

‘QUIET AS LAMBS’:
COMMUNICATIVE ACTION IN THE NEW ZEALAND PARLIAMENTARY
DEBATES ON HUMAN ASSISTED REPRODUCTIVE TECHNOLOGY

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ABSTRACT

Communicative action in the Human Assisted Reproductive Technology (HART) debates in the New Zealand Parliament in 2004 is analysed in this paper using Habermasian concepts of deliberation. The marked cooperativeness of these debates, which surprised the elected participants themselves, is demonstrated through a comparison with the related and almost simultaneous Care of Children debate, using a Discourse Quality Index inspired by Steiner et al. (2004), assisted by qualitative analysis software. Using the thematic content of HART debates themselves, and referencing international literature on related debates, how this cooperativeness was accomplished is examined. Our analysis suggests that ‘conscience’ voting, intentional sequestration of potentially destructive topics, active attempts to create unity, and a degree of Habermasian deliberative reasonableness all had parts to play. Why these debates exhibited these features is discussed in the conclusion where we draw attention to concepts of ‘the greater good’, the perceived importance of the topic and reference to aspects of New Zealand identity. Finally, we point to a contradiction in the resulting legislation which relegated ongoing debate on HART to appointed committees meeting in private.

INTRODUCTION

The New Zealand Parliament is noted for robust and often boisterous debate. Our examination of the public submissions to the Human Assisted Reproductive Technology (HART) Bills (Park, McLauchlan and Frengley 2008) had exposed us to the strongly held public views and emotions surrounding this subject. When we began our analysis of the long-running¹ Parliamentary debates on HART in the summer of 2006 we anticipated a great deal of contention. Instead, our perception was that these debates were relatively calm and

respectful. As one parliamentarian put it, those in the debating chamber were as 'quiet as lambs'. In this article we test the pervasiveness of this communication style in these debates and investigate ways in which deliberative/inclusive methods were employed. We discovered that these methods included the sequestration of the most contentious topics and the use of overseas experiences to provide guidance as to which issues could fruitfully be debated and which were best set to one side. We suggest that permission to 'conscience' vote, as well as appeals to shared values, also played a role in creating the respectful tone of the debates.

The debates were analysed using Habermasian ideas of communicative action as applied to public debate (see Lascher 1996; Bessette 1994; Goven 2003; and Trotter 2006). Communicative action, as defined by Habermas, refers to modes of cooperative communication in which mutual deliberation and actors' reciprocal perspective-taking leads to the creation of reasoned arguments (1984: 86). Such deliberation emphasises interpersonal communication over individualistic struggles. Habermas notes that communicative action can operate to enhance mutual understanding – working to transmit and renew cultural knowledge, and can establish social integration and solidarity (1987: 137). Bessette (1994) and Lascher (1996), among others, have applied Habermasian principles to legislative debates, and their work has informed our analysis of the HART and Care of Children (CoC) debates. In particular, we have been guided by Bessette's (1994) identification of key elements observable in ethical deliberation, including relatively open-minded debate (which, among other indicators, can be identified by a speaker's acknowledgement of opponents' arguments), use of available information, and an emphasis on an ultimate goal of public benefit.

Our analysis was greatly facilitated by the Parliamentary debates being available in electronic form through the New Zealand Parliamentary website <http://www.parliament.nz/en-nz/>. This enabled the analysis of the complete set of these debates, a total of approximately 80,000 words for the HART debate, using qualitative research software programmes N6 (QSR 2002) and subsequently, NVivo7 (QSR 2006). The authors independently did several close readings of the debates to identify the key themes and coded them manually and with the search tools of N6 and NVivo7. It was during these readings and our discussions of them that we first noted the harmonious communicative style.

While we did not find other studies focusing specifically on the tone of parliamentary debates on assisted human reproductive (AHR) policy, studies of reproductive legislation did give us some idea as to the tone of such political

debates internationally. Having read Franklin's (1999) analysis of the British Parliamentary debate on the Human Fertilisation and Embryology Act (HFEA) (1990), we had expected the New Zealand debates to be similarly polarised. However, the HART debates appeared to be generally marked by parliamentarian's consideration of and respect for the values of other speakers. The New Zealand debates also appeared unusual in the light of other AHR debates, some of which have revealed polarisation to the point of AHR legislation failing to be created. Polarised views both within governmental coalitions and within parties have led to the creation of 'purely procedural and insubstantial policy' in Belgium and 'no design at all and deadlock in parliament' in Italy (Rothmayr *et al.* 2004: 235). Similarly in Holland, divisions largely along religious lines have led to policy which only legislates on procedural aspects of AHR and otherwise allows for medical community self-regulation – a move which Timmermans argues allows for a politically expedient diffusion of blame (2004: 171). In such cases of both intra-coalition and intra-party splits, AHR policy outcomes have not clearly followed majority political views – Rothmayr *et al.* have noted that political fragmentation has commonly prevented the creation of any substantial AHR regulation, leading to AHR policy that is 'permissive by default' (2004: 234).

