

# Human Rights and Natural Kinds

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## ABSTRACT

Some moral philosophers contend that while all human persons are worthy of moral regard, those human beings who are not persons are not worthy of moral regard (or the same kind and quality of moral regard that we give to others). Elective abortion ends a pregnancy by ending the life of a developing human being. On its face, this practice violates a widely-held moral precept, that one may never intentionally take the life of an innocent human being. Arguments favoring the moral acceptability of abortion commonly incorporate at least one of the following claims: (a) *the human embryo/fetus/etc. is not a human being*; (b) *some human beings are not human persons*; or (c) *it is morally acceptable to intentionally kill some innocent human persons*. I argue that (a) is necessarily false. Claim (b) can be read in two ways, and I contend that it is necessarily false on one reading and highly implausible on the other. While I do not try to disprove (c), I argue that the burden of proof falls on its defenders.

EVERY HUMAN BEING is a human person. While this statement seems innocent enough, it provokes strong opposition in some circles. Many would be inclined to see it as a truism and, in fact, I believe it is a truism. What is more, it is a necessary truth, even though it is known only on the basis of experience. But opponents contend that while *all human persons* are worthy of moral regard, those *human beings who are not persons* are not worthy of moral regard (or the same kind and quality of moral regard that we give to others). Some arguments for the moral legitimacy of abortion assume this opposing position. Of course, there are other arguments favoring the moral legitimacy (perhaps qualified in some way) of abortion. Some reject the claim that all human persons are equally worthy of moral regard. Even if the claim that all humans have equal moral worth is accepted, some contend that it can be justifiable to deliberately harm some for a sufficient benefit to others. However, a utilitarian or consequentialist justification for treating an entire category of human persons as morally expendable strikes most people as morally

objectionable and transparently so. Here I focus on a claim that has greater initial appeal and rhetorical force, namely, that some human beings are not human persons, and that only human *persons* deserve the kind of moral regard we expect for ourselves.<sup>1</sup>

Drawing from some of the insights of philosophers Michael Loux and Saul Kripke, I will argue that attempts to divide human beings into persons and non-persons have no philosophical or scientific basis, hence no objective ontological force. Rather, there are strong reasons to believe that, necessarily, every human being is a human person. It follows that any division of the class of human beings will divide the class of human persons in exactly the same way. For similar reasons, any dividing principle that appeals to *essential properties* of human persons will be mirrored in the class of human beings, and vice versa.

One can, of course, separate human beings into different classes by relying on a non-essential attribute or a relation, something falling into the ontological category of what Aristotle called “accidents.” Such divisions are artificial and conventional in nature, and they are usually motivated by pragmatic concerns. For example, voters entering their local precinct might be split into two groups according to the spelling of their last names. However, some efforts to divide humans into categories based on contingent attributes are precisely intended to excuse treating some class of humans in ways that would be morally condemned if applied to those outside the class. History provides numerous examples of this kind of selective persecution that many at the time considered to be quite justified, based on differences of gender, age, race, ethnicity, mental capacity, and the like. Over time, the pernicious motives and specious rationalizations behind such efforts have been exposed and (we hope) repudiated.

#### HUMANS AND PERSONS

With this context in mind, consider the effort to pick out a class of human

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<sup>1</sup> I am grateful to audiences at the University Faculty for Life conference at Villanova University in June 2007 and at a bioethics conference at the Franciscan University of Steubenville in October 2007 for helpful comments and criticisms on earlier versions of this paper. I owe special thanks to Stephen Napier and Jorge Garcia for their careful reading and invaluable suggestions. Without their help, the shortcomings of this essay would be far more numerous.

beings who are not human persons, with the purpose of showing that human beings in that category are not deserving of moral regard. Abortion advocates are fond of this strategy and the U.S. Supreme Court in *Roe v. Wade* and *Doe v. Bolton* (1973) employed a version of it to lend at least the appearance of respectability to these decisions, which made abortion legal in every state and at every stage of pregnancy on grounds as tenuous as the mother's psychological ambivalence. As everyone knows, elective abortion ends a pregnancy by ending the life of a developing human being. Should there be a *living* infant at the end of the abortion procedure, the abortion has failed; it is a delivery. Hence, the death of the child is directly intended as the means for reaching the desired goal, that of ending the pregnancy.<sup>2</sup> On its face, then, abortion violates the widely-held moral precept that one may never intentionally take the life of an innocent human being. Any purported moral justification of abortion must find a way around this problem.

