



01 **Reflections on Human Dignity and the Israeli**  
02 **Cloning Debate**  
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13 **1 Introduction**  
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15 In 1997, the birth of Dolly the sheep sparked an intense public debate on human  
16 cloning that resulted in a wave of legislation aiming to ban the practice. Interna-  
17 tional instruments, such as the Universal Declaration of the Human Genome and  
18 Human Rights, the European Convention on Bio-Medicine and Human Rights, and  
19 the Charter of Fundamental Rights of the European Union, consider reproductive  
20 cloning to be a violation of human dignity. In Israel, too, soon after Dolly's birth,  
21 the Knesset enacted a law that prohibited both cloning and genetic manipulation of  
22 eggs and sperm. However, the ban was a temporary one, for five years, in order to  
23 allow time for further reflection. The public debate that took place, in 2004, around  
24 the extension of the moratorium revealed the system of values that characterizes  
25 Israel's official position on the issue of cloning.<sup>1</sup>

26 Human dignity is entrenched in Basic Law: Human Dignity and Liberty, as a  
27 fundamental value of a Jewish democracy. Thus it is a vital principle in Israel's  
28 constitutional law, and has multiple meanings in its jurisprudence. Nonetheless, the  
29 prohibition of reproductive cloning in Israeli law does not rest on this value, but on  
30 general principles of ethics in medical research. This paper describes the legislative  
31 debate in Israel about the prohibition of human cloning, and analyses the underlying  
32 cultural values of a Jewish democracy, that explain why cloning is not considered to  
33 be a violation of human dignity. A major factor is the influence of Jewish religious  
34 law (*halakha*), which attaches high importance towards healing and reproduction,  
35 on the one hand, and low importance to the status of the early human embryo, on the  
36 other hand. However, these themes also resonate with a secular culture of fertility  
37 and pronatalism, a social reverence for science and acceptance of technology, and a  
38 constitutional tradition of liberty and freedom.  
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01 that Israel might have a unique position on the value of human dignity, which is  
02 revered as a universal precept.

03 However, the protocols of the parliamentary debate reveal that there was little  
04 tolerance for minority views, which were predominantly female voices. Pressure  
05 was brought to silence dissent, and opposition voices were labeled as anti-science  
06 or feminist. MK Polishuk-Bloch, the chair of the Committee, said at one point:  
07 "I myself felt more than once how people tried to shut the mouths of those who  
08 think differently. I have never seen in the meetings of the Science Committee so  
09 much passion and pressure exerted by a particular group on another group as in this  
10 matter . . . . And I repeat for the umpteenth time that there is no inkling of harm to  
11 research."<sup>26</sup>

## 14 5 Government Policy

16 The Position Paper is a short two-page document, and more emotive than analytical.  
17 The first page sets forth the consensus of the three public committees and claims  
18 also to represent the common understanding of the bioethics community in Israel.  
19 The premise of the consensus is the faith that progress in medical science is always  
20 of some benefit to certain individuals, and that it would be socially irresponsible  
21 to suppress an entire area of medical research, especially in the area of infertili-  
22 ty. Cloning has several foreseeable benefits. Research in cloning techniques could  
23 produce important results for the scientific understanding of the early stages of em-  
24 bryonic development. Likewise, there are the highly trumpeted possibilities of using  
25 cloned stem cells for regenerative medicine, that is, for the production of tissue and  
26 organs for transplantation in sick persons. Moreover, even reproductive cloning as  
27 such could have beneficial therapeutic applications, in isolated individual cases of  
28 singular medical need.

29 The second page explicates the reasoning that underlies the government's posi-  
30 tion, primarily in terms of Jewish religious law (*halakha*) values:

32 From the perspective of Jewish *halakha*, central value is given to saving lives (*pikuah ne-*  
33 *fesh*) (including curing infertility and genetic disease), and the central perception is that man  
34 is a partner in the act of creation, to improve the world (*tikkun*) and correct defects in nature.  
35 It is not perchance that Israel is a leader, numerically, in the field of *in vitro* fertilization,  
36 because helping infertile couples is considered important, as a matter of *pikuah nefesh*.

