
BIOETHICS OUTLOOK

Plunkett Centre for Ethics

Volume 16 Number 3

September 2005

Understanding Utilitarianism

Stephen Buckle

In this issue

'Utilitarianism' is a term known widely outside as well as inside philosophical circles (even though sometimes it seems to be confused with 'totalitarianism!'). In this issue Stephen Buckle explains the moral theory, or set of moral theories, to which the term refers. He sets out its origins, its main features, and the assumptions it makes about human reasoning, human values and the nature of the human person. Given that utilitarianism lies behind much contemporary talk, in health care and elsewhere, about the significance of 'outcomes', his paper will likely attract wide interest.

The second half of this issue is devoted to the submission made by the Director of the Plunkett Centre to the Lockhart Inquiry into the operations of the *Prohibition of Human Cloning Act 2002* and the *Research on Human Embryos Act 2002*.

Utilitarianism is one of the most prominent of modern moral philosophies, and the most controversial. Its denial that moral rights are the basic currency of moral thinking – and the manifold consequences of this denial in a wide range of significant practical issues – is well known. What is not so well understood, however, is where utilitarianism came from, and why, under the more general rubric of "ethical consequentialism", it now enjoys such respect in academic meta-ethical debates. This paper aims to throw some light on these issues, and, by doing so, to identify utilitarianism's fundamental commitments – and to indicate why the academic preoccupation with "ethical consequentialism" is a distraction from the main issue.

What is Utilitarianism?

Utilitarianism, as a distinct moral doctrine, is commonly traced to the writings of Jeremy Bentham (1748-1832). His book, *An Introduction to the Principles of Morals and Legislation*, published in 1789, the year of the French Revolution, can be considered to have launched utilitarianism upon the

(Anglophone) world.¹ This conjunction of events brought Bentham considerable fame, since utilitarianism was thought to capture the progressive spirit of the Revolution. His reformist writings made him the godfather of a group called the Philosophic Radicals, who advocated a series of reforms based on utilitarian principles. Prominent amongst the Radicals was James Mill, the father of John Stuart Mill.

The dream of moral mathematics

Bentham's utilitarianism proclaimed that the worth of any action lay entirely in its usefulness (or utility) for human beings. Hence the doctrine's name. But the distinctive character of the doctrine depended on his further specification of what counted as useful: he claimed that *human happiness* was the measure, and further stipulated that happiness was not some abstruse philosophical ideal, but merely *pleasure*. His further stipulation that each person's pleasure counted for the same gave the doctrine the practical edge which has always been, for its advocates, one of its primary attractions: it meant that alternative courses of action could be assessed for their moral worth simply by adding up their consequences in terms of the pleasure (+1) or pain (-1) imposed on those affected. The best course of action was simply the course of action that generated the highest score. Moral mathematics was born.

Utilitarianism thus construed can be divided into two component parts: its *form* and its *content*. The formal component is its model of reasoning, that is, its consequentialism: the conviction that alternative courses of action are to be measured purely by their consequences. This element has become the main focus of attention in recent years, and explains why "consequentialism" has become the preferred mode of self-description amongst philosophical sympathizers. But things

were not always so. In the beginning, it was utilitarianism's content that was the more striking and (to its followers) more attractive component of the theory. The absence of any appeal to higher authorities or to metaphysical ideals made it appear the ideal theory for a new secular age.²

The principal source of complaint from its sympathetic critics lay in the thought that the secularism achieved was too crude, psychologically speaking. The reduction of happiness – and, by extension, all human ideals – to the mere quantity of (physical) pleasure led John Stuart Mill to describe Bentham's position as moral philosophy reduced to the "principles which regulate trade".³ So Mill proposed a compromise view – indebted to the hierarchical moral psychology of Plato – in which pleasures could be divided into higher (intellectual) pleasures and lower (physical) pleasures, such that the higher always trump the lower. (He famously observed: "It is better to be a human being dissatisfied than a pig satisfied; better to be Socrates dissatisfied than a fool satisfied".⁴) But this proposal found little favour amongst his fellow-utilitarians, because it destroyed what most found so attractive about the new theory: its promise of mathematically-certain moral conclusions.

