

DIVERSITY AND DELIBERATION

Bioethics Commissions and Moral Reasoning

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ABSTRACT

This article considers the sort of diversity in perspective appropriate for a presidential commission on bioethics, and by implication, high-level governmental commissions on ethics more generally. It takes as its point of comparison the respective reports on human cloning produced by the National Bioethics Advisory Commission, appointed by President Bill Clinton, and George W. Bush's President's Council on Bioethics, under the leadership of its original chair, Leon Kass. I argue that the Clinton Commission Report exemplifies forensic diversity (the type of diversity between contesting parties in a legal case), while the Kass Council Report exemplifies academic diversity (the diversity found in a medieval *disputatio*). Drawing upon Thomas Aquinas, I argue that the type of diversity most appropriate for such advisory bodies is *deliberative diversity*, which facilitates the President's process of taking counsel. After considering their respective charges, I suggest that neither the Clinton Commission nor the Kass Council possessed an adequate degree of deliberative diversity for their respective tasks.

KEY WORDS: *U.S. Presidential Bioethics Commissions, forensic diversity, academic diversity, deliberative diversity, disputatio*

1. Introduction

In March 2004, a newly heated current of political controversy swirled around the President's Council on Bioethics, which had been constituted by George W. Bush in November 2001, with Leon Kass as its chair (the "Kass Council") (Anderson 2004; Bailey 2004; Blackburn and Rowley 2004; Blumenstyk 2004; Elliott 2004; and Meilaender 2004). At the time of its inception, critics charged that the Kass Council did not evince sufficient ideological balance (Groopman 2002; Weiss 2002). Nonetheless, it went on to produce several well-respected reports, including a highly regarded assessment of human cloning (President's Council on Bioethics 2002).

Unfortunately, the original controversy regarding the composition of the Kass Council was reignited by the President's decision to reappoint

all but two of the eighteen members to an additional two-year term. One of the members who was not reappointed was William F. May, an eminent religious ethicist from Southern Methodist University. The other was Elizabeth Blackburn, a highly respected cell biologist from the University of California, San Francisco. Because Yale Law Professor Stephen Carter had resigned at an earlier date, three new members were added to the Council to restore its full complement of eighteen. They were Benjamin Carson, a director of pediatric neurosurgery at Johns Hopkins and a Seventh Day Adventist, Diana Schaub, a former student of Leon Kass, who teaches in the Department of Political Science at Loyola-Baltimore, and Peter Lawler, a conservative Catholic political philosopher who teaches at Berry College in Georgia.¹

The opening salvo in the debate was fired by Elizabeth Blackburn herself, in an opinion piece published in the *Washington Post* (Blackburn 2004). She maintained that from the very beginning, the Kass Council's deliberations had favored the conservative views of the President and the Chair. In her view, the recent changes to the membership had resulted in a "loss of balance in the Council, both professionally and philosophically." Leon Kass responded with a vigorous opinion piece of his own, entitled "We Don't Play Politics with Science" (Kass 2004). He contended that his Council was "easily the most intellectually and ethically diverse of the bioethics commissions to date," asserting that it "was and remains diverse by design."²

The controversy over the mid-course change in personnel on the President's Council on Bioethics raises a fundamental question that ought to be of interest to anyone concerned about public deliberation about controversial moral issues in our pluralistic society: Exactly what sort of diversity is appropriate for a commission on bioethics, or more generally, a commission on any topic with controversial moral implications, constituted at the highest levels of our national government? I will explore this

¹ A full list of the current and former membership of the Council can be found at <http://www.bioethics.gov/about/>.

² Kass's claim that the accusations of ideological partisanship were "malicious and false" was not persuasive to bioethicists and research scientists, two segments of the academic world that were a natural audience for its deliberations. Over one hundred scholars interested in bioethics signed an open letter to President Bush that protested the decision not to reappoint May and Blackburn (Caplan et al. 2004). The letter asserted that the "credibility of the council is severely compromised" because of its lack of a "wide range of opinions" on the "controversial ethical issues" that come before the Kass Council. The American Society for Cell Biology concentrated on the failure to reappoint Blackburn. "Even before Dr. Blackburn's dismissal," stated the ASCB President Harvey Lodish, "scientists were heavily outnumbered by nonscientists with strong anti-research ideological views" (American Society for Cell Biology 2004). Furthermore, Kass's spirited defense of the ideological diversity of his Council was not helped by the enthusiastic endorsement of the personnel changes by prominent conservative and pro-life groups (Family Research Council 2004; LifeSite 2004).

question in this essay, taking as my case studies the reports on cloning produced by the Kass Council and its predecessor, the National Bioethics Advisory Commission appointed by President Bill Clinton (the “Clinton Commission”).

Why these case studies? First, it is an appropriate time to take comparative stock of the very different operational styles of these two commissions. The charter of the National Bioethics advisory Commission expired in October 2001; a month later, George W. Bush created his own President’s Council on Bioethics, with Leon R. Kass as its chair and guiding force. Although that Council remains active, Kass resigned as chair in September 2005, after serving two two-year terms. The era of the “Kass Council”—the era of Leon Kass’s strong and distinctive mark upon its work—has now come to an end (Holden 2005). Second, because the two commissions have addressed some of the same topics within a relatively short time span, a direct comparison of their modes of proceeding is possible. In my view, such a comparison is particularly fruitful with respect to their respective reports on cloning, which have received the most sustained attention from both scholars and the general public. The Clinton Commission issued its report, *Cloning Human Beings* (1997), just a few months after the appearance of Dolly, the cloned sheep, caused widespread public consternation. The first report issued by the Kass Commission was *Human Cloning and Human Dignity* (2002); widely scrutinized, it decisively established the distinctive intellectual style of Leon Kass’s leadership.

In examining these two reports, my focus will not be upon the substantive positions they take on issues like the morality of human cloning and the appropriate legal and regulatory framework to deal with that practice. Instead, I will concentrate on the way that these reports, and the commissions that produced them, instantiate very different conceptions of the sort of diversity that is appropriate on a governmental body such as a presidential commission on ethics in a pluralistic society such as our own.

One initially attractive possibility is for such commissions to pursue political diversity, arguing that the fundamental issues at stake are matters that concern every citizen in our democracy. In this scenario, the purpose of diversity would be to assure the broad political legitimacy of the results of the commission; its goal would be to demonstrate to citizens across the country that their perspectives are represented in the conversation. Immediately, however, doubts about the wisdom of this course of action arise. While the presidential charges given to the Clinton Commission and the Kass Council differ in important ways (as we shall see below), the primary responsibility of both bodies was to identify and resolve the factual, moral, and jurisprudential complexities necessary to forge a coherent national policy with respect to human cloning. The general sort of diversity most necessary for this task is not political diversity,

but epistemic diversity. In other words, a national bioethics commission needs the sort of diversity in membership that provides it with the necessary knowledge, expertise, and judgment to perform its assigned task.