Here we focus on pro-abortion arguments that rely on one or more of the following claims: (a) *human embryos (or fetuses, etc.) are not human beings*; or human embryos are human beings but are not human persons, so (b) *some human beings are not human persons*; or human embryos are both human beings and human persons, but (c) *it is morally acceptable to intentionally kill some innocent human persons* (category to be determined). What I hope to show is that (a) is not the least bit plausible, and that on closer inspection (b) collapses into (a) or (c). While I do not attempt to disprove (c), I contend that the burden of proof falls heavily on those who endorse (c), not on those who reject it.

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<sup>2</sup> Terence Jeffrey's article on Cybercast News Service on January 9, 2007 includes a chilling reminder of this fact when he notes that Senator Barack Obama voted against a measure that would mandate proper medical care for babies from failed abortions. He said, "[The measure] would essentially bar abortions because the equal protection clause does not allow somebody to kill a child, and if this [surviving infant] were a child, then this would be an anti-abortion statute." See "Obama is the Most Pro-Abortion Candidate Ever." Accessed on 2/22/08 at <http://www.cnsnews.com/ViewCommentary.asp?Page=/Commentary/archive/200801/COM20080109b.html>. At least Obama knows his logic. If the infant who survives an abortion attempt is a child, what is so different about the infant who does not survive?

## NECESSITY AND KINDS

In his ground-breaking study on the nature of necessity, Saul Kripke uncovered a category of truths that are necessarily true even though they are *a posteriori* (known only through experience). The primary instances he has in mind are certain statements of identity. Kripke first explains that proper names in our language can be intended (and so interpreted) in one of two ways, descriptively or demonstratively.<sup>3</sup> Sometimes names serve as shorthand for a definite description, as in the sentence “Only the President can grant a pardon.” We understand that the person who fits the description “the President” today may not fit that description in a year or two. In a second usage, proper names function demonstratively by simply pointing to a specific individual. As Kripke puts it, names used demonstratively in this way are “rigid designators” in that they refer to one and the same individual in every possible world in which he or she exists. For example, in the sentence “George Bush is the President,” the name “George Bush” functions as a rigid designator, referring either to George H.W. Bush or to George W. Bush, but not both. The role of rigid designators in our language leads Kripke to a surprising conclusion: that some statements of identity are necessarily true even though they cannot be known *a priori*. They are genuine discoveries and not mere tautologies.

For example, a man might be known to some friends only by one name and to others only by a different name. Assume that his childhood friends know him as “Frodo.” Later they overhear a discussion about someone called “the Ringbearer” and they assume this name picks out a different person. However, when both names function as rigid designators, the proposition that *Frodo is the Ringbearer* is necessarily true. Alternatively, if “the Ringbearer” is functioning descriptively (referring to any person chosen to carry the ring), then the proposition *Frodo is the Ringbearer* is only contingently true. Someone else might have been chosen to carry the ring. Since proper names do function as rigid designators in some contexts, when they name the same person they can enter into identity claims that are known by experience (and so are *a*

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<sup>3</sup> For purposes of exposition, I use the term “proper names” to include referring expressions that pick out a specific individual.

*posteriori*), yet cannot be false. Kripke adds that such names (as rigid designators) refer to one and the same individual in every possible world, since that individual cannot be anyone else.

#### NATURAL KINDS

Kripke then extends his analysis of proper names to terms that refer to natural kinds. A natural kind term designates a group of objects with a particular structure that is repeated in every instance of the kind and is unique to things of that kind. In the case of living things like horses or crocodiles, this structure might be described as a specific pattern of DNA. In the case of inorganic kinds like water and gold, one could appeal instead to their molecular structure. Kripke argues that natural kind terms like “water” and “zebra” usually function as rigid designators in our language. Further, true propositions connecting a given kind to its unique essential structure, like those connecting two names to the same person, must be necessary truths.