The pursuit of this promise – principally in the hands of twentieth-century economists – led to a significant change in the theory itself. The basic currency of utilitarianism, pleasure, allowed only very limited, and indeed misleadingly limited, quantification. Bentham had "solved" the problem by stipulating that everyone was to count for one. As a principle of basic human equality, this may be all very well. But as a principle of moral mathematics, it allowed only the crude measures: pleasure = +1, pain = -1. But pleasures and pains come in degrees, so, even if

everyone is equal in *general* value, the intensities of their pleasures and pains, and therefore their *specific* values, need not be. So any serious attempt to measure the highest utility must fail. A different measure was therefore needed.

The new measure proposed dispensed with the theory's prior focus on subjective satisfactions (i.e. on happiness or pleasure). It replaced this hidden standard with a thoroughly public one: preference-satisfaction, or, in cruder terms, getting what you want. The advantage of this change is entirely to do with quantifiability: while it is impossible to measure the degree of happiness or pleasure achieved by a certain action or policy, it is perfectly possible to measure the extent to which preferences have been satisfied.

If Person A wants a new Mercedes every year, whereas Person B wants good hospitals, it will be obvious to all whether, or to what extent, a given action or social policy delivers them the objects of their desire. It will even be possible to measure various alternative social policies by the number of preferences each can be predicted to satisfy. The dream of moral mathematics can thus be saved; so the economists, and, following them, the utilitarian philosophers, came to advocate *the greatest level of preference-satisfaction* as the practically-rational – and thus the moral – standard by which possible actions or social policies are to be judged.⁵ This theory is known as “preference utilitarianism”, to distinguish it from the original, hedonic, theory. (Perhaps the best-known version of preference utilitarianism is Peter Singer's ethical theory.)

Consequentialism and the Form of Practical Reasoning

“Consequentialism” is the name for the formal part of the utilitarian doctrine: the view that all practical reasoning is in terms of consequences, such that the best course of action is necessarily that course of action that produces the best consequences. It is distinct from utilitarianism in that it resists stipulating what those consequences are. As such, it can be thought of as an all-embracing doctrine about what decisions or actions must be like to be practically rational – and so is commonly adjudged by philosophers to provide a sophisticated background test for all practical decision-making.

Since consequentialism does not tell anyone what to do – it cannot, because it resists telling us *which* consequences count – it is not itself an ethical theory. But it is plainly not neutral with respect to ethical theory, since it rules out – as *irrational* – any variety of ethical thinking that fails to fit the consequentialist pattern. Consequentialism thus seems to provide powerful background support for utilitarianism, by removing all non-consequentialist theories from serious consideration. Given that most traditional ethical doctrines are not obviously fitted to the consequentialist mould, the upshot is that traditional ethical values – the source of criticisms of utilitarian doctrines – can be set aside as mere prejudice obstructing the implementation of progressive moral opinion. Consequentialist practical rationality thus sweeps the field clean for utilitarianism's triumph.

Consequentialism and Rational Choice Theory

In this light, it is plainly important to examine the credentials of the consequentialist theory of practical rationality. In brief, it can be described as the view that rational choice consists in choosing some good outcome; that it is more rational to choose the best amongst alternative possible goods; and so rational choice and action is to be defined in terms of *maximizing* good outcomes. Ethics then plugs into this basic framework by specifying in what terms the good outcomes are to be understood, i.e. in terms of happiness or desire-satisfaction or character-development or even some variety of ideal-attainment. Ethically good action will therefore be the attempt to maximize the specified good outcome.

Rationality is thus defined purely in terms of the maximizing tendency, and not at all in terms of the actual values pursued: the rational choice conception is *neutral* with respect to actual values. This is commonly taken to be the *strength* of this conception of rationality: its neutrality is attributed to its *degree of abstraction* and so also of *explanatory power*. This is, however, only half true. For varieties of choice and action that uncontroversially fit into this pattern, the abstraction and so explanatory power of this conception of rationality is undeniable. But it is certainly not the case that ethics uncontroversially fits the pattern: as mentioned above, traditional ethics is not purely consequentialist, and so needs to be redefined in order to fit. Traditional norms or duties have to be reconceived as desires (and perhaps also, as an intermediate step, as values). Such reconception is plainly not a neutral process, so why should it be accepted?