Epistemic diversity, however, is a general category and not a particular one. The particular form it ought to take depends upon the particular context in which it is sought. In my view, three types of epistemic diversity are relevant for our consideration: (1) forensic diversity, modeled on the diversity of perspectives dealt with in a trial within the American legal system, (2) academic diversity, best exemplified by the medieval practice of *disputatio*, and (3) deliberative diversity, which is outlined in the Thomistic (and, ultimately of course, Aristotelian) practice of taking counsel as a key requirement of practical reason. I will suggest that forensic diversity best captures the stance of the Clinton Commission, while the Kass Council exemplifies key features of academic diversity.³ In my view, however, neither body scores sufficiently high on the scale of deliberative diversity, which would have been the particular type of epistemic diversity most appropriate for their respective tasks.

2. Forensic Diversity and the Clinton Commission

The adversary system, the linchpin of the American system of justice, is often defended on the grounds that it is more likely to produce the most knowledge possible—dare we say, to get at the truth—regarding a particular event or situation. The diversity in perspective inherent in the adversary system is located at the level of the competing parties and their attorneys. The lawyer for the plaintiff and the lawyer for the defendant are expected to advocate vigorously on behalf of their respective clients, whose interests are understood to be diametrically opposed. Fundamentally, each lawyer is committed to an end result: “victory” for the client (for example, an acquittal if the lawyer represents a criminal defendant).⁴ The “theory of the case,” along with the supporting arguments and legal analysis, are instrumental; they are designed to achieve victory for the client. A lawyer’s commitment to the framework of the adversary system is expected to be virtually absolute. It would be a very bad defense lawyer who would publicly say, after hearing the plaintiff’s case, “You are right: my client does deserve to lose.” In fact, such a response would likely

³ I do not mean to suggest that the Kass Council has deliberately followed the model of the medieval *disputatio*, any more than I mean to suggest that the Clinton Commission deliberately modeled themselves on the pattern of a judge hearing a legal case. I mean only to suggest that the proceedings of both the Kass Council and the Clinton Commission are illuminated by the respective comparisons.

⁴ The situation is different, at least theoretically, with respect to prosecutors; they are ethically obliged to seek the conviction only of those they believe legally guilty of committing a crime.

trigger a malpractice claim and an investigation for a violation of legal ethics.

Within the polar diversity of the contending parties is situated a more variegated diversity, in the form of testimony supplied by witnesses, as well as by other forms of evidence. Witnesses may have overlapping perspectives; evidence may be suggestive but not probative. A party's success depends on being able to integrate key pieces of testimony and other evidence into its "theory of the case" in a persuasive way. The pieces of gray or motley-colored mosaic supplied by the evidence will blend into a solid, clear color indicating a verdict. Ultimately, the decision is black or white.

Where, then, can limits on diversity in the adversarial system be found? Primarily, in the role and function of the finder of fact. The fact-finder is not supposed to be "relevantly" diverse with respect to the plaintiff or the defendant; whether judge or jury, the fact-finder is supposed to be neutral, untainted, and unbiased.⁵ The black robe of the judge symbolizes a commitment to subsuming personal identity into an institutional role. The jury is spoken of as a corporate entity, not as a collection of distinct individuals. Both judges and potential jurors are expected to decline to participate in cases in which they have any direct personal interest.

The power of the fact-finder is both nearly absolute and nearly absolutely restricted. It falls to the fact-finder to decide which of the competing visions of reality presented by the litigating parties is the more persuasive.⁶ There is very little room in the system for creativity on the part of the fact-finder, who is not permitted to propose a new theory of the case or even to forge a creative resolution that takes into account the legitimate interests of both parties.⁷

The strengths and limitations of the forensic model of diversity as a means for achieving knowledge follow directly from its structure. The adversary system is best suited to answer rather blunt questions regarding events that took place in the past. The questions it is designed to answer are narrow and carefully framed, calculated above all to determine whether or not a particular legally significant event occurred. Did or did not the defendant commit tortious act X against the plaintiff at time Y in the past? If so, what is the dollar equivalent of the harm

⁵ In some cases (for example, bench trials), judges not only rule on matters of law, but also serve as fact-finders.

⁶ I omit discussion of some of the "safety valves" the system has provided against unreasonable finders of fact, such as the possibility for a judge in a civil case to grant a motion for judgment notwithstanding the verdict.

⁷ The limited possibilities for creative resolutions of disputes within the legal system are one reason that the practice of mediation is growing in popularity.

caused to the plaintiff by this past action? The adversary system, and its particular framework of extreme but bounded diversity, is not designed to generate the more open-ended analysis necessary to chart a *future* course of action.

In my view, the structure of the Report (National Bioethics Advisory Commission 1997) produced by the Clinton Commission, and the function of the Commission as demonstrated in that Report, demonstrates an orientation toward epistemic diversity that is remarkably similar to that found in the legal system. Most strikingly, the members of the Clinton Commission presented themselves very much like a neutral fact-finder does in a legal case. The individual personalities of the particular members are virtually invisible in the Report; virtually no trace appears of the ultimate normative commitments of any member, or even of the framework they advocate for approaching bioethical questions.⁸

This approach is not surprising when one looks at the membership of the Commission. The vast majority of the members would identify their academic discipline as “bioethics,” which has emerged as a field dedicated to the procedural resolution of substantive disputes involving medicine and morality in a pluralistic society. The field of bioethics has increasingly adopted a self-understanding and self-presentation as in some sense standing “above” the competing thick theories of the good life that generate strongly contending views on controversial moral issues—rather like a fact-finder stands above the competing theories of the litigants. Indeed, neither the Clinton Commission nor a clearly identifiable subset of it forcefully proposes and defends a particular moral or jurisprudential stance in the course of the Report.⁹

Moreover, the Report reveals that the Clinton Commission functioned much as a judge does in a bench trial. The fact that the Commission heard a significant amount of testimony is apparent in the text of the Report, which on occasion presents verbatim excerpts from such testimony (National Bioethics Advisory Commission 1997, 72, 76). Significantly, the Report does not proceed by presenting any dialogue that occurred between the witnesses and Commission members, nor does it present the Commission’s assessment of each particular issue under consideration in mid-course. Judges in bench trials do not enter into a dialogue with witnesses.