However, despite (or, perhaps, because of) high levels of polarisation, degrees of cooperation have been created in many AHR debates through the use of discursive techniques and by forging alliances on the basis of limited aspects of AHR. British parliamentary debates were able to avoid a split in the Tory party through the introduction of the definition of the 'pre-embryo': a neologism for an embryo under two weeks old (Mulkey 1994; and see Kirejczyk 1999: 891). Other examples include the 'spirit of unusual harmony' (Bryld 2001: 304) in which Danish parliamentarians agreed on experiments to be prohibited, such as the creation of trans-species hybrids despite extensive disagreement on other aspects of the use AHR technologies. Emphasis on public health in the 1989 Dutch AHR debates allowed the disparate coalition government to find common ground despite polarisation around the status of the embryo (Kirejczyk 1999: 900). German debates similarly showed polarisation, but were able to find agreement and pass legislation based on constructing "proper" and "improper" categories of uses of technology, of family forms, or of experts' (Augst 2000: 222). In this way, reproductive debates internationally did not fall easily along party lines – the German debates saw the union of the left and conservative right against eugenics to produce restrictive AHR policies (Rothmayr and Ramjoué 2004: 182–3). Similar alignments and policy outcomes were seen in the Norwegian and Swiss debates (Rothmayr *et al.* 2004: 238).

The NZ HART debates resulted in the passing of a comparatively permissive guideline approach (Michelle 2006: 113). The regulatory approach of the original 1996 HART Bill was reduced to a guideline approach after the Bill passed the Select Committee stage. In contrast to the countries which have approaches to AHR that are ‘permissive by default’ (Rothmayr *et al.* 2004: 234), New Zealand’s lack of regulations did not appear to be due to polarisation of opinions – as will be noted throughout the paper – there was not fractious debate about the status of the embryo or about access to AHR, and there was apparent agreement upon which practices should be banned. There was, however, polarisation around the introduction of a guideline approach itself. While supporters pushed a guideline approach for its flexibility and its allowance for technological advances, detractors feared the lack of control a guideline approach would introduce.

Aside from the introduction of a guideline approach in the 2004 HART legislation, the New Zealand debates appeared to offer genuine cross-party cooperation on other aspects of AHR. In this paper we put these initial perceptions of style to the test, find that, at least within the Parliamentary debate, they are largely borne out, and examine how this was accomplished. Finally, we offer some tentative suggestions about why the New Zealand HART debates took this apparently calm and considered style.

1. DID THE HART PARLIAMENTARY DEBATES EXHIBIT MARKED COOPERATION?

To check our perception of peace and harmony we undertook a comparative analysis, using the same methods, of the CoC Bill debates, which took place in a similar time frame to the 2004 phase of the HART debates, with the same actors and on overlapping subject matter. The CoC Bill primarily focussed upon family law, particularly on updating regulations in the wake of both the Civil Unions Act (2004) and the use of new reproductive technologies. The HART Bill, in contrast, focussed on legislating the technologies themselves. Comparison of the two debates revealed relatively rambunctious CoC debates and confirmed our initial perception of the unusually cooperative nature of the HART debates. A comparison of features of the 2004 HART and CoC debates provides confirmation. Inspired by Steiner *et al.*’s (2004) publication of a ‘Discourse Quality Index’ to be used in empirical examinations of parliamentary discourse, we created our own simplified Index of Rambunctiousness—an example of the inevitable combination of so-called qualitative and quantitative research (Bernard 2002: 428). This index consisted of a check-list comprising Points of Order,² the activities of the Speaker to maintain order,² and member’s expressions of agreement with members of other parties.