Consider the proposition that *water is H<sub>2</sub>O*. Once it becomes known that water is H<sub>2</sub>O, says Kripke, it is impossible that the very stuff we refer to with the name “water” could have had a different molecular composition or that an element with that same composition could be anything other than water. Names of natural kinds, then, also act as rigid designators by picking out the same natural kind in every possible world. Once we learn that horses bear a unique DNA pattern or bar code distinct from that of zebras and donkeys (call it bar-H), we know that the proposition that *horses are genetically bar-H* is necessarily true. Natural kinds are typically defined in terms of what we have called their structure or their unique essential constituents.<sup>4</sup>

#### SUBSTANCES

An understanding of natural kind terms as rigid designators clearly has some implications for ontology and philosophy of science. Michael Loux, a metaphysician at the University of Notre Dame, was among the first to

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<sup>4</sup> There are at least three theories about biological species: viewing them as natural kinds, as individuals of some sort, or as sets of individuals. I incline toward the first theory.

apply Kripke's theory to traditional disputes about the nature of universals. In his book *Substance and Attribute*, Loux hopes to steer a course between the two major but notoriously problematic theories about the relationship between substances (individual things) and their features or properties. The *bundle theory* defines a substance as simply a set of properties that occur together (i.e., at the same time and place). The competing *bare particular theory* defines a substance as something that exemplifies a set of properties, though it is neither a property nor a set of properties. This might be called the "pin cushion theory" of substances, except that in this case the pin cushion cannot be described. It is the something-we-know-not-what that holds the pins (exemplifies the properties).

Loux rejects both standard theories and hopes to avoid their shortcomings by introducing a kind of "mixed" theory of substances. He adopts Kripke's division of universal or general terms into two sorts, those referring to properties (e.g., "pointed" or "purple") and those referring to kinds (e.g., "apple" and "airplane"). Loux contends that a property universal like "purple" refers to a single (abstract) entity that can be exemplified by many different individuals. On the other hand, a kind universal refers to the various concrete individuals belonging to that kind. Instances of "apple" are not multiple appearances of one thing (appleness) but numerically distinct particular apples. In other words, instances of kinds are substances. Loux then simply defines a substance as an instance of a kind, and he offers this as an alternative to both the bundle theory and the bare particular theory of substance. For the sake of completeness he adds: "If we are willing to extend the notion of a substance-kind to include universals like *table*, *automobile* and *pencil*, then it is plausible to assume that there is a substance-kind for every ordinary object."<sup>5</sup>

#### ARTIFACTS

Loux's theory provides a way to distinguish natural kinds from artifacts by using a further distinction between "pure" and "impure" properties. "Impure properties are properties (like *being married to Henry VIII* and *being a student of Socrates*) which 'incorporate' at least one determinate

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<sup>5</sup> Michael J. Loux, *Substance and Attribute* (Boston MA: D. Reidel, 1978), p. 161.

substance; whereas, pure properties are properties (like *redness* and *wisdom*) which do not.”<sup>6</sup> Sometimes impure properties are called relational properties. Loux suggests the following distinction: natural kinds are definable in terms of pure properties alone, while artifacts are definable only with the help of at least one impure or relational property.

Notice that any object that belongs to an artificial kind will be constructed of natural elements, though there may be no one element that is necessary to being that kind of artifact. On the other hand, an object can belong to a natural kind without belonging to any artificial kind. Loux accepts the intuition that there could be, in principle, two distinct objects that agree in all of their properties, pure and impure. Max Black’s proposal that there could be a world containing only two black spheres supports this intuition. This means that properties alone cannot explain why two things sharing all the same properties could in principle still be numerically distinct. Loux solves that problem by claiming that instances of kinds, unlike instances of other universals, simply *are* numerically distinct individuals. Kinds are not *exemplified by individuals*; rather members of kinds *are (already) individuals*.

One difficulty for Loux’s theory of substances is that artificial kinds lack a constitutive structure essential to all instances of the kind. The elements from which artifacts are composed might vary and might be lost or replaced over time, making it difficult to identify this or that individual as a member of the kind. Is a table with three of its four legs missing still a table? One way to account for this vagueness surrounding artificial kinds is that names for artifacts rarely (if ever) function as rigid designators in our language. A table is an object that fits a fairly loose description; its constitutive elements are not essential to its being a table.

Determining the identity of the same substance over time is also more problematic for artifacts. To take one popular philosophical example, consider a wooden raft afloat in the ocean, carrying the lone survivor of a shipwreck. Assume that over the years, she replaces the planks one by one with new pieces found floating on the water. When she is rescued at last, is she still floating on the same raft? Most undergraduates believe that very little hinges on the answer to this question. I believe they are right.

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<sup>6</sup> *Ibid.*, pp. 132-33.