⁸ For example, Clinton Commission member James Childress is co-author of one of the most prominent and well-regarded texts in the field, *Principles of Biomedical Ethics* (Beauchamp and Childress 1994). Nonetheless, the governing moral analysis of the Report was not conducted in terms of “prima facie duties,” the framework advocated in that text. A list of the members of the Clinton Commission can be found at <http://www.georgetown.edu/research/nrcbl/nbac/about/nbacroster.htm>.

⁹ For reflections on the evolution of the field of bioethics, see Johnsen 1998; Evans 2002; and Walter and Klein, eds. 2003.

In addition, the Clinton Commission appears to conceive of its function as adjudicating between two contesting parties—those who favor producing a child by somatic cell nuclear transfer and those who oppose doing so. It is striking that the Commission works hard to find and present both “sides” of the issue, even in cases where they arguably do not exist. In my view, for example, the conclusion of the Commission regarding the religious perspectives on human cloning far exceeds the evidence, which it presents. The Commission concluded:

The wide variety of religious traditions and beliefs epitomizes the pluralism of American culture. Moreover, religious perspectives on cloning humans differ in fundamental premises, modes of reasoning, and conclusions. As a result, there is no single “religious” view on cloning humans, any more than for most moral issues in biomedicine [National Bioethics Advisory Commission 1997, 57].

In fact, as I have argued more extensively elsewhere (Kaveny n.d.), the material presented in the Clinton Commission Report suggests that there is a substantial consensus across religious communities against producing a child via human cloning, with one or two rather extreme and far-fetched examples being proposed as cases for narrow exceptions.

Finally, and most significantly, the question the Clinton Commission formulated and answered was as narrow as possible in scope. The Commission decided that it was morally and legally justified to prohibit producing a child by somatic cell nuclear transfer, because of the significant risk of physical harm to a cloned child and to the woman who carried it to term. Just as judges normally refrain from opining on issues not necessary to decide the case before them, so too the Commission refrained from rendering its judgment on broader questions, such as whether producing a cloned child would be justifiable when and if safety issues were resolved.

Not surprisingly, the Clinton Commission’s forensic approach to addressing the issue of cloning bears the disadvantages associated with such an approach. Most importantly, although it is capable of resolving a narrow, immediate question (that is, the legitimacy of producing a cloned child now), this approach provides us with no clear way forward, no clear method of addressing the questions that will arise in the near future. The polarized diversity characteristic of the forensic approach to resolving issues does not promote compromise or creative solutions, or even encourage the identification of common ground. Indeed, we see very little effort on the part of the Clinton Commission to minimize, mediate, or partially synthesize the conflicting testimony presented by the various witnesses brought before it. Consequently, the Report leaves us with no well-defined way to proceed in our moral and jurisprudential

deliberations, but simply with a call to continue deliberating and discussing the matter.¹⁰

3. Academic Diversity and the Kass Council

The Kass Council Report on cloning bears few, if any, marks of the forensic model adopted by the Clinton Commission. In my view, the diversity it seeks is best understood, not by analogy to forensic diversity, but by reference to academic diversity, the most outstanding model of which is the medieval practice of *disputatio*.¹¹ The *disputatio*, or disputed question, was a form of philosophical and theological speculation that dominated the curriculum of the European universities of the thirteenth and fourteenth centuries.¹² A commonly cited definition of the *disputatio* is as follows:

It is a regular form of teaching, apprenticeship, and research, which is presided over by the master. Characterized by a dialectical method, it consists in the marshaling and examination of opposing arguments, furnished by the participants and grounded in reason and authority, concerning a theoretical or a practical problem. It is the task of the master to reach a doctrinal solution by an act of determination, which act confirms him in his role as master [my translation].¹³

Two types of *disputationes* regularly occurred in the University of Paris (and Oxford University) in the thirteenth century: (1) *private* disputations, which took place between a master and his students; and

¹⁰ For an analysis of the impact of the Clinton Commission on the public discussion by the Rand Corporation, see Eiseman 2003.

¹¹ The *disputatio* has roots in forms of education and research developed in classical times. See Hadot 1982, 8: “Nous avons donc pu distinguer dans l’Antiquité deux grandes formes littéraires: le genre zététique et le genre systématique, le genre zététique se subdivisant en discussion dialectique d’une part et exégèse des textes d’autre part. Nous retrouvons exactement cette classification au Moyen Age, par exemple dans ce texte de saint Thomas, dans lequel il justifie son projet d’écrire une Somme Théologique. . . .”

¹² On the historical evolution of the *disputatio*, see Bazàn et al. 1985, 25–48. It was both an important pedagogical tool and an important tool of research: “[V]ers 1300, la pratique de la dispute à la Faculté des arts de Paris fut populaire et servait non seulement d’exercice pour les étudiants, mais aussi de véritable forum pour débattre de questions difficiles et importantes” (Weijers 1997, 401). For brief accounts of the *disputatio* in English, see Le Goff 1993, 89–92; Sweeney 2002.

¹³ “Elle est une forme régulière d’enseignement, d’apprentissage et de recherche, présidée par le maître, caractérisée par une méthode dialectique qui consiste à apporter et à examiner des arguments de raison et d’autorité qui s’opposent autour d’un problème théorique ou pratique et qui sont fournis par les participants, et où le maître doit parvenir à une solution doctrinale par un acte de détermination qui le confirme dans sa fonction magistrale” (Bazàn et al. 1985, 40).

(2) ordinary, or solemn *public* disputations, which were events that preempted regularly scheduled classes and were attended by the entire university community (Bazàn 1982, 35).¹⁴ In such public disputations, the master holding the event took center stage. He set the question, which was announced in advance to the participants and to the university community. He also distributed the various responsibilities, presided over the sessions, determined the question, answered the objections, and finally, organized all the material in a written form. There is no doubt that the solemn disputation was the master's show.¹⁵

A public *disputatio* consisted of two sessions, each of which took up a large part of the morning.¹⁶ In the first session, supporting arguments for and against a given question were brought forward. An opponent was appointed, whose job was to raise the arguments against the proposed thesis. In solemn disputations, the opponent could be a bachelor (that is, a graduate student) from another school. A respondent was also named, who was a bachelor of the master. His task was to clear the terrain, answering objections, and providing a preliminary take on the matter. The audience also entered into the discussion; other masters raised questions, then the other bachelors, and finally, the undergraduate students. At the end of the first session, the *disputatio* resembled an intellectual battlefield. Questions were asked, and objections were answered, in no apparent order (Le Goff 1993 89–92; Bazàn et al. 1985, 40–48).