As shown in Table 1, within the 2004 phase of the HART debates there were just eight separate points of order raised by members of Parliament, with one call from the Speaker for order. In the Care of Children debates, there were 24 points of order. The majority of these were calls for redress for insults or for quiet in the debating chambers. The CoC debates also included 20 calls from the chairperson for 'order', 'quiet', or for a certain behaviour to desist, including seven separate calls from the Chair for a member to withdraw and apologise. Within the HART debates, speakers voiced agreement with a statement of a fellow parliamentarian in a different party 35 times in total, with 10 of these qualified by a 'but' or a 'however'. Within both the debates, a degree of criticism can be seen within statements of qualified agreement, for example:

I have to say that I agree with every utterance of the previous speaker, Bill English, and I wish that he had been sitting on the Health Committee. Regrettably, it was his colleagues on our committee, along with others, who were so implacably opposed to any mechanism being introduced to make that unelected and unaccountable advisory committee [*a committee which would advise the minister on matters relating to HART*] have some accountability to Parliament.
(Kedgely, Green 6 Oct 2004: HART debates)

In contrast, agreement statements of any degree were used only 12 times between members of different parties within the CoC debates. Compared with the HART debates, in which such statements were frequently positive exchanges between members from a range of parties, all but four of the CoC state-

Table 1. *Indices of Rambunctiousness in the HART and CoC Debates (2004)*

	HART Debates: Total debate word count (73 272)	CoC Debates: Total debate word count (84 600)
Calls from the Speaker for members to desist, calls to order, and orders to withdraw and apologise	1	20
Points of order	8	24
Statements of qualified agreement	10	4
Statements of unqualified agreement	25	8
Thanks or compliments	16	3

ments of agreement were between opposition members of Parliament sharing criticism of the bill.

The cooperative nature of the HART debate in the Chamber and in Select Committee was apparently so surprising that even the members themselves were moved to comment:

This is unusual, but I would like to acknowledge the Opposition members of the select committee.

(Chadwick, Labour: 10 Nov 2004, HART debates)

Again I appreciate the opportunity to participate in the debate on the Human Assisted Reproductive Technology Bill...It is not common in Parliament that we debate issues in genuine debates.

(Franks, ACT: 6 Oct 2004, HART debates)

There was some limited acknowledgement of the contention surrounding the HART Bill. However, apart from one request to the Chairperson for noise levels to be reduced (Kedgely, Green: 6 Oct 2004 HART debates), such comments typically acknowledged the potentially contentious subject matter at hand rather than levels of actual dispute in the House (see also Benson-Pope, Labour: 10 Nov 2004; and Kedgely, Green: 6 Oct 2004):

In my view, one of the strengths of this bill is that it has done a very important balancing act in relation to the extreme of views we have heard [in public submissions].

(Hutchison, National: 20 Oct 2004, HART debates)

Clearly, this is an area of extreme emotional sensitivity where views are polarised.

(Schnauer, ACT: 23 April 1997, HART debates)

However, even this relatively limited identification of contention was challenged:

I was quite interested and amused by the speaker from ACT who talked about polarisation of this issue. Polarisation has been seen to only a very limited extent in this debate tonight. There have been suggestions that the Bill might go too far in one direction, or not far enough in another, and that it might be too rigid in some areas. But there certainly has not been what I would call a great degree of

polarisation, and certainly not in the importance of having legislation of this nature.

(White, Labour: 23 April 1997, HART debates)

Our independent impressions of the relative harmony of these debates are therefore supported by the comparative analysis of the entire corpus of both the HART and the CoC debates using our check-list, as well as by the reported experiences and observations of the parliamentary participants at the time. In the next section of this paper we analyse how this outbreak of harmony was accomplished.

2. HOW WAS HARMONIOUS DEBATE ACHIEVED?

i. Allowance of split or 'conscience' voting

As noted by Rothmayr *et al.* (2004: 233) in their 2002–2004 comparison of AHR policy in 11 OECD nations, AHR debates are often unusual in that divisions frequently do not cut along party lines. This is also evident within the NZ HART debates, where split voting occurred within four of the parties (ACT, National, NZ First and United Future). The house was respectful of such divergence, as noted by many speakers (see also Franks, ACT: 6 Oct 2004; and Turner, United Future: 6 Oct 2004):

ACT New Zealand will be having a split vote, as it has all the way through the deliberations on the Human Assisted Reproductive Technology Bill, mainly because we, like many of the submitters, have quite divergent views about the provisions within it.
(Roy, ACT: 10 Nov 2004, HART debates)

I am absolutely respectful of the split voting reflecting the different viewpoints, because I think that all members here look very deeply into their hearts and do their absolute best to come up with what they believe will be the best way forward.