37 Although it is made very clear from the start that there is unanimous agreement that  
38 reproductive cloning should be banned for the time being because of the dangers, the  
39 Paper says that there is no principled rabbinical objection to reproductive cloning in  
40 the treatment of infertility. It opposes this position to that of the Catholic church, not  
41 in terms of the graded moral status of the embryo and the permissibility of medical  
42 research in fertilized eggs, but by rejecting the notion of genetic determinism, which  
43 it supposes to underlie the Catholic view:

44 The Catholic church views the fertilized egg as a complete human being, and therefore con-  
45 siders that a person's destiny is pre-determined in one's genetic constitution at the moment









01 by a pervasive discourse of risk, this is almost completely absent in Israel, and the  
02 public is generally trustful of science and ‘progress.’” She suggests that this com-  
03 placence about bio-technology can be attributed to the special relation of humans to  
04 God in Judaism and the idea of *tikkun*, of improving the world, to alleviate suffering.  
05 (Hashiloni-Dolev 2006: 139–140).

06 The positive attitude towards the potential of medical science to alleviate suf-  
07 fering also explains the widespread acceptance of prenatal genetic diagnosis, even  
08 among disability organizations (Raz 2004). Indeed, the problematic history of med-  
09 ical genetics and eugenics, with its fatal consequences for European Jewry, seem  
10 not to have any impact on Israel’s pro-science culture:

11 Jewish tradition supports the prevention of life with disability, especially prior to concep-  
12 tion, and contemporary Israeli medical genetics is not haunted by the negative history of  
13 eugenics. . . . Israeli-Jewish culture does not perceive the technological manipulation of life  
14 either as ‘playing God’ or as threatening to human dignity or rights, since the prevention of  
15 life with disability is not seen as endangering human dignity, but rather as preventing suffer-  
16 ing and improving on God’s creation. In general, advanced medical technologies are under-  
17 stood to serve the common good and not to pose risks. (Hashiloni-Dolev 2006: 143–144)

18 (b) *Fertility*: The Holocaust might not cast a shadow on attitudes toward medical  
19 research and genetics, but on the other hand it plays an important role in Israel’s  
20 pronatalist culture, which is related to the historical and geo-political context of the  
21 Jewish state. Israel arose out of the genocide of six million Jews in the Holocaust,  
22 at the hands of the Nazis. As early as the 1940s, when the news of the Holocaust in  
23 Europe first reached the Jewish community in Palestine, David Ben-Gurion spoke of  
24 a “demographic duty” to the nation and warned that Jewish existence was at stake.  
25 In 1967, the Government adopted a resolution to establish a Center for Demogra-  
26 phy, so as “to act systematically to realize a demographic policy, directed to create  
27 an atmosphere which encourages birth, taking into consideration that it is vital to  
28 the future of the Jewish people.” (Hazleton 1978: 58–61) Israel’s population today  
29 is around six million, and that includes over a million non-Jews. It is surrounded  
30 by Arab nations whose populations outnumber its by far. Demography is also an  
31 express issue as regards the Israeli-Palestinian conflict and is seen as a threat to the  
32 continuing existence of a Jewish majority inside the state.

33 Yet, Israel is also a liberal democracy, and a pronatalist government policy would  
34 not be effective if it did not comport with other accepted values – in this case, the  
35 centrality of family life. That is to say, that Israel has a national culture of fertility,  
36 and in particular a culture of reproductive medical technology. “For Israeli Jews,”  
37 writes Susan Kahn, “the imperative to reproduce has deep political and historical  
38 roots as well. Some feel they must have children to counterbalance what they be-  
39 lieve to be a demographic threat represented by Palestinian and Arab birthrates.  
40 Others believe they must produce soldiers to defend the fledgling state. Some feel  
41 pressure to have children in order to replace the six million Jews killed in the Holo-  
42 caust. Many Jews simply have traditional notions of family life that are very child-  
43 centered.” (Kahn 2000: 3) The threat of losing a child in war or in a terrorist attack  
44 may also have an influence on the desire to have many children (Hashiloni-Dolev  
45 2006: 130).