The second session resolved the chaos. It consisted of the magisterial determination of the question raised by the *disputatio*. His task was to coordinate the material presented in the first session into some kind of logical order. This included formulating and arranging the objections raised against his thesis, and briefly responding to those objections. But the bulk of the master's attention was devoted to his own extensive, doctrinally rooted response to the disputed question, which formed the central part of his determination of the issue. In short, the master's task was to give a systemic formulation of the disputed question, to synthesize and order the relevant issues and subissues within the broader framework and language of the discipline in which the question arose (Le Goff 1993, 89–92; Bazàn 1982).

If the Kass Council Report is helpfully illuminated by reference to the medieval practice of *disputatio*, who, then, is the master? Obviously, its chair, Leon R. Kass, M.D. When taken as a whole, the Kass Council

¹⁴ For an account of how the *disputatio* fit into broader university life, see Maierù 1997; Weijers 1995; and Weijers 2002.

¹⁵ La *disputatio* "est une activité propre du maître, dont le rôle magistral est défini par la triple fonction de lire, disputer et prêcher" (Bazàn et al. 1985, 44).

¹⁶ As Wippel describes (1982), quodlibetal questions were more free-wheeling types of *disputationes*, in which the master did not control the questions or even the topics raised.

Report advances a vision of human cloning, and of its relationship to key human values or goods, which is demonstrably consonant with Kass's own view of human cloning and human values.¹⁷ This aspect of the Report is not surprising; President Bush made it clear that he expected Kass's vision to guide the Council, naming him as chair several months before the remaining members were appointed. Moreover, it stands in striking contrast to the method of operation of the Clinton Commission; its chair Harold Shapiro seems to have understood his role as providing procedural and organizational leadership rather than moral and intellectual leadership.¹⁸

The Executive Summary of the Kass Council Report clearly maps out its strategy. The subsection "The Inquiry: Our Point of Departure," clearly states the subject of the *disputatio*: "We have attempted to consider human cloning (both for producing children and for biomedical research) within its larger human, technological, and ethical contexts, rather than to view it as an insulated technical development" (President's Council on Bioethics 2002, XLI). The Kass Council's first—and most decisive—task is to set out the moral framework which structures the subsequent analysis and discussion. The Report, we are told, will assess cloning in terms of the "broad human goods that it may serve as well as threaten" (XLI). Recognizing the importance of terminology, the Council will also develop and defend a vocabulary that will facilitate its moral analysis (XLII–XLIV). It promises also to clearly articulate and defend the action theory that will guide its analysis (XLII), which, as it turns out, is

¹⁷ In my judgment, Kass's article "The Wisdom of Repugnance" (1997) provides much of the framing and general orientation for the approach of the Kass Council Report, particularly that of the majority. For example, Kass criticizes the stance toward cloning taken by professionalized bioethicists in the Clinton Committee Report on the grounds that the field's practitioners "have turned the big human questions into pretty thin gruel" (1997, 18). For similar reasons, the Kass Council Report emphasizes that it is produced by "a Council *on* Bioethics, not a council *of* bioethicists" (XVII). The Kass Council Report's sense of the human urgency of human cloning, and its willingness to draw upon sources of moral wisdom far broader than analytic philosophy, are also signaled in the article, as is the attention the Report pays to the manner in which cloning might affect the moral meaning of human reproduction, which is portrayed as intimately connected to its natural meaning. To give a concrete example, a sentence from "The Wisdom of Repugnance" (Kass 1997, 18) nicely foreshadows the themes and tenor of the Kass Council Report: "The stakes are very high indeed. I exaggerate, but in the direction of the truth, when I insist that we are faced with having to decide nothing less than whether human procreation is going to remain human, whether children are going to be made rather than begotten, whether it is a good thing, humanly speaking, to say yes in principle to the road which leads (at best) to the dehumanized rationality of *Brave New World*." See also Kass 2001.

¹⁸ It is striking, in my view, that when Leon Kass was its Chair, the President's Council on Bioethics was frequently referred to as the "Kass Council" or "the Kass Commission," while the Clinton Commission was rarely referred to as the "Shapiro Commission," after its chair Harold Shapiro.

firmly rooted in the Aristotelian-Thomistic tradition (see 44–47 in the main body of the Report).¹⁹ The Council will also review the scientific background (XLIV–XLVI), to insure that all are equally informed about the facts relevant for moral analysis. In short, the Executive Summary outlines a strategy whereby the Council can put in place the essential factual and moral presuppositions to guide the ensuing discussion. By so doing, it can create for itself the basic working elements of a common tradition of moral inquiry, which arguably does not fully exist in our society. These elements are worked out in some detail in Chapters One through Four,²⁰ which are the necessary prolegomena to the Kass Council's moral analysis.

The heart of the Kass Council Report can be found in Chapters Five and Six, which deal with the moral issues raised by human cloning. Both of these chapters are structured in ways that are broadly reminiscent of a *disputatio*. Consider first Chapter Five, which takes up the topic of cloning-to-produce-children. Although no member of the Commission supports this practice, the case *for* it is outlined first, just as the objections come first in the written resolution of a *disputatio*. A response to the positive case for cloning-to-produce-children comes next; it is followed by a synthetic conclusion, which presents the case against cloning-to-produce-children in terms of the broad moral framework generated in the first four chapters of the Report.

The topic of cloning-for-biomedical-research generated more than theoretical disagreement among the members of the Commission, which appeared to be rather evenly divided about the moral issues involved. Nonetheless, the rhetoric and structure of the analysis in Chapter Six overwhelmingly favors the case *against* such cloning. The table of contents indicates that the case *for* cloning-for-biomedical-research is set out in about twenty-seven pages (143–70). However, a close analysis from a rhetorical and structural perspective suggests that the case *for* such cloning is significantly undermined in the very course of making it.

How, exactly, does this undermining occur? First, the section defending cloning-for-biomedical-research is immediately preceded by a brief meditation on the “human meaning of healing” (138–43).²¹ That meditation substantially undercuts the existential imperative of

¹⁹ “The act itself (*what*) may be accomplished by a variety of means or techniques (*how*) and it may be undertaken for a variety of motives or purposes (*why*)” (President’s Council on Bioethics 2002, 44).

²⁰ Chapter 1 is entitled “The Meaning of Human Cloning: An Overview,” Chapter 2 is “Historical Aspects of Cloning,” Chapter 3 is “On Terminology,” and Chapter 4 is “Scientific Background.”

²¹ The meditation echoes general themes on the limits of medicine both with respect to ends and to means that Kass has written about previously (See, for instance, Kass 1985; Kass 1989).

cloning-for-biomedical-research before it is even made. For example, the meditation emphasizes that suffering is inevitable in human existence, as well as the fact that the duty to relieve suffering is an imperfect duty, which “does not trump all other considerations” (141). From a rhetorical perspective, this meditation saps the urgency of those who will argue in ensuing pages that relief of suffering is a primary moral obligation.