The stakes can be higher for natural kinds. If a being does not qualify as human, as belonging to the human family, any moral status assigned to human beings *qua human* do not automatically extend to this being. Consider the fact that while animal rights advocates claim that animals (or sentient animals) deserve moral consideration, they do not rest that claim on a supposed kind-identity between humans and other animals. In fact, an accusation of “speciesism” makes no sense unless it is possible to distinguish humans from other animal species. Nor is this distinction purely conventional, as in the case of tables or airplanes. Rather, the human genome specifies a natural kind that is the same for every individual human.

For similar reasons, I think, Aristotle sought definitions of natural kinds that would incorporate elements *essential to and constitutive of things of that kind*. For instance, while the ability to laugh at a joke is unique to human beings, Aristotle does not define humans as animals that can laugh at jokes, but as *rational* animals. I suggest that in Aristotle’s theory of natural kinds, “rational animal” is a rigid designator; his definitions function as rigid designators by picking out the constituents of natural substances (in this case, the form and matter) essential to members of the kind. One reason for preferring such definitions is that they have explanatory power, since the constitutive structure of a thing underlies and accounts for its characteristic properties and powers. While properties (like the ability to laugh at jokes) come in varying degrees, membership in a kind does not.

Hence the Aristotelian term “rational animal” should be read as the name of a natural kind; it is not divisible into the name of a generic kind (“animal”) plus the name of a specifying property (“rationality”). Rational animality is the Aristotelian equivalent of the human genome. No human being could have been or could come to be an animal of some other kind. If I am correct in thinking that “rational animal” functions as a rigid designator of a natural kind in Aristotle’s theory, it follows that within his ontology, differences in intelligence or mental capacity are irrelevant to an organism’s ontological status as a human being.

#### THE LOGIC OF NATURAL KINDS

The preceding analysis of natural kinds leads to some important conclu-

sions. We might think of propositions (1)-(3) below as axioms of the logic of natural kinds. While they are suggested by Kripke's work, the formulations are my own.

(1) *Necessarily, every natural object is a member of a natural kind.*

While we may not know much about its structure, every physical object has physical parts and so has some constitutive material structure. Only a spiritual being is ontologically simple.

(2) *Necessarily, nothing is a member of more than one natural kind.*

All instances of a natural kind are concrete individuals. An instance of a property, on the other hand, can be another property (e.g., roundness is a shape), and relations can themselves stand in further relations (e.g., cousins are part of one's extended family). Michael Loux argues that this is what separates kinds from property universals.

(3) *Necessarily, an organism's membership in a natural kind is essential to that organism.*

This marks the principal difference between artificial and natural kinds. While a given block of wood may or may not become a table, no mouse can change into a horse, Cinderella's story notwithstanding.

#### RATIONAL ANIMALS

An individual belongs to a genus as well as to a species, of course, but a genus is not a natural kind; rather, it groups two or more natural kinds (species) under a broader class. In his project of defining human beings and other natural kinds, Aristotle looks for constitutive essential features that explain or underlie the natural powers and liabilities of members of that kind. That humans belong to the genus of animals already tells us something about their natural potentialities. But animals are not a natural kind. Collecting natural kinds under a common genus is often guided by the attempt to find a theoretical explanation for common traits or capacities. Mammals have a common mode of reproduction, for example,

and this suggests that a scientific inquiry into further traits common to mammals might discover the basis of this specific way of reproducing. Of course, one can also construct an artificial genus on the basis of accidental characteristics, say, the genus of animals that are today's topic of discussion on *Mister Rogers' Neighborhood*. But this genus is unlikely to be of scientific interest, since it is defined by features that are contingent and ephemeral.

#### SPECIES AND ESSENCES

It is tempting to think of biological species as a subset of natural kinds. Aristotle seems to assume such a view, and natural science proceeded on this assumption for many centuries. However, identifying biological species with natural kinds implies that members of a species share an essence that is common to all and only members of that species. We might call this view essentialism with respect to biological species. Unfortunately, many philosophers of science argue that evolutionary theory is incompatible with this sort of essentialism. By way of illustration, Marc Ereshefsky's entry on species in the online version of the *Stanford Encyclopedia of Philosophy* announces the death of essentialism. In current biology, he says, "no qualitative feature— morphological, genetic, or behavioral—is considered essential for membership in a species."<sup>7</sup> He finds it puzzling at best that many philosophers continue to endorse a version of essentialism by identifying species with natural kinds. But perhaps it is not necessary to choose between evolution and essentialism.