(Gallagher, Labour: 10 Nov 2004, HART debates)

As a corollary to intra-party splits, it has been further noted by Rothmayr *et al.* (2004: 232–4) that AHR debates may lead to united calls for greater restriction from parties traditionally in opposition with one another. Such calls for restriction may be made for very different reasons – conservative politicians taking what Neilson *et al.* (cited in Rothmayr *et al.* 2004: 233) have termed a *blue* exception to AHR, expressing fears of a breakdown of traditional family

values and damage to foetuses, and left-wing politicians taking a *green* opposition, largely fearing harm to women and disabled persons. Such arguments are certainly present within the New Zealand HART debates and can be seen to have created a (temporary) agreement amongst the left-wing Green Party, the Christian-centrist United Future Party, and the centre-right National Party on aspects of AHR. This can be seen in Kedgley's (Green) compliment to English (National) in our first quotation in Section 1, and the following expression of support for Kedgley from Turner:

I take over from where my colleague Sue Kedgley left off on this issue, because I share her concerns.

(Turner, United Future: 6 Oct 2004, HART debates)

Such splitting within parties and agreement across parties may offer a partial explanation of the low levels of contention within the debates. It may be that members have toned down their attacks on other parties because of their awareness of the existence of similar viewpoints within their own parties. In addition, they also likely realise that some members of other parties agree with their viewpoint and are able to vote accordingly. This also may reduce the incentive for boisterous debate.

ii. Avoidance of contention

Awareness of the futility and potential destructiveness of debating the undebatable has led to certain highly divisive topics simply being omitted from AHR debates internationally (Kirejczyk 1999: 898; see also MacKenzie 2007: 307). The foremost of these taboo topics is the embryo. While Franklin's (1999) analysis of the British Parliamentary debate of the 1990 HFEA identified the embryo as the key image within the debates, immense debate about the status of the embryo, nearly leading to a split in the Conservative Party, led to the introduction of a somewhat more comfortable term of 'pre-embryo' (Kirejczyk 1999: 891). Similarly, in writing about the Dutch debates, Kirejczyk reports:

...it took nearly 18 years of harsh debates...before the bill liberalizing abortion was finally passed.... The process preceding the passing of the Bill was such a disruptive and traumatic experience that nearly all political actors were committed to prevent its repetition over human embryos (1999: 900).

This led to the avoidance by all parties, both secular and confessional, of representing human embryos as human persons (Kirejczyk 1999: 898). The New

Zealand debates show similar sequestration, containing only limited discussion of embryos, with such issues instead discussed in the context of care of human life more generally:

My presentation on this Bill will be brief but I would like to ensure that those things are taken into consideration, because life to all of us in this House, and to those outside its boundaries, is sacred. It must be treated as such. If not, this technology and all the regulations and laws that go with it can go out the window.

(Gudgeon, NZ First: 6 Oct 2004, HART debates)

Human-assisted reproduction should be subject to moral, ethical, and legal oversight, simply because it concerns the very origins of human life, and also because it concerns very directly our identity as individuals and the identity of other people in our community. So this Bill seems to me to be a response to our fairly fundamental instinct to show respect and protection for life at a very vulnerable stage of the life-span.

(English, National NZ; 23 April 1997, HART debates)

One part of the reason for this apparent parliamentary avoidance of the issue may be due to its being addressed in the select committee stage:

The issues are complex and complicated. The select committee took a lot of time to tease out the issues that were before us. We have not answered the question of when a new life begins, which is what some of the debate has been around. An egg and sperm are both living; an embryo forms, then a foetus-life is continuous. So there has been debate about when life begins and what should and should not be allowed.

(Scott, National NZ: 10 Nov 2004, HART debates)

Awareness of other nations' debates may not only make NZ parliamentarians sensitive to the necessity of cooperative/inclusive behaviour (or of avoidance of irresolvable questions, such as those surrounding foetal personhood) in coming to a satisfactory outcome, but may have actually helped make the debate less contentious simply due to other nations having already ironed out problems:

We have learnt from overseas experience. The timing of this bill is important. I was actually in England and in Australia when they

were debating their legislation on this issue, and the debate was very heated. Look at us tonight—quiet as lambs! We have heard from Bill English, who has serious concerns—and he has been a Minister of Health. We have heard a few other speeches against the bill, but it is going through the House tonight with little in the way of major controversy. That is because other countries have gone before us. We have learnt from overseas experience, and that has made the passage of the bill easier.