Second, only five of the twenty-seven pages allegedly devoted to the case *for* cloning-for-biomedical-research actually deals with the *promise* of such cloning to relieve suffering (145–50). Attention quickly turns to the “Possible Moral Dilemmas of Proceeding.” Seventeen pages are devoted to considering whether strict limits will be effective (150–67), while only three pages are devoted to the case for going forward without any limits whatsoever (167–70). Throughout this section—which is nominally devoted to the case *in favor of* cloning-for-biomedical-research—scant attention is paid to the hopes of such research, or to the ravages caused by the diseases that it targets. In contrast, vivid and extensive consideration is given to the possibility that research based on human cloning will dehumanize the embryo and desensitize the society to questions of human dignity. Structurally and rhetorically, therefore, the argument in favor of cloning-for-biomedical-research is cast in an extremely fragile and defensive posture.

As with a medieval master’s written resolution of a disputed question, the framing and presentation of the objections to his thesis in the first part of the *disputatio* in fact prepare the way for the persuasive articulation of that very thesis in the heart of the question. For example, the very fact that so much of the case *in favor of* cloning-for-biomedical-research consists of justifying the feasibility of moral and regulatory *limits* on the practice invites the reader to consider whether the practice is simply too dangerous to human goods to be allowed to proceed in any form. In fact, the Kass Council goes on to devote an additional twenty-four pages to the case against cloning-for-biomedical-research, which makes this very argument (170–94).

The Kass Council Report on cloning exhibits many of the strengths characteristic of the *disputatio*, most notably the striking combination of a clear normative vision—held by Kass and the majority—with a commitment to vigorous engagement with alternative viewpoints. In addition, the Commission has attempted to encourage the reading and discussion of key texts, by publishing a reader containing a wide range of interdisciplinary readings from the Western canon that it believes are helpful in forming a moral perspective on human cloning (President’s Council on Bioethics 2003). Indeed, in marked contrast to the Report produced by the Clinton Commission, the Kass Council Report is striking for the degree to which it relies upon works of literature, such as Huxley’s *Brave New World*, to illuminate the moral implications of cloning. This high

regard for the teaching and learning of key texts is by no means foreign to the medieval tradition, in which the practice of *lectio*, or the careful reading of texts in a pedagogical setting, gave rise to and supported the *disputatio* (Bazàn 1982).

However, there are drawbacks to this model as well. The medieval practice of *disputatio* depended on the existence of a well-formed and well-functioned tradition of inquiry, of which masters exhibited complete command and into which students were initiated over the course of years of study.²² The Kass Council is open to the question of whether it has in fact attempted to create a *virtual* moral tradition in which to situate its analysis of human cloning, a tradition which in fact belongs to no one, except perhaps, Leon Kass himself. As many commentators have pointed out (including me; see Kaveny 2004), the moral language the Kass Council Report draws upon is “rich” and evocative. However, the “richness” of the Report may in part be a function of the reader’s inchoate awareness that many of its morally dense terms are susceptible of multiple meanings, which may or may not all be compatible.

In addition, the Kass Council Report may trigger a sense of consternation among those who disagree with its fundamental stance, precisely because it closely resembles the *disputatio* in terms of the role and place it gives to diverse opinions. Diverse opinions are treated very differently in the *disputatio* than in the forensic model, which is far more familiar to most Americans. In the forensic model, diversity and equality go together; opposing positions are given equal chances to make their own case in their own terms. In the context of the *disputatio*, however, respect for diversity does *not* mean equality. The master is the indisputable center of the event. He presents the opposing views vigorously and sharply, at the same time that he subordinates them to and contextualizes them within his own perspective on the issue at hand. Needless to say, the role and function of the master in the *disputatio* is likely to be controversial in our society. One cannot but wonder if some of Elizabeth Blackburn’s frustration with Kass’s leadership of the Commission was attributable to the unfamiliar way he dealt with diversity of opinion, rather than with his suppression of it.

Finally, the *disputatio* is centrally designed to get to the heart of a speculative or theoretical matter; it is best suited to defending or attacking a proposition regarding what must be true, given certain assumptions. It is not as well equipped to make determinations regarding particular contingent events in either the past or the future. More specifically, it is not designed, as the adversarial system is, to get at the truth regarding

²² Bazàn 1982 shows how the evolution of the genre from *lectio* to *questio* to *disputatio* is accompanied by an evolution in the common assessment of the proper attitude toward tradition, toward a position more open to its deliberate development.

a humanly significant event that took place in the past; there is no room, for example, for examination of witnesses and assessment of their credibility. Nor is the *disputatio* well-suited to make a prudential judgment regarding a particular course of action to be taken in the future, which would require making judgments about a number of contingent factors, and aggregating probabilities about the likely outcomes of certain related actions and events.

It is not surprising, therefore, that the analysis of Chapters Seven and Eight of the Kass Council Report, which deal with policy issues, is substantially less compelling than that of Chapters Five and Six, which grapple with the moral significance of human cloning in light of enduring aspects of human nature. In sharp contrast to the subtlety of the Commission's moral analysis, its legal analysis is rather rudimentary; the Commission appears to focus solely on the prospect of a (criminal) ban. No systematic consideration is given to jurisprudential concerns; the relationship between law and morality in a pluralistic society receives virtually no discussion. Furthermore, the chapters devoted to public policy pay scant attention to the contingencies involved in making law and policy; they do not examine how well the proposed ban would fit in with existing law in related areas, either with respect to its normative pre-suppositions or with respect to its practical workability. In short, the chapters on law and public policy appear to be little more than an appendage to the chapters discussing the moral issues raised by human cloning.

4. Deliberative Diversity and Practical Decision-Making

There is, however, a third way of conceiving of epistemic diversity. Unlike the forensic model, it is not focused on determining the events of the past. Unlike the academic model, it is not best suited to determining theoretical truths, unencumbered by the contingencies of deciding upon a course of action here and now. In fact, this model of diversity, which I call deliberative diversity, finds its home in the practical realm, in the context of deliberating about—and then deciding upon—what to do. In developing my understanding of deliberative diversity, I will draw upon the account of how practical reason operates, and the virtues that dispose it to operate well, developed by Thomas Aquinas.