In order to explain this, a thoroughly non-neutral commitment of modern rational choice theory needs to be brought to the fore: its conception of reason as a

calculative capacity in the service of *given* values. The calculative aspect lies in the fact that rationality on this model essentially amounts to adding up the quantity of goodness of each alternative, in order to choose the highest scoring alternative. The givenness of the values is plain from the fact that the model accords them no theoretical attention whatsoever. Reason is thus conceived as a service industry, a method applicable to one's values in order to assist in their attainment: the values themselves are not open to rational assessment. Why not? The standard rationale for this view is that values are not subject to rational assessment because values are *subjective*. They come into the world through human desires, and do so because they are in fact *nothing more than* human desires. (And, it is usually added, since humans are all different and desire different things, values are wholly personal – what each person desires.)

The model of reason built into rational choice theory is thus a version of the "Humean" (or instrumental) theory of reason: reason *serves* desire, and does so by calculating how desires are most efficiently satisfied. Reason cannot therefore judge between alternative desires; and, given that values and desires are equated, reason cannot judge between alternative values. This theory of reason amounts to a reinterpretation of human nature: specifically, of the idea that the human being is the rational being. Traditionally, this meant that the human being is a being who acts in the light of rationally-acquired knowledge of the world, including knowledge of objective goods. In the Humean reinterpretation, it means only that the human being is a being which calculates how to satisfy its desires: it is an animal distinguishable from other animals only by its greater capacity to figure out how to get what it wants. To see what is lost in this reconception, it is only necessary to observe that it implies no difference in dignity between animal and human life. So the idea that there is a distinctive dignity to human beings turns out to be unjustified on this conception.

Form and Content Issues: A Summary

One central task of an examination of consequentialist modes of ethical thinking must therefore be to examine the *form* of rationality built into such thinking: the Humean model of practical rationality. This will require a direct assessment of the basics of modern rational choice theory: its conception of rationality (and implicit conception of human nature); and its equation of norms (or duties) and values and desires.

Utilitarianism adds to this form a distinctive content. So examination of the specifically utilitarian brands of consequentialism requires assessing the distinctive *content* of utilitarian values: of the ethical value of a hedonic conception of happiness ("classical" utilitarianism), and, especially, of the ethical value of the mere fact of getting what one wants (preference utilitarianism). The impact of these values on practical ethical questions then needs to be identified and assessed. This will include, among other things, their impact on such commonly-employed notions as the meaning and dignity and quality of a human life.

Concluding Remarks

At bottom, utilitarian moral theory is a consequence of the empiricist revolution in modern philosophy. Empiricism denied innate knowledge and restricted what could be known to human experience. But it did more than that. It implicitly denied that human beings were the truth-seeking rational beings that the ancient and medieval worlds had taken them to be. Hume's dethroning of reason has to be seen in this light.

concerning only which of the available alternative actions is the *most useful*. Any idea of moral truth, or even of value other than usefulness, has simply been set aside.⁷ In consequence, all that is needed to generate specific utilitarian theories is to settle on a *criterion of usefulness*. Bentham's hedonic standard and the economists' preference-satisfaction standard are the two most widely-accepted criteria, and so the most influential theories. It is plain that both implicitly rule out the distinctive concerns of a rational being, as traditionally understood, and so both fit the Humean recasting of the human being.

The "ethical consequentialism" that so preoccupies the academic moral philosophers, with its attempt to legislate for acceptable moral positions by reference merely to (its account of) the form of practical reasoning, is thus a distorting lens through which to comprehend morality. This apparently formal category in fact predisposes filling out ethical theory according to the narrowed content imposed by empiricism's restriction to the useful, and so is not the neutral category it purports to be. In the end, then, the fundamental division between utilitarianism and its traditional rivals will not be settled by the formalist preoccupations of so much contemporary meta-ethics. What is fundamentally at issue is the nature of the human being.