01 to the body), as both a negative and a positive right.<sup>34</sup> Drawing upon this, the Court  
02 found individual rights in various contexts that bear upon the essence of individual  
03 personality, including, for example, the right to parenthood, the right to know the  
04 identity of one's parents, the right of an adult to be adopted by a family with whom  
05 he or she has a special relationship, and the right to determine the inscription on  
06 a tombstone. In some instances the Court ruled that certain aspects of the right to  
07 equality may be derived from human dignity, to the extent that discrimination is  
08 degrading, even though the Basic Law had omitted any express mention of equality  
09 for political reasons (Kretzmer 2002). In more recent developments, the protection  
10 of human dignity in the Basic Law is emerging as a legal source for claiming eco-  
11 nomic and social rights, in the sense of guaranteeing the right to minimal conditions  
12 of existence in dignity.

13 The vagueness and open-endedness of the concept of "human dignity" (*kvod*  
14 *ha-adam*) is compounded by the fact that the Hebrew term for "dignity" (*kavod*)  
15 has multiple meanings. Orit Kamir has pointed out how the ambiguities represent  
16 distinct and even incohesive value systems, which are characteristic of the tension  
17 between a Jewish and a democratic state (Kamir 2002). For example, *kavod* as such  
18 can be translated accurately as dignity, but it is also the only word in the Hebrew  
19 language for "honor" and "respect", as in the commandment to honor thy father  
20 and thy mother, or to behave with respect for the dead. *Kavod* also has engendered  
21 meanings. As "honor" it connotes patriarchal constructs of the honor of the family  
22 and the merit of female modesty. On the other hand, *kavod* is also the only word in  
23 Hebrew for the male attribute of "glory". This is the glory of the warrior and hero,  
24 and of authority, power, rank and position. In the Old Testament *kavod* is ascribed  
25 first and foremost to God – as in *melekh hakavod*, the King of Glory. Human dignity  
26 in the sense of Man being created in God's image (Genesis 1:27) – as invoked in  
27 the cloning debate – appears to be related to this meaning. It is the divine spark  
28 in human beings that makes each and every one of us unique. Kamir says that this  
29 understanding of *kavod* is more related to glory than to dignity, and that it does  
30 not necessarily comport with democratic notions of individual rights. Interestingly  
31 enough, the examples she gives are of life, death and reproduction:

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34 Glory . . . implies a rabbinical, religious, Jewish ideology, which attributes Man's glory to  
35 his heavenly creation in the divine image of God. According to this worldview, Man's glory  
36 is the source not only of certain human rights, but also of Man's duties to his creator. As  
37 'glory,' the word *kavod* does not entail such rights as to end a pregnancy and to die at will;  
rather, it implies a person's duties to live and multiply. (Kamir 2002: 235)

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40 Indeed, the debate on cloning in Israel has been framed in terms of Jewish religious  
41 values, rather than secular humanist concerns that derive from a human rights ethic  
42 which is fundamental to democracy. But at the same time a human rights discourse  
43 which revolves around individual liberty, such as that of Israel's Supreme Court,  
44 may not be sufficient to explain the moral intuition that cloning should not be al-  
45 lowed as a matter of human dignity.



01 Nor does it confer any legitimacy on positive genetic enhancement, or on eugenic  
02 ideas of producing a superior human being, race or species. However, while the  
03 difference between therapeutic and non-therapeutic uses of medicine is, indeed,  
04 crucial to distinguishing negative from positive eugenics, it can be very fuzzy, and  
05 is influenced by social attitudes towards what constitutes illness and merits medical  
06 intervention, as well as by economic forces.