How do we decide what to do? According to Thomas, we begin with the end. More specifically, we begin with the end, which we desire to achieve. "I want," I say, "to go to my office." It is the task of reason to take *counsel*, to deliberate on various possible means to the desired end (*Summa Theologica*, I-II, Q. 14). "Should I call a taxi? Should I drive myself? Should I take the bus?" Reason then makes a *judgment* regarding the fruit of these deliberations (ST I-II, Q. 14, A. 1). "The bus is the best

option, since there is no parking and it is cheaper than the taxi.” The will *consents* to the outcome of reason’s deliberation regarding means (ST I-II, Q. 15), and resolves to put reason’s plan into action through an act of *choice* (ST I-II, Q. 15, A. 3, Rep. ob. 3). The reason *commands* the relevant power of the person to do what is necessary (walk to the bus stop) (ST I-II, Q. 17, A. 1), and the will makes *use* of that physical action to achieve the willed end (I actually take the bus, stay on the bus, and get to the office) (ST I-II, Q. 16).

Prudence, according to Aquinas (following Aristotle) is the virtue that encompasses right reason with respect to action (ST II-II, Q. 47, A. 2). Aquinas notes that acting rightly requires an understanding both of the universal principles of reason and of the contingent singulars about which actions are centrally concerned (ST II-II, Q. 47, A. 3). Theoretically speaking, there are an infinite number of contingencies that agents contemplating particular actions need to consider; practically speaking, experience allows us to discount most of those contingencies, most of the time: “Experience reduces the infinity of singulars to a certain finite number which occur as a general rule, and the knowledge of these suffices for human prudence” (ST II-II, Q. 47, A. 3, Rep. ob. 2).

Because prudence deals with both universal principles and contingent singulars, it has a number of integral parts; Aquinas argues that these include memory, understanding or intelligence, docility (that is, a willingness to be taught), shrewdness, an ability to reason, foresight, circumspection (that is, an ability to identify relevant circumstances), and caution (ST II-II, Q. 49). Aquinas also identifies three virtues closely associated with prudence as responsible for guiding these particular elements of the process of practical deliberation. *Euboulia* is the disposition to take good counsel (ST II-II, Q. 51, A. 1). *Synesis* is the disposition of good judgment about particular practical matters; for Aquinas it consists in the cognitive power apprehending a thing just as it is in reality (ST II-II, Q. 51, A. 3). Finally, *gnome* is the virtue of being able to recognize when one has a truly exceptional situation on one’s hands (ST II-II, Q. 51, A. 4).²³

Where in Aquinas’s account of practical reason and its attendant virtues is there room for diversity in perspective? In my view, such room can be found in his recognition of the need to take counsel before acting. Aquinas recognizes:

Choice . . . follows the judgment of reason about what is to be done. Now there is much uncertainty in things that have to be done; because

²³ “Now it happens that something happens which is not covered by the common rule of actions. Hence it is necessary to judge of such matters according to higher principles than the common laws.”

actions are concerned with contingent singulars, which by reason of their vicissitude, are uncertain. Now in things doubtful and uncertain, the reason does not pronounce judgment, without previous inquiry: wherefore the reason must of necessity institute an inquiry before deciding on the objects of choice; and this inquiry is called counsel [ST I-II, Q. 14, A. 1].

Strictly speaking, one takes counsel about the best means to achieve a given end, which is held constant as a principle in one's deliberations; although, as Aquinas notes, what constitutes the "end" in one inquiry may serve as a potential "means" in another (ST, I-II, Q. 14, A. 2). The inquiry conducted by counsel is not formless; it takes its shape not only from the end pursued by the agent, but also from general statements known through the sciences, information received through the senses, and general statements known through practical science or speculative endeavors, such as "adultery is forbidden by God," and "man cannot live without suitable nourishment" (ST I-II, Q. 14, A. 6).

Aquinas notes that the process of taking counsel frequently involves consulting other persons:

Now we must take note that in contingent particular cases, in order that anything be known for certain, it is necessary to take several conditions or circumstances into consideration, which it is not easy for one to consider, but are considered by several with greater certainty, since what one takes note of escapes the notice of another . . . [ST, I-II, Q. 14, A. 3].

What sort of persons should be consulted? In my view, Aquinas's reflections on the virtue of prudence, which is right reason with respect to things to be done, provides some guidance in answering this question. In choosing her counselors, an agent faced with a particularly difficult decision about what to do will seek what I call *bounded diversity*. What are the boundaries? She will not choose someone who will contest the validity of the end she has set for herself. Nor will she choose someone whom she does not believe has a basic grasp of what that end involves, or of the other basic principles (including basic moral principles) that good deliberation presupposes. In short, she will not seek counsel from someone who does not share the basic elements of her moral world view, and who does not understand the basic principles of speculative and practical reason. Finally, she will not seek a diversity between the virtuous and the vicious.

Ideally, all those from whom she seeks counsel will also possess the virtues of *euboulia*, *synesis*, and *gnome*. More specifically, it seems evident that a qualification of membership on a presidential council ought to be *euboulia*, or the willingness and ability to seek counsel before making up one's mind about difficult issues. Religious or political ideologues whose sole concern is advancing the agenda of their constituencies ought

not to be appointed. *Synesis*, or good judgment about practical matters, requires a breadth of experience and education; as a rule “young turks” ought not to serve on such commissions. Finally, *gnome*, or the ability to recognize when one is dealing with a truly exceptional case, is probably the most elusive virtue associated with prudence. Frequently forced to address situations fraught with emotional concerns, committee members must be able to decide when making an exception to a general moral or legal rule is warranted—and when the temptation to make an exception must be resisted. *Gnome* requires a rare combination of intellectual flexibility and moral strength.

Where, then, *should* one seek diversity in the process of taking counsel? In my view, in two particular areas: diversity of knowledge, and diversity of experience. More specifically, a decision-maker will first seek diversity in the possession of theoretical knowledge relevant to the decision to be made. Second, she will attempt to put together a body of counselors that reflect a diversity of practical experience, in order to ensure that her decision takes into account as many ramifications as possible, given the fact that an action inevitably remains a contingent singular.

I suggest that we evaluate the diversity of presidential commissions on bioethics in terms of the requirements of deliberative diversity. More specifically, we should see the President as the deliberating agent, who is seeking *counsel* from the members of such a *council*. The diversity in membership required depends upon the particular question about which the President seeks advice. Seeking certain types of diversity would be highly inappropriate. As I noted above, it would be counterproductive to the deliberative process for the President to seek counsel from someone who doubted the worthwhileness of the end that serves as a basic principle of his deliberations. It would also not be productive for him to appoint someone who called into question his basic principles of morality, including political morality, or common sense truths about the nature of things.