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Footnotes

1 The view was certainly in the wind elsewhere (a point often neglected in Anglophone philosophical writings), and Bentham's claim to originality is not beyond dispute. Karl Marx, for example, claimed that Bentham "simply reproduced in his dull way what Helvétius and other Frenchmen had said with wit and ingenuity in the eighteenth century". (Karl Marx, *Capital*, trans. Ben Fowkes (Harmondsworth, Penguin: 1976), I, 758n.) Marx here thinks of Bentham as a nineteenth-century figure, since it was in the early nineteenth century that his influence was at its height.

2 See, for example, James E. Crimmins, *Secular Utilitarianism: Social Science and the Critique of Religion in the Thought of Jeremy Bentham* (Oxford University Press, 1990).

3 John Stuart Mill, "Bentham", in John Stuart Mill and Jeremy Bentham, *Utilitarianism and Other Essays* (Harmondsworth: Penguin, 1987), 156.

4 John Stuart Mill, *Utilitarianism* (Oxford University Press, 1998), 57.

5 The fact that getting what you want might not make you happy is a residual embarrassment to the theory, about which philosophers occasionally fret. The economists, for their part, have ignored happiness as a goal, despite its popularity as a measure of a successful life. Why? Several possibilities suggest themselves: because it is not measurable and so not to be accepted as a scientific concept; or because they have *assumed* that getting what you want *equals* happiness; or even because they have *defined* happiness in terms of preference-satisfaction. In short, they have swept the problem under the carpet.

6 See Aristotle, *Metaphysics*, I. 1 (many editions); and cf. John Locke, *An Essay concerning Human Understanding*, ed. P. H. Niddich (Oxford: Clarendon Press, 1975), e.g. I. i. 5: "We shall not have much reason to complain of the narrowness of our minds, if we will but employ them about what may be of use for us".

7 The point, and its limiting effects on human life, are central concerns in a famous 19th-century examination of the utilitarian spirit, Ivan Turgenev's novel *Fathers and Sons* (1861). See, in particular, Bazarov's remark that "we base our conduct on what we recognize as useful"; *Fathers and Sons* (Harmondsworth: Penguin (1975), 123.

Submission to Lockhart Inquiry

Bernadette Tobin

In this submission I have directed my comments to the 'terms of reference' of the Lockhart Inquiry.¹ The numbers at the end of each heading indicate the particular term of reference to which the comment is intended to respond.

Re developments in medical research and scientific research and the potential therapeutic applications of such research :

1 (i) (b)

I am not a scientist, so I have to rely on what others say about the therapeutic potential of various kinds of stem cells. I understand that (a) stem cells from sources other than embryos are increasingly being revealed to have the same (or a very similar) capacity for differentiation as have those from human embryos, and that (b) stem cells derived from human embryos are increasingly being revealed to be therapeutically problematic. If those two claims are true, then there is no pressing reason for any change to the current arrangements which govern (and include limitations on) research on human embryos.

With respect to (a) above, I note:

'Stem cells hold enormous promise in the development of new therapies for a wide range of conditions. At this point in time stem cells derived from adult tissues or umbilical cord blood show the greatest clinical application and a rapidly growing repertoire of capacity for transdifferentiation. Coupled with the

*possibility for autologous transplant (and hence immunocompatibility), their stability, and recent expansion in quantities sufficient for therapy, adult and cord blood stem cells must be considered the most feasible options. In contrast, progress using ES cells has been slow and hampered by the risk of tumour formation and immune rejection. The potential use of ES cells derived from human cloned embryos is even more problematic – especially considering that their application as a therapy tailored for one patient would be inordinately expensive.'*²

*'Indeed, stem cell biology can proceed probably pretty well without nuclear transfer, and indeed it is rather likely that nuclear transfer may only have a very limited value in growing stem cells for self transplantation....'*³

*'... recent scientific reports suggest that there may be ways to derive pluripotent and self-renewing human cells – the functional equivalent of embryonic stem cells – without having to destroy human embryos in the process. Four such approaches were surveyed and discussed in a recent report from the President's Council on Bioethics "Alternative Sources of Human Pluripotent Stem Cells". Pluripotent stem cells might be obtainable from already dead (not just unwanted or doomed but actually dead) embryos, some of whose individual cells might nonetheless still be viable; from living embryos by non-destructive biopsy; from bioengineered, embryo-like artefacts; and from reprogrammed body cells, taken from children or adults, that are induced to return to the undifferentiated state of pluripotency.'*⁴