Suppose we define an essence or nature of a living substance as the fundamental constitutive structure (roughly, what it is made of) that (a) grounds its properties and capacities and (b) orders it toward maturity. In Aristotelian terms, a thing's nature is both a formal cause (making the thing what it is) and a final cause (moving it toward full self-realization). A final cause should not be construed as an efficient cause that somehow operates in the present before it even exists. Rather, there is a trajectory

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<sup>7</sup> Marc Ereshefsky, "Species," *The Stanford Encyclopedia of Philosophy* (Summer 2007 Edition), ed. Edward N. Zalta, <<http://plato.stanford.edu.proxy.bc.edu/archives/sum2007/entries/species/>>.

of growth and development in living things that tends toward maturation and reproduction, and that is what is meant by saying that the form functions as a final cause. Such teleological terminology is not in vogue these days, but efforts to eliminate it have been notoriously unsuccessful. Even Darwin's theory asserts that living things operate for an end, namely, survival for themselves and for their own kind or, in more recent versions of the theory, the organism's genes seek their replication.

Ereshefsky attributes the following three theses to natural kind essentialists: (1) all and only the members of a kind have a common essence; (2) the essence is responsible for the traits typical of members of that kind; and (3) knowing a kind's essence helps us predict the properties typical of that kind's members. Since (2) and (3) presuppose (1), he confines his criticisms to that claim, that members of a natural kind have an essence that is common to each member of the kind and not shared by any member of a different kind. Ereshefsky argues that traits of organisms are seldom universal within all members of the species and that few traits are unique to the members of a single kind. Worse still, "a species' essential trait must occur in all the members of a species *for the entire life of that species* [emphasis mine]. Moreover, if that trait is to be unique to that species, it cannot occur in any other species for the entire life of that species."<sup>8</sup>

I believe that these criticisms fail to undermine the natural kinds theory presented here. The essentialism of Aristotle/Kripke holds that there is a constitutive structure (a combination of matter and form, or "stuff" plus a principle of organization/activity) in every living substance. This structure is common to the substances that belong to the same species or kind, and it does ground their characteristic traits or capacities and does help us to predict further traits and capacities that they may have. But a thing's structure is not a property or trait; it is what the thing is made of, so to speak. It is possible to recognize a common structure or kind in this rough and ready sense without knowing the ultimate underlying explanation of that structure and without being able to offer a property or set of properties that is common to all members of the kind at all times of their existence and that is lacking (as a complete set anyway) in all members of

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<sup>8</sup> Ibid.

other kinds at every moment of *their* existence. Hence, if an essence is defined as a property or set of properties unique to members of a kind, few biological species will have essences in this sense. If an essence is defined as a unique structure (DNA pattern or something similar), then every biological species has an essence.

While it may be true that biologists find no qualitative features that are both universal and unique to members of a particular species, scientists routinely classify individuals as members of *Homo sapiens* based on genetic criteria that are universally accepted and fairly clear in their application, even in cases where only fossilized remains are available. These criteria (even when they are a disjunctive set of some sort) are sufficient for defining the species and so, likewise, for defining the natural kind. One of the non-essentialist theories that Ereshefsky discusses seeks to define a species as a group of organisms bound by a unique ancestry. While this may not suffice as a full definition of a species, it does include the common-sense assumption that the offspring of members of a given kind (call them Ks) are themselves K. Evolutionary theory includes the belief that a K can have offspring that are sufficiently dissimilar from Ks that they are, in fact, not Ks. If this is true, then in principle there could one day be some sort of non-sexual production of beings from human gametes that are not themselves human. However, in the current debate about the morality of abortion, IVF procedures, and research on embryos, no one seriously claims that the human embryo or fetus under discussion is a member of a more evolved, non-human species.

While “essentialism” is sometimes a term of abuse these days in the social sciences, it is not clear that the natural sciences can do without it. Often the very objections to essentialism include veiled invocations of something bearing a close resemblance to essences. For instance, Ereshefsky claims that evolutionary biologists do not need essences in order to explain variations within a species: “They cite the gene frequencies of a species as well as the evolutionary forces that affect those frequencies. No species specific essences are posited. [Thus] contemporary biology can explain variation within a species without positing a

species' essence."<sup>9</sup> In order to explain genetic variations within a given species, however, biologists must be able to tell which organisms are normal or typical of the species and which are variants of it (i.e., not members of a different species altogether). Showing that external evolutionary forces affect gene frequencies in goats requires being able to separate the sheep from the goats. Many qualitative features may aid us in this task, but the natural kind theorist may admit ignorance about what is ultimately responsible for the differences between these two species.