(Scott, National; 10 Nov 2004, HART debates)

New Zealand legislation has not blindly followed other countries, however, and as Michelle (2006: 113) noted in her analysis of HART parliamentary debates and public and media AHR discussion, New Zealand HART legislation is markedly more liberal than many other nations, including both England and Australia, particularly in terms of not limiting single women, unmarried and same-sex couples' access to AHR technologies.

iii. Active Attempts to create unity

Rather than just avoiding contentious topics, however, AHR debates, both in New Zealand and overseas, also show active attempts to create agreement (Bryld 2001; Rothmayer *et al.* 2004). Danish AHR Parliamentary debates from 1983–1985 displayed a 'spirit of unusual harmony', united in fears of designer humans, trans-species hybrids and cloning (Bryld 2001: 304). This fear-driven unity proved powerful, leading to the re-definition of human life as something which starts at the moment of conception. This amendment successfully achieved the support of socialist parties, as such a definition was seen as able to strengthen defences against reproductive control by scientists (Bryld 2001: 305). Similar unity of fear is seen in the NZ debates. As in the submissions to the HART Bill (Park *et al.* 2008: 11, 19), bogeymen in the HART Parliamentary debate tended to be cloning, hybridisation, concern for the commercialisation of women, commercial surrogacy and cosmetic and sex selection:

The most important part of the Bill is the clear identification of activities that are simply unacceptable in this country. Such activities include human cloning for reproductive purposes, the implantation of a human embryo into an animal and vice versa, genetically modifying embryos using gametes to form foetuses for reproductive purposes, and sex selection for social reasons.

(Benson-Pope, Labour: 10 Nov 2004, HART debates)

I am supporting this Bill because it gives a clear way to regulate against the sorts of things that very few people in this country would want to see. They would not want to see cloning and they would not want to see the genetic engineering of babies—they would not want to see that.

(Scott, National: 6 Oct 2004, HART debates)

Attempts to allude to values assumed to be shared, particularly those of care for humans and desire to lessen suffering, can be seen within the debates, particularly when the speaker was attempting to disagree with the Bill:

None of us wants to see medical science held back from making breakthroughs that alleviate suffering, but my concern is that we are straying into areas where the very nature of what it means to be human is put up for grabs, and we need to be very careful in the way we allow this to advance.

(Turner, United Future: 6 Oct 2004, HART debates)

Imagery of liberation from suffering, avoiding disability, and the tragedy of childlessness were employed within the debates. Similar to the Dutch debates in which the majority of speakers worked to demonstrate their shared value of 'balance' between scientific development and morality (Kirejczyk 1999: 904), some speakers in the NZ debates employed a similar mixture of hope and fear to show commitment to finding a balanced solution. Such a mixture was often associated with concern for the 'desperate childless' (see also McLauchlan, National: April 1997; and Scott, National, 25 Aug 2004, HART debates). Speakers went to considerable lengths to encourage their colleagues to empathise with the experiences of couples wishing to have children.

I was recently talking to a colleague about the trauma of childlessness. People need to have been in that situation to know the heart-break caused to a couple when they cannot have their own child. And to know what women and their partners go through when they try to conceive a child and cannot. There has to be a way to respond rapidly to new technology. I ask members to put themselves in the place of someone who knows that she cannot have a child, and who hears of the breaking new technology that would allow her and her partner to do so.

(Scott, National: 10 Nov 2004, HART debates)

Assisted human reproduction brings joy and hope to many. A letter

writer to an American infertility magazine touches on some of these issues: 'My infertility is a blow to my self-esteem, a violation of my privacy, an assault on my sexuality, a final exam on my ability to cope, an affront to my sense of justice...' But reproductive technology also raises ethical issues in some areas that are being outstripped by medical technology.

(Batten, NZ First: April 1997, HART debates)

Previous analysis of public submissions to the HART Bill also showed that statements of compassion for people experiencing infertility were used to convey a sense of care and concern. Usually, however, such expressions were made as part of a generally anti-AHR stance (Park *et al.* 2008: 18–19). In contrast, in the HART Parliamentary debates (such as in the above quotes) these expressions were more often part of an assertion about the importance of respecting the private nature of AHR decisions.

This aspect of the New Zealand usage is similar to that reported from the German AHR debates where it was specifically the notion of desperate childlessness which was used to support a 'rhetoric of private morality' (Augst 2000: 219). Augst argues that such an approach strongly contrasts with discourse focusing on the medicalisation of reproductive choices, an approach which stresses the danger of leaving such decisions to rest with individuals (other than doctors). But in the New Zealand parliamentary debates the private morality and medicalisation arguments were found together. The respect for individual values was in tension with a concern for un-checked choices. Despite this, in comparison to the CoC debates, the HART debates demonstrated a much broader acceptance of a 'private morality' approach. Similar approaches have been found also in treatment of reprognetics in New Zealand haemophilia communities where 'what is right for the family is what is right'. Even those with strong opinions about not using reproductive techniques themselves felt they should be accessible by others wanting them (Park and York 2008: 44). As discussed by Glover and Rousseau (2007: 118), however, Maori understandings of whakapapa, and the fundamental importance of children to group reproduction, also need to be considered. Such understandings question the extent to which the use of AHR can reasonably be considered an issue of 'private' morality.