With respect to (b) above, I note :

*'And there's another very important limitation.. which is that the embryonic stem cells themselves are carcinogenic. That is, if you transplant them, you give rise to a particular kind of cancer.'*⁵

In this regard it is worth recalling Lord Robert Winston's recently-reported criticism of scientists for 'hyping' the therapeutic potential of embryonic stem cells: he described their motivation for doing so as, merely, the desire to have the law changed!⁶

Re community standards 1 (i) (c)

First, the Committee should have been asked to consider the *ethical* issues associated with activities governed by *Prohibition of Human Cloning Act 2002* and the *Research Involving Human Embryos Act 2002*. Note, for instance, Lord Winston's plea for more work on animal models prior to experimentation on human cells and other tissue.⁷ His criticism of those scientists who go straight to research on human tissue is a criticism of the lack of *ethical* integrity of those researchers, not a criticism that they are out of line with community standards. As it happens, these are matters on which there are no clear community standards. And indeed, even if there were, it is not obvious that such community standards would settle the *ethical* issues: for, notoriously, communities can accept unethical practices and object to perfectly ethical practices. In this regard I refer the Committee to the Hart-Devlin debate about the proper relationship between ethics and the law.⁸

Secondly, the central ethical objection to destructive research on human embryos is that they are the kind of being which deserve our protection. Various lines of argument can be put forward in support of this view, some of which are, no doubt, more persuasive than others. In my view

the most persuasive reason for thinking that a human embryo deserves our protection is that it belongs to what philosophers call a 'natural kind' (the natural kind constituted by humans) all members of which deserve our protection.⁹ (Morality has always prohibited the taking of (innocent) human life.) On this view, it is not necessary to argue that embryos are human beings, or that embryos are human persons, or that embryos are human individuals: it is enough that they are (embryonic) members of the human kind.¹⁰

In passing, I think that it is critical that the Committee recognizes that the question of whether a human embryo is the kind of being which deserves our protection is *not essentially* a religious question. None of the great books of the three monotheistic religions has anything to say about the moral status of human embryos. Debates about their moral status are debates *within* secular philosophy. (There, the matter is controversial: secular arguments are advanced in favour of, and against, the idea that a human embryo is the kind of being which deserves our protection; but that controversy is a different matter.) So, submissions which dismiss the significance of objections to destructive research on human embryos on the grounds that they are *essentially* religious objections are, in my view, mistaken.

Thirdly, the community continues to be divided on the ethics of destructive research on human embryos. To some, the deliberate destruction of human embryos for research purposes is a matter of little ethical concern. To others it constitutes an ethical obstacle to a range of practices including embryonic stem cell research. Direct evidence of the fact that the community is divided is provided by the recent survey of attitudes to abortion (undertaken by the Southern Cross Bioethics Institute) which revealed both (i) that a majority of Australians presently endorses the current legal regime with respect to abortion and (ii) that a majority of Australians presently thinks that the human embryo is worthy of respect! In

addition evidence is provided by the very persistence of the debate about the moral status of human embryos. At a recent 'Great Stem Cell Debate' in Sydney, which was arranged so as to *exclude* consideration of this issue, the issue nonetheless continued to be raised. Even though the speakers were carefully chosen from amongst that part of the community which is not opposed to destructive research on human embryos, they frequently engaged with this central ethical issue *as though it still needed to be addressed*. And, predictably, the issue was raised once others in the audience (myself included) were invited to take part. So a debate which was intended to bypass this issue ended up focussing directly on it: that I take to be evidence of its relevance, and of the continued community division on the matter.

Fourthly, there has been almost no debate about whether the law should be changed to permit the creation of human embryos for research purposes. A few scientists argue in favour of this change (some forthrightly, some by deceptive uses of terms which disguise the fact that they wish to create human embryos for purposes other than implantation in a woman): but they seem to me to be a very few. There has been no *community* debate and, *a fortiori*, no community support for any proposal to amend the law to permit this practice.

