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## Philosophy and Theology: Notes on Jeff McMahan

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## PHILOSOPHY AND THEOLOGY

The most intellectually sophisticated opponent of the pro-life position is probably Jeff McMahan of Rutgers University. In recent articles, including “Killing Embryos for Stem Cell Research,” he seeks to deny two different fundamental premises: “(1) The embryo is the earliest stage in the existence of someone like you or me. That is, we were once embryos. (2) We have the same moral status at all times at which we exist. We mattered just as much when we were embryos as we do now” (*Metaphilosophy*, April 2007). Part of his argumentation rests on the claim that “many of the moral reasons why we have to treat an individual in certain ways and not treat that individual in other ways are given by that individual’s intrinsic nature.” Indeed, the pro-life claim is that the human being is the same in nature through various stages of life: embryonic, fetal, newborn, toddler, etc.

McMahan points out that we as a society have accepted assisted conception via in vitro fertilization (IVF) even though as it is currently practiced, IVF involves the creation of numerous surplus embryos that will be frozen (which likely means death), will be the objects of lethal experimentation, or simply will not be implanted and thus be allowed to die. If we as a society really believed that the embryo is a human being having intrinsic value, then this practice would be viewed as deeply problematic.

McMahan is largely correct, but his point is somewhat overstated insofar as recognition of the problem of “surplus” embryos is indeed found in society. On December 4, 2008, the *New York Times*, ran a story titled “Parents Torn Over Extra Frozen Embryos from Fertility Procedures.”<sup>1</sup> A survey cited in the article indicates discontent, mixed feelings, and conflict between spouses about what to do with fro-

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<sup>1</sup>Denise Grady, “Parents Torn over Extra Frozen Embryos from Fertility Procedures,” *New York Times*, December 4, 2008, A22, A24.

zen, so-called spare embryos. Some parents want to donate the embryos for research purposes, but other parents compared the freezer storage to an orphanage. Others stop paying to freeze the embryos and disappear. “They would rather have you pull the trigger on the embryos,” said Dr. Mark V. Sauer, director of the Center for Women’s Reproductive Care at Columbia University Medical Center, in the same *New York Times* article. “It’s like, ‘I don’t want another baby, but I don’t have it in me; I have too much guilt to tell you what to do, to have them discarded.’”

For others, McMahan’s assessment does apply, but the point is rather trivial. We, as a society, do not recognize the dignity of human life in the earliest stages of development, legally or, for the most part, morally. We indeed endorse many practices that fail to accord to every human being his or her intrinsic value. This societal consensus is part of what John Paul II called the culture of death. So the approval of IVF and the approval of the killing of embryonic human beings reflect a similar dehumanization of human life in its beginnings.

However, perhaps not just society but people committed to the basic equality of all human beings likewise do not really act on this belief. McMahan alleges a “conspicuous failure of even the most ardent ‘pro-life’ activists to give frozen embryos a chance at life by offering the use of their bodies for fetal gestation.”

McMahan seems unaware that some pro-life activists do not adopt embryos because they view embryo adoption itself as morally impermissible.<sup>2</sup> Other pro-life activists have become adoptive parents to frozen embryos, and groups have also organized two national centers to facilitate embryo adoption, the Snowflakes Embryo Adoption Program and the National Embryo Donation Center. McMahan’s allegation is, in a certain sense, beside the point. If people are not open to adopting newborns, they may nevertheless, without hypocrisy, oppose infanticide. If people are not open to adopting homeless teenagers, they may nevertheless, without hypocrisy, oppose making use of them as sources for organ donation.

McMahan concedes, “Some opponents of hESC [human embryonic stem cell] research do, of course, extend their opposition to assisted conception as well, at least as it is currently practiced; but they seem to be a minority among the opponents of hESC research. For the majority, acceptance of assisted conception as practiced casts doubt on their commitment to the second of the two assumptions stated earlier.” He offers no evidence to support the view that a majority of opponents of human embryonic stem cell research accept IVF. Indeed, I cannot think of a single critic of embryonic destruction who supports IVF as currently practiced, in which “surplus” embryos are created never to be implanted in their mothers. Certainly, Catholics who