One might object that this approach does not preserve the values of a representative democracy, because it excludes from deliberation those who differ from the President in basic ways. In my view, this objection misses the point. In our democratic republic, a President is elected in part to implement the vision upon which he based his campaign, and in part because people trusted his judgment and ability to deal with unexpected issues that would inevitably arise more than they trusted the judgment and ability of his opponents. It is misguided and unrealistic to think that he will seek the counsel of someone fundamentally opposed to his world view. It is therefore misguided and unrealistic to think that the membership of the Kass Council and of the Clinton Commission would be fungible, even were they given the same set of practical questions to consider.

That said, however, the virtues appropriate to taking counsel are incompatible with selecting a group of “yes-people” as advisors, who are unlikely to provide wide-ranging and perspicacious advice on the particular matter about which the President is deliberating. Consequently, such a commission would profit from diversity of relevant expertise, as well as from diversity in the theoretical and practical approaches to the problem at hand, provided those approaches fall within the moral parameters set by the one seeking counsel, the President.

Unfortunately, in my view, *neither* the Clinton Commission nor the Kass Council exhibited the kind of diversity in membership, which would have allowed them to provide optimum counsel to the President on the matters given to their consideration. What kind of diversity would have been desirable? The answer to this question is not the same in the two cases, for two reasons. First, as I noted above, the basic moral and political commitments of President Clinton and President Bush are significantly different; neither can be expected to appoint members who are diverse with respect to their own fundamental commitments.

Second, the ends, or purposes, for which the two bioethics commissions were constituted are actually quite different. Each therefore requires a different type of diversity in order to provide the President to whom it reports with adequate counsel in his deliberations. How do we identify the respective ends or purposes, which should guide the work of the two commissions? In my view, we should do so by examining the charge given to each commission in the executive order constituting it. This charge identifies the end or purpose of the commission; in Aquinas’s terms, it serves as the end or principle of the deliberations to be conducted by its members with the aim of giving counsel to the President.

Consider first Executive Order 12975, by which President Bill Clinton created the National Bioethics Advisory Commission on October 3, 1995. The order specifies in the pertinent part:

Sec. 4. Functions

- (a) NBAC shall provide advice and make recommendations to the National Science and Technology Council and to other appropriate government entities regarding the following matters:
 1. The appropriateness of departmental, agency, or other governmental programs, policies, assignments, missions, guidelines, and regulations as they relate to bioethical issues arising from research on human biology and behavior; and
 2. Applications, including the clinical applications, of that research.
- (b) NBAC shall identify broad principles to govern the ethical conduct of research, citing specific projects only as illustrations for such principles.

Legal and policy questions are at the heart of President Clinton's concern. His end or purpose is to put in place a coherent body of law and policy on bioethical issues such as human cloning; it is with respect to this objective that he is seeking counsel from his commissioners. What sort of diversity should be exhibited by a deliberative body charged with giving the President of the United States counsel regarding appropriate federal law and policy regarding human cloning? In my view, the membership of that body should prominently include diversity in expertise regarding the relevant areas of law touched upon by human cloning, as well as some diversity in opinion on the proper relationship of law and morality in a pluralistic society. Unfortunately, it is clear that the requisite diversity was not reflected either in the composition of the Commission or in the substance of the Commission Report.

More specifically, the Clinton Commission Report failed to reflect an adequate awareness of the diversity in contemporary jurisprudential perspectives on the relationship of law and morality. As I have argued in more detail elsewhere (Kaveny n.d.), the Commission's legal and jurisprudential analysis was deeply indebted to an important but not uncontroversial strand of liberal legal theory. That jurisprudential approach, most thoroughly developed in the work of Joel Feinberg (1984; 1985; 1986; 1988), argues that the law, particularly the criminal law, should be used only to prohibit actions that wrongfully harm other persons. By narrowly justifying a legal prohibition of cloning-to-produce-children on the basis of the high likelihood that physical harm would result from such a procedure, and expressing significant skepticism about the legitimacy of prohibiting cloning if it were deemed to be physically safe, the Clinton Commission seems to endorse without argument an approach similar to Feinberg's.

There are, however, other ways of understanding the proper relationship of law and morality in a pluralistic society. In my view, the writings of perfectionist liberals such as Joseph Raz (1986) provide greater justification for a society to take into account less tangible but no less real concerns about preserving the values and commitments common to a community in formulating its legal prohibitions. In addition, there are a number of other legal theorists, such as John Finnis (1998), who have attempted to update a "natural law" approach to take into account the particular challenges of making law in pluralistic societies. Moreover, the question of human cloning and the law could be helpfully analyzed from representatives of a law and economics approach, or critical legal studies, or scholars focusing on race and the law or women and the law.

A similar charge can be made with respect to the Commission's understanding of constitutional law. More specifically, the Clinton Commission Report strongly suggested that a constitutional right to privacy might well protect the use of somatic cell nuclear transfer to produce a child

under the aegis of reproductive freedom. It did not, however, mention the very strong arguments that toll against the likely recognition of such a right. Let me mention only two. First, the case law supporting a positive right to reproductive liberty is scant; thus far, such a right has been articulated by one lone district court. Second, the likelihood that the United States Supreme Court will take up the cause of human cloning to justify the creation of a new fundamental right unenumerated in the text of the Constitution, is very slim (Kaveny n.d.).

In view of its specific charge to set an appropriate course with respect to the legal and policy issues surrounding human cloning, it seems clear that the Clinton Commission did not give the President adequate counsel regarding the available options. In my judgment, this failure was due in part to a lack of deliberative diversity in its composition. The Commission of eighteen members included three lawyers, two of whom were academic bioethicists, and one of whom headed a state Department of Public Health. No member of the Commission was a specialist in jurisprudence. Furthermore, the testimony from legal experts before the Commission appears to have been fairly narrow in range.²⁴

What about the Kass Council? Its purpose is set forth in Executive Order 13237, signed by George W. Bush on November 28, 2001. In the pertinent part, it states:

Sec. 2. Mission

- (a) The Council shall advise the President on bioethical issues that may emerge as a consequence of advances in biomedical science and technology. In connection with its advisory role, the mission of the Council includes the following functions:
- (1) to undertake fundamental inquiry into the human and moral significance of developments in biomedical and behavioral science and technology;
 - (2) to explore specific ethical and policy questions related to these developments;
 - (3) to provide a forum for a national discussion of bioethical issues;
 - (4) to facilitate a greater understanding of bioethical issues; and
 - (5) to explore possibilities for useful international collaboration on bioethical issues.

In addition, the Executive Order provides that:

²⁴ The only person with legal training to appear on the list of invited speakers was John Robertson, a bioethicist whose stance toward the relationship between law and morality can be characterized as very similar to (and perhaps more extreme than) Joel Feinberg's liberal subjectivism. Lori Andrews prepared a commissioned white paper offering background on "The Current and Future Legal Status of Cloning," and Bartha Maria Knoppers was invited to submit a paper entitled "Cloning: An International Comparative Overview."