Finally, a word about the properties said to be essential to things of a given kind: most such properties (maybe all of them) are dispositional ones. Rationality is not something that humans sport on the surface by reciting poems or rattling off proofs; it is a capacity for abstract thought and reasoning that is grounded in human nature. Other things being equal, a human being will manifest this capacity from time to time, but failing to manifest it has nothing to do with whether one has it. The claim that rationality is essential to humans, then, does not attribute a manifest quality to each and every human. It attributes a capacity (or potentiality) to every being that is human. Even when this capacity is blocked or impeded—in fact, even when its exercise would be physically impossible or miraculous—its status *as a potency* remains.

#### HUMANS

Let us now return to the first of the claims that might be used to justify abortion: (a) *the human embryo is not a human being*. Notice first that the term “human embryo” (or “human fetus,” etc.) does not name a natural kind. Rather, it names a subset of a natural kind by using a criterion based on age or level of development. If “human embryo” and “human being” are rigid designators in (a), then (a) expresses a kind-identity that is either necessarily true or necessarily false. Since it is implausible to claim that a human embryo is *necessarily different in kind* from a human infant, it follows that under this reading (a) is necessarily false. From axioms (1) through (3) discussed earlier, we can derive the following theorem:

(4) *Necessarily, an organism comes to be a member of a natural kind*

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<sup>9</sup> Ibid.

*when and only when it comes to be; it ceases to be a member of a natural kind when and only when it ceases to be.*

The theory of evolution presents no obstacle to (4), as even a complete species-shift would take place not within the lifetime of an organism but between an organism and its offspring. Such a shift is presumably extremely rare in any event.

While everyone recognizes that a human ovum or sperm cell is not a human being, biologists teach that when fertilization occurs, the result is a new being distinct from the ovum and sperm.<sup>10</sup> At the time of the *Roe v. Wade* decision, some Supreme Court justices claimed to be unclear about when human life begins; today such ignorance would be as inexcusable as it is implausible. The life of a human being from conception onwards is the development of a continuously existing and self-directing organism, not a story of an organism that dies at some point and is replaced by an organism of a different kind. As the President's Council on Bioethics concluded, there is overwhelming evidence for the claim that an early human embryo is a human being.<sup>11</sup> These facts about human development support the conclusion that (a) is false and so:

(5) *Necessarily, every human embryo is a human being.*<sup>12</sup>

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<sup>10</sup> "The scientific evidence indicates that from the moment when the sperm makes contact with the oocyte (ovum), human development is an integrated continuum in which one stage follows another throughout all of life until death, and therefore that the developing human being is both a 'genetic' and a 'developmental' individual from the first moment of its existence." Dr. John B. Shea, "The 'Pre-Embryo' Question," *Catholic Insight: Bioethics*, Jan. 25, 2005.

<sup>11</sup> "*Human cloning (what it is)*: The asexual production of a new human organism that is, at all stages of development, genetically virtually identical to a currently existing or previously existing human being." President's Council on Bioethics, "Human Cloning and Human Dignity: An Ethical Inquiry" (July 2002), ch. 3, available online at [http://www.bioethics.gov/topics/cloning\\_index.html](http://www.bioethics.gov/topics/cloning_index.html). Accessed on 2/22/2008.

<sup>12</sup> In cases of twinning, what begins (it seems) as one human being develops into two human beings. I am inclined to agree with the view that G.E.M. Anscombe attributes to Jerome Lejeune in her article "Embryos and Final Causes" *Human Life, Action and Ethics: Essays by G.E.M. Anscombe*, ed. M. Geach and L.

## PERSON AS A NATURAL KIND

We turn next to (b), the claim that some human beings are not human persons. First, recall that if the terms in (b) referring to human beings and human persons are supposed to be names of natural kinds, then (b) is either necessarily true or necessarily false. It is the negation of an identity statement regarding a natural kind, denying that all human beings are human persons. Given Kripke's analysis, either these terms refer to different natural kinds (and necessarily so) or they refer to the same natural kind (again, necessarily). If they refer to different kinds, then it is necessarily true not just that *some* human beings are not human persons, but that *no* human beings are human persons. On the other hand, if (b) is false, then its logical opposite (All human beings are human persons) is necessarily true. Nothing can both belong to a natural kind and also *not* belong to that same natural kind. Since there is little reason to treat (b) as necessarily true, the obvious conclusion is that (b) is necessarily false, that is:

(6) *Necessarily, every human being is a human person.*

Note also that any property or set of properties essential to beings of a natural kind is necessarily exemplified by every member of that kind. Thus, any property essential to human beings will be likewise essential to human persons, and vice versa. There is no way to distinguish human beings from human persons either by kind or by properties essential to a kind.