07 Therapeutic utility, or the potential of such, is the general value underlying the  
08 ethics of medical research in human beings. But the foreseen therapeutic benefit  
09 must be balanced against the risks. Because of the current dangers of reproductive  
10 human cloning, Israel has adopted a moratorium. Yet, within these terms of rea-  
11 soning, one might well ask whether research in human cloning can ever be consid-  
12 ered safe enough. Even if there are possible therapeutic applications to reproductive  
13 cloning in singular cases of medical need, the benefit of such must be weighed by  
14 considering their added value in relation to existing therapeutic alternatives, and  
15 the conclusion should be that the benefit is marginal or negligible. Moreover, the  
16 danger of mishaps constitutes a crucial moral problem (Ramsey 1970: 81). These  
17 involve, of course, the risks to the offspring, but also the risks to the women, both of  
18 which cannot be confined to the period of gestation. We are just now beginning to  
19 appreciate the long-term effects on the health of the children of in vitro fertilization  
20 and related interventions. And it is fairly clear from the emerging practice of global  
21 trafficking in eggs, that the development of cloning technology would present a  
22 moral hazard to the human rights and dignity of women, as the source of the eggs.

23 Proponents of the government's position in the internal debate suggested that any  
24 negative impact could be dealt with through legal regulation, rather than prohibition.  
25 However, this is quite cynical, for while Israel boasts of being a leader in medical  
26 reproduction, it is also highly under-regulated. Artificial insemination, in vitro fer-  
27 tilization, sex selection, and medical research are all regulated under either adminis-  
28 trative rules or secondary legislation. Embryo research is not specifically regulated  
29 in any way, and the recommendation of the cloning law's Advisory Committee to  
30 regulate egg donations for research was also not taken up. Parliament has addressed  
31 only one subject of medical reproduction in primary legislation – the subject of  
32 cloning – and even so, with minimal content and in the form of a moratorium, which  
33 is a highly unusual method of legislation. The moratorium is supposed to encourage  
34 public debate, but this does not occur of itself and the government does nothing to  
35 involve the general public.

36 The ambivalence of Israel's position on reproductive cloning – against now in no  
37 uncertain words, but in favor for the future; to be prohibited, but only for the time  
38 being – remains a puzzle. One wonders, why so much fuss to maintain a position  
39 that is so contrary to that of the rest of the world? The faith in science and progress  
40 seems to be exaggerated. The expectations from the outcome of research seem to be  
41 inflated. What can explain this? Perhaps there is a sub-text of economic stakes and  
42 market forces at play.

43 There is no doubt that the relative laxity of Jewish religious values regarding  
44 research in early embryos places Israel in a unique position to be at the forefront  
45 of competition in repro-genetic research and the global bio-industry. There is an





01 <sup>13</sup> Section 2 of the Law.

02 <sup>14</sup> Mirah Hibner-Harel and Talia Edry, Opinion on Experiments to Create Embryonic Stem Cells, 22  
03 August 2002, Appendix 6 to the 2003 Advisory Committee Report (note 5 above).

04 <sup>15</sup> The Prohibition of Genetic Intervention (Human Cloning and Genetic Manipulation of Reproductive  
05 Cells) (Amendment) Bill, 5764-2003, *Hatza'ot Chok 5764* (2003), p. 290 [hereinafter – the Bill].

06 <sup>16</sup> Section 1 of the Bill.

07 <sup>17</sup> 2003 Advisory Committee Report (note 5 above), pp. 6–7. Note that the recommendation to regulate  
08 egg donations has not been implemented.

09 <sup>18</sup> Commentary to Section 2 of the Bill.

10 <sup>19</sup> The Prohibition of Genetic Intervention (Human Cloning and Genetic Manipulation of Reproductive  
11 Cells) (Amendment) Law, 5764-2004, *Sefer HaChukkim 5764*, p. 340 [hereinafter – the Amended Law].

12 <sup>20</sup> Commentary to Section 3 of the Bill.