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<sup>2</sup>Examples of various positions on the ethics of embryo adoption may be found in, Thomas V. Berg and Edward J. Furton, eds., *Human Embryo Adoption: Biotechnology, Marriage, and the Right to Life* (Philadelphia and Thornwood, NY: The National Catholic Bioethics Center and The Westchester Institute for Ethics & the Human Person, 2006); and Sarah Vaughan Brakman and Darlene Fozard Weaver, eds., *The Ethics of Embryo Adoption and the Catholic Tradition: Moral Arguments, Economic Reality, Social Analysis* (New York: Springer, 2008).

accept the Church's teaching on life issues not only oppose IVF for this reason, but also oppose IFV in its very principle.<sup>3</sup>

Recognizing that the phenomena of twinning does not undermine the view that conception is the beginning of a unique individual human being (individuality does not require indivisibility), McMahan offers a different reason based on twinning for thinking that a human zygote cannot be the beginning of a new human life:

The embryo is someone like you or me and if it matters in the way you and I do (the two assumptions), then when symmetrical twinning occurs and an embryo ceases to exist, this should be tragic. For it is the ceasing to exist of someone who matters. According to the two assumptions, therefore, there is a serious moral reason to try to prevent monozygotic twinning from occurring. Or at least we should try to ensure that all instances of twinning involve asymmetrical division, so that no one ceases to exist. But these suggestions are absurd, and I know of no one who believes either.

But why should we hold that the original twin has gone out of existence rather than that one twin has arisen from the original? McMahan states further that

when an embryo divides to form twins, if the division is symmetrical, the original embryo also ceases to exist. The original embryo cannot be identical with both twins, since one thing cannot be numerically identical with two things that are not identical with each other. And if the division is symmetrical, the original embryo cannot be one twin but not the other, for there is nothing about one twin to identify it as the original embryo that is not also true of the other.

This seems problematic, because McMahan moves from epistemological ignorance to metaphysical certainty. If he is correct that there is nothing that we can identify that is true of one twin but not the other, we cannot know which of the two twins (if either) is identical with the original zygote. Therefore, we are not justified in concluding that the original zygote has died, since one of them may very well be identical to the original. As Stephen Napier, an ethicist at The National Catholic Bioethics Center, points out, it is consistent with the empirical evidence to interpret twinning as a form of asexual reproduction in which the original zygote gives rise to another without ever falling out of existence.<sup>4</sup>

Even if we could know that the original zygote had ceased to exist in giving rise to the twins, it would still not follow that we would have a moral duty to combat twinning. Intervention in any given case of possible twinning would be virtually impossible in natural conception, since couples normally do not know if or when they conceive, let alone that they may be conceiving a zygote who will later become identical twins. Further, the burdens of treatment and the benefits for others must also be considered before determining if a particular treatment is reasonable to undertake

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<sup>3</sup>See Congregation for the Doctrine of the Faith, *Instruction Dignitas Personae on Certain Bioethical Questions* (December 8, 2008), and Congregation for the Doctrine of the Faith, *Donum vitae* (February 22, 1987).

<sup>4</sup>Stephen Napier, "Twinning, Substance, and Identity through Time: A Reply to McMahan," *National Catholic Bioethics Quarterly* 8.2 (Summer 2008): 255–264.

or to continue. Even in some cases where personhood is indisputably established, it is unreasonable to provide life-saving treatment. It is not a tragedy or a moral failure to fail to provide a heart transplant to a ninety-five year old woman, even though she is undoubtedly a person. In this case, the burdens to the patient would likely be considerable and the benefits slight. Indeed, in the case of the twins, it is a benefit to at least one of them that a treatment to prevent twinning not be provided.

Finally, McMahan chides pro-life advocates for not campaigning for research on ways of preventing the vast numbers of embryonic deaths due to spontaneous miscarriage. McMahan claims (without citing any evidence) that about two thirds of all embryos die prior to birth.

The rate of miscarriage among healthy women may be much lower, in fact—around 14.0 percent.<sup>5</sup> Further, in many cases, “early miscarriage” is not always properly speaking the loss of a human life. Some cases of spontaneous abortion are the result of grave abnormalities and serious deficiencies in the reproductive process, ultimately from incomplete fertilization. Thus, in these cases, which may account for the majority of spontaneous early miscarriages, a human being has not been formed and so a human being does not die, since conception itself has failed to be completed.