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Gormally (Exeter UK: Imprint Academic, 2005), pp. 45-58. Lejeune's remarks on early embryo development suggest that in the case of identical twins, even at the very first cell divisions (when it seems that only one entity exists) two human beings are already present and beginning to develop. The two other views that Anscombe discusses are also compatible with (6). These are: one twin begins at conception, and twinning is the coming-to-be of a new human being from the first (via non-sexual reproduction), or the initial being ceases to be at the time of twinning, and is replaced by two humans who are each distinct from the initial one. If Lejeune's view is correct, perhaps (5) should be modified to read that every human embryo is at least one human being.

## “PERSON” AS A DESCRIPTION

Defenders of (b) might argue that the kind terms present here should not be interpreted as rigid designators. Instead, the claim that not all human beings are human persons might mean that some members of the human natural kind lack the property or set of properties captured in the descriptive phrase “human person.” As we have just seen, treating both *human being* and *human person* as names of natural kinds renders (b) necessarily false. The only alternative for defenders of (b) is to treat *human person* as a definite description, so that an organism qualifies as a human person only if it possesses specific features or capacities. Since human beings do not differ in their kind-essential properties, presumably the properties essential to being a person will be contingent properties of humans.

On this reading, (b) claims that some human beings lack the moral status ordinarily given to humans (call it *basic moral status*) because they lack the properties requisite for personhood. Since humans cannot differ in their essential properties, this reading of (b) divides human beings into two categories based on a set of attributes that is accidental to being human but is, we are told, essential to being a person (where personhood is an artificial or constructed kind). Defenders of abortion’s moral acceptability must use this version of (b) to defend an even stronger claim, namely (c) *it is morally acceptable to intentionally kill some innocent human beings*. Hence they face the further objection that it is counterintuitive to withhold moral protection from humans when they are most vulnerable.

## LIMITED PERSONHOOD

Proposed criteria for personhood come under attack for excluding some humans from personhood who are clearly persons or including beings who are clearly not persons. Defenders of limited personhood generally respond either by complicating the personhood criterion (and so making it less intuitively appealing) or by “biting the bullet” and accepting implications of their criterion that are deeply counterintuitive. An instance of the latter approach can be found in a 1996 essay by bioethicist R.G. Frey, where he argues that since healthy chimpanzees have a level of cognitive function higher than some severely damaged humans, morally

sensitive scientists will prefer to use disabled humans rather than healthy chimps in their medical experiments.<sup>13</sup>

Within the debate over abortion, the personhood criterion most commonly invoked appeals to the *age or level of development* of the unborn child. This criterion had more plausibility when there was little public knowledge about the earliest stages of human life. The advent of IVF technologies and the debates over cloning and embryonic stem cell research have done much to change this situation. To take one example, in August 1990 *Life* magazine featured Lennart Nilsson's breath-taking photographs of the first eight days of life, thereby producing a wave of panic in pro-choice academic circles. Dismayed by Nilsson's photos and by the growing number of her pregnant friends flaunting their ultrasound baby pictures, German historian Barbara Duden published a monograph in 1993 that fretted over alarming changes in the public perception of an aborted fetus (or, as she called it, the "product of the suction process"). She warns: "Many now see in this bloody mass the face of a child."<sup>14</sup> Perhaps Duden overestimates the danger to her cause, but she is right to point out that recent science undermines attempts to locate the beginning of one's moral status sometime later than the beginning of one's life.<sup>15</sup>

A second set of personhood criteria, related to the first, focuses on some feature or capacity that tracks human development, such as *viability, consciousness, rational capacity, ability to interact socially*, and the like. Critics complain that these criteria admit of wide variation and are seldom applied with absolute consistency. Even apart from such internal theoretical difficulties, defenders of limited personhood must explain why

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<sup>13</sup> R. G. Frey, "Medicine, Animal Experimentation, and the Moral Problem of Unfortunate Humans," *Social Philosophy and Policy* 13 (1996): 181-211.