- (c) The Council shall strive to develop a deep and comprehensive understanding of the issues that it considers. In pursuit of this goal, the Council shall be guided by the need to articulate fully the complex and often competing moral positions on any given issue, rather than by an overriding concern to find consensus. The Council may therefore choose to proceed by offering a variety of views on a particular issue, rather than attempt to reach a single consensus position.

In sharp contrast to the Clinton Commission, it is clear that the primary focus of the Kass Council is moral vision, not public policy. The overriding task of the Kass Council is to grapple with “the human and moral significance” of cloning and other developments in biomedicine. It is clear, as well, that President Bush recognized that Americans might hold competing views of the place of various biomedical developments within a well-lived life and a flourishing society. He explicitly called for these competing views to be identified and explored, rather than suppressed in favor of an artificial or premature consensus.

Given President Bush’s basic commitments, and the charge he has given to his Council, what sort of diversity in membership would be most helpful? In my view, it would have been beneficial for the Committee to include several persons who share the President’s deep commitment to a Christian world view, but who draw upon the resources of that world view in different ways in order to address questions in bioethics. Unlike the Clinton Commission, the Kass Council includes a number of prominent public intellectuals explicitly working out of the Christian religious tradition. While the Council as originally constituted included some diversity of moral viewpoints, the vast majority of thinkers publicly associated with a religious tradition overlapped a great deal in their outlook. Robert George, Gilbert Meilaender, and Mary Ann Glendon are all first-rate thinkers; they are also all intimately associated with the religiously and politically conservative viewpoint represented by the journal *First Things*.²⁵ Like George and Glendon, the distinguished philosopher Alphonse Gomez-Lobo is also a conservative Catholic.

A greater degree of breadth in expertise and concern would contribute to the deliberative task of the Council. For example, especially in light of President Bush’s call for the Council to “articulate fully the complex and often competing moral positions on any given issue,” would not it have been helpful to include a religious ethicist whose work has focused on the intersection of biomedical questions with matters of social and economic justice? How do emerging technologies in genetics and biomedicine affect the inequalities between rich and poor, within the United States

²⁵ Bailey 2002 details the connections of several other Council members with *First Things*.

and around the globe? If the rich can buy a better genetic package for their children, will any hope of fair equality of opportunity be destroyed? What is the cost of advances in genetic medicine, how should its benefits be weighed against the cost of providing health care coverage to the approximately 15% of Americans who are uninsured?

One might also ask for greater diversity in perspective on highly controverted issues, such as the status of human embryos less than fourteen days of age. It is true, of course, that many of the Council's research scientists, and some of its moralists not explicitly identified with a religious tradition, supported cloning-for-biomedical-research, which invariably entails the destruction of very young embryos. Significantly, however, only one member of the Council working from an explicitly Christian moral framework supported such research. William F. May, an eminent religious ethicist who is also highly regarded in the field of bioethics, took this position, issuing a separate opinion in the Kass Council Report.

Why does it matter that there should be explicitly Christian articulations of a position supporting cloning-for-biomedical-research? First, it matters because this is a difficult and divisive question within the Christian community, no less than within the American community as a whole. Moreover, significant perplexity about the status of the early embryo is not limited to so-called liberal Christians; the late Methodist ethicist Paul Ramsey grappled with the issue, recognizing the power of the position that before the window for twinning and recombination closed, the embryo was not sufficiently individuated to count as a human being (Ramsey 1978, 27–31). Culture warriors might find it convenient to paint a picture in which orthodox Christians who value nascent life are uniformly arrayed against secular humanists and research scientists regarding the status of the early embryo. That picture, however, significantly distorts a much more nuanced reality regarding the state of the question.

Second, it matters because the articulation of a position supporting some research on human embryos from within a Christian framework would facilitate the President's process of taking counsel. George W. Bush has made no secret of the importance of his Christian commitments in shaping his political and personal world view. Consequently, it is reasonable to assume that it would be helpful to his deliberations to see how believing Christians representing a variety of different perspectives might assess cloning-for-biomedical-research and other controverted and difficult questions. No matter how articulate, no purely scientific case in favor of cloning-for-biomedical-research will resonate with the bedrock elements of the President's world view. Furthermore, no one without theological and philosophical training, as well as a thorough knowledge of the history of moral ideas, will be able effectively to analyze or critique the position of those who argue that the Judeo-Christian tradition

unequivocally supports a conservative position on the status of the early embryo.

One might object, of course, that the process of deliberation, as outlined by Aquinas, prohibits the deliberator from taking into account morally unacceptable options, or from seeking counsel from those who propose such options. If Bush in fact is convinced that the very early embryo does count as a distinct human being, then he is not obliged to staff his committees with persons who do not reflect this viewpoint. At the same time, he owes the American people a forthright statement that he is taking such a position in the Executive Order creating and commissioning the Council. No such statement was so included; in fact, the Executive Order suggests that the full range of positions on controversial issues will be considered.

How do the foregoing considerations bear upon the much-publicized turnover in membership of the Kass Council discussed at the beginning of this essay? In my view, they suggest that the loss of the theological perspective on medical ethics represented by William F. May was a significant blow to the Council's capacity for deliberative diversity. None of the new members offered theological or moral expertise akin to his; in my judgment, Professors Schaub and Lawler replicated expertise and normative perspectives already well represented on the Council. They seem to possess neither the training nor the inclination to offer a view of Christian moral commitments on bioethical issues that is capable of challenging on its own terms the view presented by Meilaender, George, and Glendon. In my view, the loss of the perspective represented by Professor May significantly undermined the value of the counsel given by the Council, both to the President and to the citizens of this country.

5. Conclusion

What sort of diversity is appropriate for national commissions constituted to advise the President on controversial moral questions? The answer to this question is by no means obvious. Reviewing their respective reports on cloning, I have suggested that the National Bioethics Advisory Commission constituted by President Clinton exemplifies forensic diversity, while the President's Council on Bioethics created by George W. Bush models academic diversity. Neither commission, in my view, demonstrates a sufficient degree of deliberative diversity, which I believe to be the sort of diversity most appropriate to advisory bodies of this sort.

I believe that the lack of adequate deliberative diversity on a presidential commission has two harmful ramifications. First, it hampers the ability of the commission to give good counsel to the President or his designees. Second, it creates the impression that the work of the

commission was essentially a sham, because it was constituted to legitimize and defend positions settled long before the first meeting. In our society, which tends to view with skepticism the possibility of moral reasoning and deliberation in general, this ramification may well be the more harmful one in the long run.

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