However, given some percentage of loss of actual human embryos, is there a moral obligation to prevent such losses? It is possible that efforts could be made with microsurgery or some other kind of intervention that might save human embryos that would spontaneously miscarry, but almost certainly such treatments would be at great expense and could prove an excessive burden on all those involved while promising little hope of success.

Not attempting to save the life of the embryo in this context simply does not indicate a tacit belief that this is not a human being and has no significant intrinsic value. Just as there is no moral requirement to make extraordinary efforts to attempt to restore health to elderly human beings, we need not make extraordinary efforts to attempt to restore health to human beings in their embryonic state. An affirmation of the dignity of all human life simply does not imply that one must always make every effort to save every human life, regardless of the burdens involved or the likelihood of success. Even though every human life has intrinsic value, as noted earlier, it does not follow that every proposed treatment is worthwhile or valuable.

In addition, and unlike the case of the elderly dying, we characteristically have no knowledge that *this* woman bearing *this* human being within her is having a miscarriage *right now*. We are normally more concerned about the death of a well-known neighbor than the death of an unknown person thousands of miles away, so embryonic death at an early stage is generally less alarming than the death of a prenatal human being later in pregnancy.

If we did know exactly who was going to have a miscarriage and when, and if we had effective and nonburdensome ways to save this endangered life, then the

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<sup>5</sup>Ronald H. Gray and Ling Yu Wu, “Subfertility and Risk of Spontaneous Abortion,” *American Journal of Public Health* 90.9 (September 2000): 1452–1454.

pro-life view would entail that we would have a *prima facie* obligation to try to save the human being in utero, and indeed a great many people would vigorously try to do this—including many people who suffer from infertility problems.

Recently, McMahan also authored “Challenges to Human Equality,” in which he explored the philosophical basis for attributing equal rights or equal dignity to mature, healthy human beings (*Journal of Ethics*, June 2008). Although controversy remains about the moral status of embryonic, fetal, and newborn human beings, all other human beings are normally held to be equal in moral worth. Unjust killing of these human beings is held to be equally wrong (the equal wrongness thesis), regardless of whether the victim is young or old, stupid or intelligent, virtuous or vicious.

Two problems arise for this view, which McMahan calls “liberal egalitarianism.” The *separation problem* refers to the difficulty of ascribing higher moral status to *all* humans than is had by *all* nonhuman animals, some of which may function at a higher rational level than some humans.<sup>6</sup> McMahan believes that this problem cannot be solved, and that achievement of higher psychological capacities, and not species membership, is relevant in determining moral status. The *equality problem* refers to the evident inequality among human beings in terms of their rationality and moral achievement. Achievement in reasoning and in moral development varies tremendously even among healthy, mature human beings. How can we consider most human beings to have equal moral status if they are so evidently unequal in terms of the properties that grant moral status?

One alternative offered by Rahul Kumar, in his review essay on McMahan’s *The Ethics of Killing*, is to ground moral worth not on *individual* achievement in the moral or rational realm, but rather on membership in a rational kind (“Permissible Killing and the Irrelevance of Being Human,” *Journal of Ethics*, June 2008). McMahan agrees that the nature of the being in question should determine the moral status which that being enjoys, but McMahan suggests that the human fetus does not yet have a rational nature. In his 2008 article, McMahan asks,

Why should the morality of an act of killing be governed by the kind of respect that is appropriate for a nature that the individual killed does not have now but may have later, though only if it is not killed? Why should an act of killing not be governed instead by due consideration for the nature of the individual at the time of action (or of the death, if it occurs later)?

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<sup>6</sup>Eric D. Perl offers one way of taking into account that human beings have moral responsibilities to nonhumans that are significant and yet differ from what is due to humans. “‘Every Life Is a Thought’: The Analogy of Personhood in Neoplatonism,” *Philosophy & Theology* 18:1 (2006): 143–167 (see abstracts). Perl grounds the moral status of a being in its metaphysical nature and rejects a simple dichotomy between reason and nature. What he offers instead is an ordered, hierarchical analogy of personhood in which every being merits consideration in terms of the kind of being that it is. Typically, the debate about moral status dichotomously posits rational “persons” on the one hand and material beings (nonpersons) on the other. Reason, the realm of persons, is set against the material realm of nonpersons. This assumption, together with a denial of nature, leads to both the “separation problem” and the “equality problem” faced by McMahan. Perl’s article does not, however, explicitly take on the challenge of justifying human equality.