<sup>14</sup> Barbara Duden, *Disembodying Women* (Cambridge MA: Harvard Univ. Press, 1993), p. 54.

<sup>15</sup> A more recent instance of shifting cultural attitudes is the movie "Knocked Up," written and directed by Judd Apatow and opening in most theaters on June 1, 2007. It tells the (fictional) story of a young couple facing an unexpected pregnancy. Several visits to obstetricians include real-time ultrasound images of the developing baby at various stages, filling the whole screen and inspiring reactions of amazement in the onlookers. (It should perhaps be noted that this is not a family-friendly movie.)

humans without the specified qualities lack basic moral status because of this fact. Viability, for example, is important for physicians, but why should it matter to moral philosophers? Finally, a theory in which personhood can be gained or lost willy-nilly because of illness, accidents, and the like, risks losing its plausibility as the *sine qua non* of basic moral status.

#### A DEEPER OBJECTION

Limited personhood criteria strain under the burden of providing rational support for (c), as this requires them to marry basic moral status (via personhood) to *accidental features* of human beings. Surely common sense is on the other side here, supporting the view that basic moral status rests on human nature, not on contingent and variable features of human beings. The Declaration of Independence soberly proclaims as self-evident the proposition that all men (i.e., all humans) are created (morally) equal and are endowed by their creator with certain unalienable rights. The point of such a strong statement is to ensure that every member of the human race receives the same moral regard and, especially, to reaffirm the objective and unchangeable character of fundamental human rights. While such considerations do not amount to a conclusive refutation of (c), they do show that the burden of proof falls on its pro-choice defenders.

The personhood debate receives considerable attention in philosophical journals and in the media. But advocates of human rights for the unborn might be better advised to reject the terms of the debate, since it presupposes that serious moral regard attaches only to human persons (or minimally, that the moral status of non-persons is debatable). If “human persons” picks out a natural kind, this claim has some plausibility. But as we have seen, in any logically consistent version of (b), “human persons” refers not to a natural kind but to an artificial subset of that kind. As an artificial category, personhood is neither constitutive of beings who are persons nor is it essential to them. While membership in humankind lasts a lifetime, membership in personhood (as a limited class) can come and go.

Hence, if moral status is tied to personhood, some humans will lack (or lose) this status and may then be used or abused in ways that we would otherwise reject as morally reprehensible. Indeed, this very strategy has

been used to justify practices (such as slavery, child abuse, and genocide) that most of our contemporaries vehemently oppose. Of course it is possible to claim that the fatal flaw in the justification for these practices was simply a matter of choosing the wrong personhood criterion. But any criterion that withdraws moral protection from some human beings by withdrawing them from the (morally significant) category of persons must be a criterion that has clear *moral* significance. There must be a plausible connection between the contingent feature in question (e.g., level of development, ability to exist outside of the womb, etc.) and basic moral rights. Further, a case must be made for rejecting the common-sense assumption that basic moral rights belong equally to every member of humankind.

Just as it is difficult to refute that common-sense assumption, it may be counterproductive to argue for it. Any such argument would appeal to some *descriptive* concept of personhood in order to show that all human beings, by their very nature, fit that description. However, unless “human person” denotes the *same natural kind* as “human being,” it remains at least logically possible that some human beings will not qualify as human persons.<sup>16</sup> Hence, personhood as a morally significant *descriptive* category should be defined only by properties or aspects that are essential to human beings (and that are also essential to persons of other kinds, such as angelic or divine persons). The authors of the Declaration, for example, appealed to what they regarded as an essential property of every human being—having been created by God and endowed by him with certain inalienable natural rights.

Since the limited personhood project shows little philosophical promise, there is reason to conclude that (c) is false and that:

(7) *It is never morally acceptable to kill an innocent human person.*

#### CONCLUSION

The argument of this paper is that attempts to justify abortion by denying unborn human beings the basic moral regard granted to other humans are

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<sup>16</sup> David Boonin argues persuasively for this point in *A Defense of Abortion* (New York NY: Cambridge Univ. Press, 2003).

both implausible and highly suspicious. I have not argued for the claim that all human beings have basic moral status in virtue of their humanity, in part because I believe the truth of this claim is more evident than the premises typically offered in its favor. But I hope to expose the empty rhetoric of a common pro-choice strategy, one that feigns serious moral respect for human life while defending a practice that, in Barbara Duden's own words, makes a developing human being into "a bloody mass."