem elokim*, the image of God, found in the beginning of the Bible's recounting of the creation of the world. In the Jewish tradition, playing God is a good thing. As the late British Chief Rabbi Lord Immanuel Jakobovits stated, we can dismiss the common argument of "playing God" or "interfering with divine providence" (in reference to cloning). Ev-

ery medical intervention represents such interference. In the Jewish tradition this is expressly sanctioned in the biblical words, "And [an attacker] shall surely provide for [his victim] to be healed" (Exodus 21:19). The Talmud states, "From here we see that the physician is given permission to heal."

Three separate and distinct areas of analysis are

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needed to understand cloning according to Jewish law: (1) Is cloning an intrinsically good, bad or neutral activity? (2) Is the clone human and who are his or her relatives? (3) Will cloning lead down the slippery slope towards other ethical violations and, if so, what are they? I will propose some tentative resolutions in each area.

#### IS CLONING A GOOD THING?

The first issue — is cloning an intrinsically good, bad or neutral activity — would seem to be part of the general debate about assisted reproductive technology. There are a host of such activities that manipulate the normal reproductive process. They vary from simple artificial insemination of the husband's sperm (which was done 2,000 years ago) to surrogate motherhood and its close cousins zygote intrafallopian transfer (ZIFT) and gamete intrafallopian transfer (GIFT). While some religious and ethical traditions, most notably Roman Catholicism, view all tampering with nature in the reproductive area as wrong, that is by no means true for most religious or ethical traditions, including Judaism, which generally view all assisted reproductive technologies, when modestly done in cases of infertility, as a proper way for people to seek to be fruitful and multiply, and enjoy parenthood, all of which is considered in Jewish law a *mitzvah* or good deed.

Indeed, one is hard pressed to find a religiously neutral reason why cloning would be intrinsically bad in cases where other means of treating infertility would not work. Taking the cells necessary to genetically reproduce the person cannot be argued to be a form of wounding (*chavala*) as the cells can be extracted without any apparent violation of Jewish law. In that regard, cloning lacks many of the serious

halachic problems associated with artificial insemination, in vitro fertilization and surrogate motherhood, all of which raise serious halachic concerns in terms of the fertilization of the egg by the sperm, and other related issues.

Consider on the other hand what is most likely to be the first use of this new technology, the donation of an oocyte to a woman who has a mitochondrial disease, where her embryo is transplanted into a disease-free oocyte, thus eliminating the mitochondrial disease from the fetus. Why should that be opposed?

#### ARE CLONES HUMAN?

The second issue — is the clone "human" and who are his or her relatives — is the one that attracts the most interest, but which in fact has the least substance to it. Clones would be born from an ovum/egg that was stimulated to divide after its DNA was removed and replaced with another's DNA. This egg would then be implanted into a woman's womb and be carried to term like any child. This child would have a birth mother, and bear no resemblance to the artificial people some are afraid would be used for spare parts or slave labour. Clones would be human — born from a human mother — and entitled to the same rights as all humans. Each person is created "in the image of God," and must be treated as such. There is absolutely no support — anywhere in the whole corpus of Jewish law — for the proposition that a child born from a human mother can ever be classified as not human.

The question of who would be the clone's mother/father/sister/brother is a good one. One could view the gestational mother as the mother, and the gene donor — when he is a man — as the father. One could view the gene donor as the mother, when she is a woman, and label the gestational mother as of no significance. Indeed, one could consider the gene donor a sibling, if one wanted to stretch a bit. All of these are possible and, at least within the Jewish legal tradition that I am most familiar with, each except the last theory has its adherents.

In my opinion, the Jewish legal tradition is most inclined to label the gestational mother (who serves as an incubator for the cloned individual) as the legal mother of the child, since she has most of the apparent indicia of motherhood according to Jewish law, while the contributor of the genetic material lacks these indicia. This school of thought argues that motherhood is established at parturition and birth, at the time of removal from the womb. Although the child

bears no genetic relationship to its gestational mother, particularly when the clonee is a male, there are no other possible candidates whom Jewish law could label the mother, and thus it seems reasonable to believe that this woman would be considered the halachic mother of the child.

Consider, for instance, the case of a woman born with no ovaries, who as an infant is given an ovary transplant. Twenty years later, this woman marries and has a child. Who is the legal mother of the child? Jewish law acknowledges that the woman who received the ovary transplant — who had a sexual relationship with a man, and within whose body she ovulated, conceived, implanted, nurtured and bore this child — is the halachic mother of the child, even though she bears absolutely no genetic relationship to the child.