These questions reflect a misunderstanding of the meaning of something having a nature, at least as understood by most pro-life advocates. The human fetus will *never* get a different nature, even if eventually this human being is a mature, healthy adult. A human fetus develops in accordance with the nature he or she already has. Similarly, a human being does not become male or female only when reproduction becomes physically possible at puberty. The ability to act in a distinctly male or female way in reproduction comes only at the flowering maturity of human development, but being male or female is not only a necessary condition for this exercise but also a fundamental fact of the nature of the being in question from the beginning of life. Similarly, it is not that the human embryo is internally directed toward the development of a rational nature, as McMahan supposes, but rather that the human embryo already has a rational nature in virtue of which development of rational functioning, if it takes place, is made possible.

McMahan holds that for the natural kind, or the species membership, to be relevant for the recognition of moral status, there must be a morally significant sense in which the present nature of a radically impaired human being is internally directed toward rationality. This, again, is to misconstrue the meaning of nature as used by those with whom he disagrees. A mentally handicapped human being has a rational nature—presently, currently, and actually—so long as he or she is alive. In virtue of the human body and in virtue of how we diagnose pathology, the orientation toward reason remains even in cases of where a human being suffers from radical mental handicap.

First, as James Reichmann has pointed out, the human body is characterized by a structural openness and extreme flexibility which enables the human body, through habit and training, to properly adapt to and shape its environment.<sup>7</sup> Both instinct and physical structure limit nonhuman animals to a small range of activities. The human person lives in a wild diversity of ways made possible by the mind, yes, but also by the human body's flexibility. The human body, even aside from the brain, is itself shaped by its intrinsic connection to reason's flexibility in the face of changing circumstances.

Second, it is in virtue of his or her rational nature that we can diagnosis a human being as mentally handicapped. If the human being in question was not a member of a rational kind, then the mental function exhibited would not count as diminished, but rather as normal or perhaps even above normal. Indeed, we already make use of a species-specific account of flourishing when practicing medicine both in terms of diagnosing illness and in terms of the moral imperative to attempt, where feasible, to treat pathological conditions.<sup>8</sup>

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<sup>7</sup>James B. Reichmann, *Philosophy of the Human Person* (Chicago: Loyola University Press, 1985): 186–189.

<sup>8</sup>Daniel P. Sulmasy, "Dignity and Bioethics: History, Theory, and Selected Applications" in *Human Dignity and Bioethics: Essays Commissioned by the President's Council on Bioethics* (Washington, DC: US Independent Agencies and Commissions, 2008), 469–501.

In terms of the equality problem, pushed by questions posed by Tim Mulgan,<sup>9</sup> McMahan expresses skepticism about the possibility of basing the *equal* moral worth of human persons on properties that are *unequal* among human persons, such as psychological capacities or ethical achievement. He notes,

All this leaves me profoundly uncomfortable. It seems virtually unthinkable to abandon our egalitarian commitments, or even to accept that they might be justified only in some indirect way—for example, because it is for the best, all things considered, to treat all people as equals and to inculcate the belief that all are indeed one another’s moral equals, even though in reality they are not. Yet the challenges to the equal wrongness thesis, which is a central element of liberal egalitarian morality, support Mulgan’s skepticism about the compatibility our all-or-nothing egalitarian beliefs with the fact that the properties on which our moral status appears to supervene are all matters of degree. It is hard to avoid the sense that our egalitarian commitments rest on distressingly insecure foundations (July 2008).

McMahan himself recognizes how “dangerously invidious” it would be, both socially and politically, to publicly deny the fundamental equality of a group of human persons. Perhaps, having more fully understood the logical implications of the “pro-choice” position, McMahan might recoil from his premises and reconsider the entire project of justifying private, lethal choices.

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<sup>9</sup>Tim Mulgan, “Critical Notice of The Ethics of Killing,” *Canadian Journal of Philosophy* 34 (2004): 443–460.