Re consideration of relevant aspects of State and Territory legislation corresponding to the *Research Involving Human Embryos Act 2002* : 1 (ii) (a)

There are two ways in which the *Research Involving Human Embryos Act*, and, presumably, the corresponding Acts in the various states and territories, are inadequate:

Inadequacy of definition of 'embryo'

The definition of embryo contained in the Act is circular: the Act defines an embryo by using the term embryo. So it does not distinguish (a) a human cell that is capable of some development from (b) a human cell that is oriented to that particular type of development that may result in a child being born, given a favourable environment. This confusion has clear implications for somatic cell nuclear transfer and other alternatives to fertilization. The absence of a clear definition undermines both the *Prohibition of Human Cloning Act 2002* and the *Research Involving Human Embryos Act 2002* as a whole, it undermines everything said about 'hybrid embryos', 'chimeric embryos', 'prohibited embryos', 'human embryo clones', 'excess ART embryos', etc. It undermines the guidelines issued by the Australian Health Ethics Committee on record keeping and data reporting, allowing arrangements on these matters to differ from clinic to clinic. It undermines data on success rates using different culture media and thawing techniques. It undermines regulations relating to importing and exporting of embryos. It undermines the claim that a 'strict regulatory regime' obtains with respect to research on human embryos: for it is open to a clinic or laboratory to make its own determination about whether what it has formed is an embryo or not. The inadequacy of the definition means that scientists can get around the current prohibition on the creation of human embryos for research purposes.

There are various ways in which this inadequacy could be fixed. The Acts could be amended. The Licensing Committee could be directed to add an adequate definition of an embryo to the guidelines under which it issues licenses. One way or another, I recommend the following definition of the word 'embryo' for the Committee's consideration:

- i) the cell formed by the fusion of an ovum and a sperm and the organism that normally develops from that cell; or
- ii) any cell or organism, however formed, that may be distinguished from ordinary cells by having a potential to develop in an integrated way towards forming a foetus, similar to the potential of the cell formed by the fusion of an ovum and a sperm.

Ambiguity in definition of 'excess ART embryo'

There is an important ambiguity in the notion of an 'excess ART embryo'. As the debates at the time of the passing of these Acts reveal, the legislators intended that the expression should refer *only* to those embryos which become excess to the 'treatment' needs of women or couples seeking assisted reproduction. However, with the lapsing of the prohibition on destructive research on human embryos created after 5 April 2002, the question arises whether embryos which are not to be implanted (for one reason or another) may immediately be deemed to be 'excess ART embryos'. To put the matter another way: clinics may expand the category of 'excess ART embryos' to include not just embryos 'greater in number than are needed for implantation' but also embryos 'never to be implanted because they are "unsuitable" for implantation'.

This matter should be clarified. Excess should be defined to mean 'surplus' and not (also) 'unsuitable for implantation'. The definition of 'excess ART embryo' needs to be amended so that the legislation's so-called 'strict regulatory regime' limits research on human embryos to those which become surplus *only* after the woman and spouse have made a decision not to continue with ART treatment.

The role played by State and Territory statutory bodies that regulate assisted reproductive technology (ART) treatment as well as role of national organisations including, but not necessarily limited to, the Fertility Society of Australia and its Reproductive Technology Accreditation Committee (RTAC): 1 (ii) (b)

The Fertility Society of Australia's Reproductive Technology Accreditation Committee does not monitor compliance with ethical guidelines. (The experience of the Donor Conception Support Group, with respect to the overseeing of proper record-keeping in clinics, and with respect to the encouragement of past donors to come forward and be identified, shows this.) Nor do individual Human Research Ethics Committees: they are too busy, and their membership is not appropriate for monitoring compliance with ethical guidelines. There is, thus, a significant gap in the arrangements for monitoring the compliance of IVF clinics with ethical guidelines.

Re implications for Australian science and economic activity : 1 (ii) (g)

Given the progress which has been made in developing the therapeutic potential of non-embryonic stem cells, I submit that there is *less* reason now than there might have been thought to have been in 2002 for legislators to permit creation of human embryos for research.