On the other hand, in recent years a quite robust discussion within Jewish law has developed as to whether a child can halachically have two or more mothers. According to my teacher, Rabbi J. David Bleich, a preeminent authority on Jewish medical ethics, a number of halachic authorities would be inclined to rule that it is possible for a child to have two mothers according to Jewish law, and in the case of surrogate motherhood, both mothers (the egg donor and the gestational carrier) are to be considered the mother. According to this logic, in the case of cloning Jewish law should also recognize as mothers both the gestational carrier and the woman who contributes the genetic material.

The question of who is the mother is seminal in determining the religious identity of the child. Jewish law insists that the child of a Jewish mother is a Jew and the child of a gentile woman is a gentile, independent of the religious identity of the father. If the gestational mother is Jewish (and one were to determine her to be the sole mother), Jewish law would assign the child Jewish identity and would limit paternity to cases where the provider of the genetic material — if he were a man — is also Jewish. In cases where the donor of the genetic material is a Jewish woman and the gestational mother is a non-Jewish woman, or the other way around, the determina-

tion of religious identity would depend on whom one labels the mother.

This ongoing discussion about the exact nature of a clone's family, however, is not reason enough to stop the process in its tracks. Surrogate motherhood also has its uncertainties about who is the mother, but still serves a valuable role in allowing those unable to reproduce naturally to have children. Cloning will serve the same function and should not be prohibited because of this uncertainty.

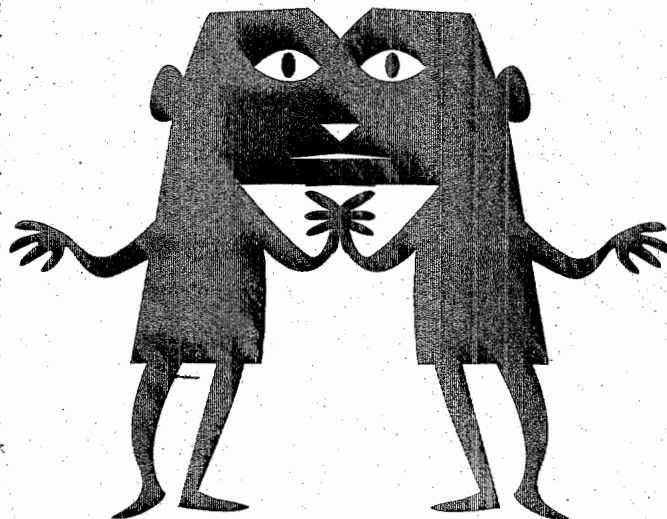
#### THE SLIPPERY SLOPE

Finally, many have argued that the problems with cloning have nothing to do with the technical issues relating to cloning, but rather with the fear that the individuals produced through cloning will not be considered human by society. This could lead to a number of gross violations of normative Jewish laws and ethics, such as the harvesting of organs from these people, their use for human experimentation, slavery or other prohibited activities.

However, as already noted, there is no doubt at all that a person produced through cloning, and born of a mother, is a full human being according to Jewish law and tradition and is entitled to be treated — must be treated — as such by all who encounter this person. And once we recognize that clones are full humans, we also recognize that cloning is no more likely to lead down the ethical slippery slope than any other assisted reproductive technology, which we generally permit to treat infertility.

Does that mean full speed ahead? The answer is that with appropriate supervision, cloning can be proper and should not be banned. Indeed, even the most common "nightmare" scenario advanced by those hostile to cloning is really quite good. Consider the case of a person dying of leukemia and in need of a

bone marrow transplant, with no donor available. The decision to clone the sick person, so that there will now be two people (one donor and one recipient of bone marrow) alive — each, to quote the Biblical verse, in God's image — seems to be vastly ethically superior to the alternative before cloning: that one will die and the other will never be born. Indeed, the Jew-



ish tradition might label this as two *mitzvot* since one is both having a child and saving a life!

Cloning, like artificial insemination and surrogacy when they first appeared, has narcissistic possibilities. In reality, however, it will most frequently be used as a treatment for drastic infertility, and like all forms of assisted reproductive technologies has its place in one of the central missions of humanity: to

make the world a better place for its inhabitants. It is a brave new world, and our mission is to make sure that it is an ethically good world also.

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