MacKenzie (2007), who worked with the British debates, argues that strong attempts to create unity in AHR debates may not be conducive to open-minded deliberation. She notes that AHR debates are particularly unlikely to result in consensus, due to the 'incommensurable moral universes' surrounding AHR

(2007: 307). Using Latour's (1993) notion of 'purification', she argues that the incommensurability of morals in the 1990 British HFEA debates led to parliamentarians' decontextualisation of the debates, and active attempts to 'sacralise' and set apart certain issues. Such sacralisations, including women as nurturers (2007: 314), the sacredness of individual choice (2007: 309), and the sacredness of desiring children (2007: 313), are used to create practical alliances in the face of contention. Here, she argues that the gestational surrogate mother in particular cannot be part of this decontextualising discourse of sacredness, as her willingness to part with the resulting baby does not fit within such discourse (2007: 313). MacKenzie's concern here is that rhetorical devices used in an attempt to forge common ground may blind actors to what they are debating and exclude certain topics. In the New Zealand context, commercial surrogacy was quickly ruled out as a permissible practice in the Bill and disappeared from the debates.

iv. Deliberative reasonableness

Habermas's (1984) concept of deliberative reasonableness, in which communication guided by actors' reciprocal perspective-taking leads to reasoned arguments, provides us with further analytic purchase. Although the discourse of the debates may not be entirely in tune with this concept, a good deal of empathy is expressed, and, as noted above, at several points in the House (and apparently also in the Select Committee) participants were invited to take the perspective of others. A number of comments suggest that these were powerful experiences for the participants.

The HART debates meet the hypothesised pre-conditions for deliberation, as outlined in the introduction; namely, the acknowledgement by parliamentarians of their opponents' arguments, their use of available information, and their emphasis on the goal of public benefit. However, as acknowledged by Lascher (1996: 607), the extent to which people are willing to really engage with one another to the point where they may change their perspectives is difficult to discern because we do not know the participants' original views. Thus, while the HART parliamentary debate did demonstrate a high degree of harmony, whether it can be assumed that this reflects communicative action in Habermas's terms is unclear. Here, Bessette (1994) has noted that a great deal of the deliberation occurs within the committee process. This may reduce the evidence (and the need) for flexibility in the parliamentary debates themselves.

Within the New Zealand HART debates, considerable faith was expressed in the parliamentary process (see the quotes in Section 1) which suggests confidence

in its robustness. Similar faith in the parliamentary process can be inferred through the Green Party's repeated statements opposing the introduction of a guideline rather than regulatory approach in the HART Bill (see also the first quote in Section 1), a move which would curtail the role of deliberation by elected representatives:

Regrettably, the Government bill has taken what would have been a really impressive bill—and gutted it to...a regime that relies on guidelines, rather than regulation, and a regime that bypasses Parliament completely and delegates policy making in that highly contentious, ethical minefield area to a committee of unelected and unaccountable experts meeting behind closed doors.

(Kedgley, Green: 10 Nov 2004, HART debates)

The confidence that Kedgley implies in the quality of the HART parliamentary process, and her fears for a lack of a similar public arena in the future, contrast sharply with the frequent comments bemoaning the lack of open deliberation in the Care of Children debates:

I am not surprised that the Labour Party, under urgency, is trying to shut down debate on one of the most critical areas of New Zealand life, which is the area of family law.

(Smith, National: 4 Nov 2004, CoC debates)

Questions have been raised, however, regarding the possibility or desirability of 'true' deliberation in bioethics (Trotter 2006). Trotter warns that 'participatory democracy' can lead to the wielding of power by a few over many, with the façade of consensus and deliberation leading to the acceptance of such rulings. Kedgley, too, in the opening quote of Section 1, notes the power wielded by some National Party members in the Select Committee. Similar notions have been suggested in a New Zealand context by Goven (2003) discussing plant genetic technologies, where participants' views in deliberative processes tend to be overshadowed by economic and scientific modes of understanding. In the human domain we suggest that bioethics deliberations may also overshadow the social and cultural concerns of communities and citizens (see also Kleinman 1997; Pálsson 2007: 130). Such sequestration may be seen in the HART debates in the avoidance of the, admittedly highly complex and controversial, topics of commercial surrogacy and fertility rights for people with intellectual disabilities.