13 <sup>21</sup> By decision of the Committee itself, the protocols are publicly accessible on the Ministry of Health  
14 website – <http://www.health.gov.il/pages/default.asp?pageid=1172&parentid=10&catid=6&maincat=1>.

15 <sup>22</sup> Per Professor Michel Revel, Ministry of Health Committee on the Status of the Human Embryo,  
16 Protocol of Meeting, April 14, 2003.

17 <sup>23</sup> Per Professor Asa Kasher, *ibid.*

18 <sup>24</sup> Per Professor Avraham Steinberg, *ibid.*

19 <sup>25</sup> Undated position paper submitted and signed by the heads of three public committees – the National  
20 Helsinki Committee [i.e., the statutory Advisory Committee] (Prof. Bolislav Goldman), the bioethics  
21 advisory committee of the Israel Academy of Sciences (Prof. Michel Revel), and the internal Ministry  
22 of Health committee on the status of the human embryo (Dr. Shraga Blazer) – as well as by the chief  
23 scientist of the Ministry of Health (Prof. Rami Rahamimov), for the March 1, 2004 meeting of the  
24 Knesset Science and Technology Committee.

25 <sup>26</sup> Knesset Science and Technology Committee, Protocol of Meeting, February 1, 2004, p. 12.

26 <sup>27</sup> Tamara Traubmann, “Ministry gives nod to human cloning”, *Haaretz*, 5 March 2004.

27 <sup>28</sup> FH 2401/95 *Nahmani vs Nahmani* 50 P.D. (4) 661. The question facing the court was how to balance  
28 the relative weight of rights to motherhood and to non-fatherhood. After a long process of litigation,  
29 the Supreme Court finally ruled by a majority, that the woman’s right to become a mother imposed a  
30 correlative duty on the father to cooperate and refrain from obstructing its realization. This is in contrast  
31 to rulings in other jurisdictions that require such decisions to be consensual.

32 <sup>29</sup> The protection of individual human rights was well established in a long line of previous judicial deci-  
33 sions, which had the binding effect of precedent. The rights included in Basic Law: Human Dignity and  
34 Liberty, and its companion Basic Law: Freedom of Occupation, are those upon which political consensus  
35 could be gained, and the list is not conclusive. Several rights that were recognized in the case law were  
36 omitted. These include the right to equality, as well as freedom of conscience, freedom of expression,  
37 freedom of religion and conscience, and freedom of the press. These rights and freedoms continue to be  
38 protected as part of Israel’s constitutional jurisprudence.

39 <sup>30</sup> This is a reference to the Hart-Devlin debate on the use of criminal law to enforce sexual morality,  
40 such as the aversion to homosexuality.

41 <sup>31</sup> The Criminal Law, 1977, Sections 312–321.

42 <sup>32</sup> CA 413/80 *Anonymous vs Anonymous* P.D. 35(3) 57.

43 <sup>33</sup> Section 1 of the Legal Competence and Guardianship Law, 1962.

44 <sup>34</sup> Section 2 of Basic Law: Human Dignity and Liberty states in the negative: “There shall be no violation  
45 of the life, body or the dignity of any person as such”. While Section 4 states in the positive: “All persons  
are entitled to protection of their life, body and dignity”.

<sup>35</sup> Universal Declaration on the Human Genome and Human Rights, Article 2: “Everyone has a right to  
respect for their dignity and for their rights regardless of their genetic characteristics.”

<sup>36</sup> Per Professor Bolek Goldman, Ministry of Health Committee on the Status of the Human Embryo,  
Protocol of Meeting, April 14, 2003.

<sup>37</sup> For a preliminary exploration of this theme, see my earlier article: Shalev, Carmel. Human Cloning  
and Human Rights: A Commentary, *Health and Human Rights* 6, 2002, 137–151.

<sup>38</sup> For a more expansive elaboration of this legend, cf. Shalev, Carmel. “Clones and Golems”. *Ethics and  
Law in Biological Research*. C.M. Mazzoni (ed). Martinus Nijhoff Publishers, 2002, 187–192.