Footnotes

1. The Legislation Review Committee - *Prohibition of Human Cloning Act 2002* and the *Research Involving Human Embryos Act 2002* is required to consider and report on the scope and operation of each of the *Prohibition of Human Cloning Act 2002* and the *Research Involving Human Embryos Act 2002* taking into account:

(i) the following statutory requirements:

a) developments in technology in relation to assisted reproductive technology;

b) developments in medical research and scientific research and the potential therapeutic applications of such research;

c) community standards;

d) the applicability of establishing a National Stem Cell Bank; and

(ii) the following additional matters in relation to the national legislative scheme:

a) consideration of relevant aspects of State and Territory legislation corresponding to the *Research Involving Human Embryos Act 2002*.

b) the role played by State and Territory statutory bodies that regulate assisted reproductive technology (ART) treatment as well as the role of national organisations including, but not necessarily limited to, the Fertility Society of Australia and its Reproductive Technology Accreditation Committee (RTAC);

c) the effectiveness of monitoring and compliance under the *Research Involving Human Embryos Act 2002* in particular, but also in relation to the *Prohibition of Human Cloning Act 2002* to the extent that issues may arise in relation to the latter Act;

d) the ongoing appropriateness and effectiveness of changes to the Customs regulations to regulate the export of human embryos derived through ART and the import of viable materials derived from human embryo clones;

e) options for regulation of the import and export of human embryonic stem cells;

f) the implications of cost recovery; and

g) implications for Australian science and economic activity.

2 Gregory Pike: Southern Cross Bioethics Institute: Briefing Note on Stem Cells (unpublished manuscript), 2005

3 Lord Robert Winston: Engineering Reproduction: Will we still be human at the end of the 21st century? <http://www.abc.net.au/rn/deakin/docs/winston.doc> (accessed on 15th September 2005)

4 *Washington Post*, 12 July 2005

5 Peter Rathjen : interviewed on ABC Radio National's PM program on 5th September 2005, <http://www.abc.net.au/pm/content/2005/s1453722.htm> (accessed 7th September 2005)

6 'Mark Colvin : Britain's famous science broadcaster and expert on reproductive technology, Lord Winston, says the potential benefits of embryonic stem cell research are being hyped.' ABC Radio National's PM program of Monday 5th September. <http://www.abc.net.au/pm/content/2005/s1453722.htm> (accessed 7th September 2005)

7 Lord Robert Winston: Engineering Reproduction : Will we still be human at the end of the 21st century? <http://www.abc.net.au/rn/deakin/docs/winston.doc> (accessed on 15th September 2005)

8 H.L.A. Hart, *Law, Liberty and Morality*, Oxford, Oxford University Press, 1963. Patrick Devlin: *The Enforcement of Morals*, London, New York and Toronto, Oxford University Press, 1965.

9 'Objects belonging to a natural kind form a group of objects which have some theoretically important property in common. For example, rabbits form a natural kind, all samples of gold form another, and so on. Natural kinds are contrasted with arbitrary groups of objects such as the contents of dustbins, or collections of jewels. The latter have no theoretically important property in common; they have no unifying feature. Natural kinds provide a system for classifying objects. Scientists can then use this system to predict and explain the behaviour of those objects.' *The Concise Routledge Encyclopedia of Philosophy*, Routledge, London and New York, 2000.

10 It might be objected that acceptance of such a view would commit one to opposing those current Australian laws which permit abortion. This is not so: ethical and legal questions about abortion involve complex issues to do with pregnancy, women and their partners, the relation of morality to the law, etc., which are not at issue in discussions about the ethics of destructive research on human embryos.

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Editor: Bernadette Tobin

Layout: Linda Purves

Subscription is \$65.00 (Institutions), \$40.00 (Individuals), \$20.00 (Students or Pensioners)
\$15.00 (airmail post/overseas subscriptions) + 10% GST

Plunkett Centre for Ethics in Health Care, St Vincent's Hospital, Darlinghurst NSW, 2010

ISSN 1037-6410

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