The importance of accountability in deliberative process is suggested in the

Toi Te Taiao: The Bioethics Council (since disestablished) ‘*Who Gets Born? Pre-birth Testing*’ (2008) project. Although Toi Te Taiao, an appointed Council which offered bioethics recommendations to Government, conducted ‘deliberative research’ as the basis of this project, they reached the conclusion that there is no ethical reason against sex selection for non-medical reasons. This conclusion, as discussed by Jones *et al.* (2009, is in opposition to the almost unanimous stance against such non-medical sex-selection in both the HART submissions and the debates as well as in the committee’s own highly promoted deliberative encounters with citizens (Toi te Taiao 2008: 29–30, 35. See also Toi te Taiao 2008: 27 for a pro sex selection view). To have proposed a recommendation so out of line with widely shared views suggests the problem of imagining bioethics as somehow divorced from community concerns, e.g., concerns about gender equality or trivialising HART. It also realises the fears expressed throughout the debates by Kedgely and Turner about relying on non-representative, unelected groups for bioethical recommendations. While we had privately thought that these fears were exaggerated in our early analysis of the debates, Toi Te Taiao’s recommendations have made us question our early views. The lack of transparency in such processes may pose a challenge to true deliberation.

3. DISCUSSION: TOWARDS THE GREATER GOOD

Lascher (1996) has suggested that tendencies for deliberation may be greater within debates in which the topic is of greater importance to voters, and when the issue relates to one of the core values of the debaters, or when there is uncertainty in the outcome of altering policy. These conditions were met in the HART debates. In this final section, we reflect on these debates and suggest that participants’ perceptions that they were of fundamental importance – ‘about the very origins of life itself’ and ‘our identity’ — engendered some restraint. The belief that New Zealand could do this well, perhaps better than some other countries, also provided a degree of inspiration. As Hutchinson put it, the debates were guided by a goal of finding ‘a practical balance’ (see also Hutchinson 6 Oct 2004, HART debates):

There is no doubt that the spectrum of technologies involved engender with them a great polarity of view. That is why it has been so important to reach a practical balance.
(Hutchinson, National: 10 Nov 2004, HART debates).

The issues were seen as difficult but very important, not just for the present, but into the future. They required a degree of courage:

I think, in a way, that it would have been an easy thing for this Parliament not to have grappled with those issues. This is kind of in the too-hard basket, but I believe that at least, while no legislation is perfect, it does set a template or a base for future Parliaments and for our society.

(Gallagher, Labour: 10 Nov 2004, HART debates).

Despite the wide range of views, and the strength with which those views were expressed, Members emphasised constructiveness:

The select committee process was very interesting. People came from widely divergent views, which they put to us vocally, and I felt we were able to talk through the issues in a constructive manner.

(Roy, ACT NZ: 10 Nov 2004, HART debates)

Here, then, we see acknowledgement of, and apparent respect for, plurality, and, for the sake of a greater societal good, recognition of the practical need to create balanced legislation. A similar argument incorporating both practicality and awareness of a greater good appears in the report of the Advisory Committee on Assisted Reproductive Technology (ACART), a committee set up by the HART Act as a result of the decision to enshrine guidelines not regulations in the Act. They quote in their paper on the *Use of Gametes and Embryos in Human Reproductive Research* (2006), the Royal Commission on Genetic Modification (RCGM) (2001):

In a pluralistic society people draw their values from different sources. It is not appropriate for one group to impose their values on others. But in the midst of such diversity, can a common core of values be found as a basis for ethical decision making? The Commission debated that question and decided that such a common core of values exists.

(RCGM 2001: 24).

This can be seen to strongly echo the sentiments of many parliamentarians in the HART debates who described what they were doing with modesty in view of the great challenges the issues presented:

I acknowledge that this is a difficult area, and an area where people have very strong personal, moral, and spiritual beliefs—particularly the Hon Bill English, as shown in his speech just previously. But in the end as lawmakers we are required to try in some kind of way, as

best we can and with the information we have at the time, to build or create some sort of legal framework that these kinds of things developing around us can operate in. That does not mean that we will get it exactly right at this point in our history, but it certainly means that we will build a skeleton of a framework for these kinds of things to develop within.

(Hughes, Labour: 10 Nov 2004, HART debates)

In order to find some agreement within such a range of views, core, shared qualities must be identified and focused upon. Both the Royal Commission on Genetic Modification, and the Parliamentary debates attempted to find a core of shared values by outlining the values and qualities inherent in our broadest grouping: our New Zealand-ness. Within the report of the Royal Commission, these values were stated explicitly, and were listed as:

- the uniqueness of Aotearoa/New Zealand
- the uniqueness of our cultural heritage
- sustainability
- being part of a global family
- the well-being of all
- freedom of choice
- participation

(RCGM 2001: 25)

These values were identified after consultation of the Commission with New Zealanders throughout the country (RCGM 2001). While the HART debates did not formally establish shared notions of 'New Zealand-ness', attempts to establish and evoke presumed shared values, such as honesty, trustworthiness and ingenuity can be seen throughout the debates, including statements of an unexplained New Zealand 'specialness' necessitating protection:

We need to use a precautionary approach, especially when we are talking about New Zealand children...

(Yates, NZ Labour: 25 Aug 2004, HART debates)

Ideas of 'specialness' and invocation of a common 'Kiwi-ness' also included reference to famous New Zealanders, respect for Maori values (although not universally shared by parliamentarians), successful meat, wool and racehorse production as well as various forms of culturally embedded knowledge (all sources of Kiwi pride). Appeal to Māori customs and values were also used (although not unanimously accepted) to challenge assumptions about surrogacy:

We know that the Māori concept of whanau has incorporated issues of surrogacy. Many of us in our own families as pakeha New Zealanders have had children who were given the name of their grandparents and brought up with their grandparents supposedly being their parents, because it was not socially acceptable for an unmarried woman to have a child. So it became the child of the grandparents in some instances. That is a kind of surrogacy.
(White, NZ Labour: 23 April 1997, HART debates)

And, finally, ideas of New Zealanders' goodness and trustworthiness were also invoked to attempt to give confidence in the legislation:

It is important that New Zealand is the only country in the world where, without legislation, the clinics have moved entirely to the use of sperm and egg donors who agree to be identifiable to their offspring.
(Hutchinson, NZ National; 10 Nov 2004, HART debates)

Here, Hutchinson seems to be evoking a sense of the openness of New Zealanders (no anonymous donors) and their ability to collectively define 'the right thing' to do and to go ahead and do it, without the necessity for an external authority. Ideas of New Zealand goodness, openness and responsibility were a key part of arguments for a guideline, rather than a regulatory, approach. Taking on a similar function to the sacralisation of women's bodies in the British HFE0 debates (MacKenzie 2007), the sacralisation of New Zealandness (and New Zealanders) within the debates may have made it difficult to argue for the necessity of a strict regulatory regime. Although we did not have access to the Select Committee debates, it would be illuminating to see if such discursive strategies played a role in changing the HART bill from regulatory to guideline legislation within this process.

4. CONCLUSIONS AND LIMITATIONS OF OUR STUDY

The surprising levels of cooperation within the HART debates may have many sources, such as learning from other nations' previous debates on similar matters, intra-party division encouraging all parliamentarians to not make divisive statements, and perhaps a respect for what is perceived as the highly personal nature of AHR issues. Appeals to common values, as humans and as New Zealanders, and to the weightiness of the issues under debate also appeared to contribute to the temperateness of the discourse.

While there was a great degree of empathy evident among parliamentarians for the positions their fellow parliamentarians represented, in this analysis it has not been possible to document debaters' willingness to alter their views because no survey of their views at the beginning of the process is available. It should be noted too, that parliamentary debates may not be the richest source of such evidence, being relatively late in the process of forming legislation and also relatively limited in time. Select Committee proceedings may be more enlightening (see Bessette 1994).

Aspects of the HART Parliamentary debates certainly do show a high degree of respect for the values of other parliamentarians. However, this respect for difference and of the 'personal choice' nature of AHR did not extend into universal agreement with the guideline rather than the regulatory approach put forward by the Bill. One of the arguments for the regulatory approach was the preservation of Parliament's right to debate changing circumstances as they arose, and to determine how the HART Act and the regulations that would flow from it should be amended as such new challenges demanded. Despite the numerous affirmations by the debaters of the value of the parliamentary process in developing the HART legislation, somewhat paradoxically, the House voted against its own on-going involvement and instead turned the responsibility over to an array of appointed committees whose deliberations take place in private.

NOTES

- 1 The HART Bill spent 8 years in process. The original HART Bill was introduced in 1996 as a Member's Bill, but was stalled following the introduction of the 1998 Government Bill, the Assisted Human Reproduction (AHR) Bill. Both Bills were sent to select committees, but were not dealt with until 2004 when a Supplementary Order Paper, SOP 80, was introduced, and all three items were addressed by the Health Select Committee. The AHR Bill was thrown out in the Select Committee process, but the final HART Bill, under the influence of SOP 80, adopted elements of the guideline rather than regulatory approach of the AHR Bill.
- 2 A point of order is a parliamentary interjection in which a member calls the Speaker's attention to an alleged violation of parliamentary rules of order.

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