

## REPRODUCTION

## Of souls, selves, and cerebrums: a reply to Himma

F J Beckwith

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Ken Himma argues that a human being becomes a moral person at the commencement of brain activity. In response to Himma, the author offers (1) brief comments on Himma's project, (2) an alternative account of the human person that maintains that a human being is a human person by nature as long as it exists, and (3) a counterexample to Himma's position that shows it cannot account for the wrongness of the purposeful creation of anencephalic-like children. The author concludes with replies to two challenges to his position.

It is an honour to respond to the important argument offered by my friend, Ken Himma.<sup>1</sup> He starts with the uncontroversial premise that it is morally wrong to kill a moral person without justification. He then explores the question of when a moral person comes to be in a human being's development. He concludes, as others—for example, Baruch Brody—have argued,<sup>2</sup> that a human being becomes a moral person at the commencement of brain activity. (Brody's argument does differ, however, in some respects.)

There is much to commend Himma's argument. It is philosophically rigorous and offers a line in human development at which one may distinguish persons from non-persons that appeals to many people's intuitions about the self. I think there are several questions, however, that one may raise in reply. Because of space constraints, I will *not* attempt in my analysis to defend a particular view of the human person, but rather, I will offer: (1) brief comments on Himma's project; (2) an alternative dualist account of the human person that maintains that a human being is a human person by nature as long as it exists; (3) a counterexample to Himma's position, whose apparent wrongness seems to be best accounted for by the alternative I am suggesting, and (4) replies to a response and a counterexample suggested by an anonymous referee.

### 1. HIMMA'S PROJECT

Himma's project depends on a Cartesian understanding of the self that locates the soul or self in mental activity or consciousness. Himma, for instance, uses the terms "soul" and "mind" interchangeably, as if the absence of mental function or the cerebral architecture that makes mental functions possible signals the absence of the soul. Himma assumes that what is valuable about a human being is consciousness, a psychological self, which he argues correlates

with an intact brain that has the present capacity to allow the self to manifest certain functions—for example, self consciousness, self awareness, thought, etc. This account seems to me to beg an important question: why should the psychological self—the mental activities of a mature human being—be judged as the locus of intrinsic value rather than the whole being who, from the moment it comes into existence and whose parts work in concert for the maturing and perfecting of its basic capacities, maintains absolutely identity through change while losing and gaining parts over time? I suspect that Himma would reply that he is not begging the question since he is relying on people's considered intuitions on this matter, and ethical discussion has to start somewhere. That, of course, is an appropriate way by which to conduct a philosophical inquiry, and I have done a bit of that myself over the years. Nevertheless, there are counterexamples and metaphysical concerns that I believe support contrary intuitions that are consistent with the account of human personhood that I am offering in this brief reply. As Patrick Lee points out—for example, those who, like Himma, maintain that the soul is absent if the essential organ by which personal acts are manifested is not present (in this case, the brain),<sup>3</sup> "view the soul only in its synchronic function (its effect at a definite time), and ignore its diachronic function (its effect on a sequence spread out in time)" (Lee,<sup>3</sup> p 83). That is, Himma offers a particular notion of soul—a Cartesian one—which does not take into account other phenomena for which the concept of soul I am suggesting below has been traditionally offered—for example, the intrinsic purpose of organisms, absolute identity over time, substantial unity of the entity, etc, aspects of a being that are central to its existence, continuity, and identity even when that being is not self aware or self conscious. For a defence of this view see J P Moreland and S B Rae's, *Body and Soul: Human Nature and the Crisis in Ethics*.<sup>4</sup>

### 2. THE SUBSTANCE VIEW OF HUMAN PERSONHOOD

Although a Cartesian substance dualist may understand the terms "mind" and "soul" in the same way as Himma, a non-Cartesian substance dualist does not. She offers a view of the human person that she believes has more explanatory power in accounting for why human persons are intrinsically valuable even when they are not functioning as such—for example, when one is temporarily comatose, why human persons remain identical to themselves over time, and why it follows from these points that the unborn are human persons prior to the achievement of brain activity. According to this version

Correspondence to:  
F J Beckwith, J M Dawson  
Institute of Church-State  
Studies, Baylor University;  
Waco, Texas, USA;  
Francis\_Beckwith@baylor.  
edu

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of substance dualism, inspired by the work of Thomas Aquinas, the human being is an immaterial substance that is not identical to the sum total of the parts of the physical body to which it is uniquely associated. This is similar to the definition offered by Moreland and Rae.<sup>4</sup> (Much of what follows in this article has been influenced by the work of Moreland and Rae as well as by the work of Lee.<sup>3</sup>) The immaterial substance, sometimes called *the soul*, is the locus of the self. Thus, mental functions are powers that the soul has by nature that may only be exercised (at least on this side of heaven) by means of the physical entity called the brain.

An anonymous referee, in reply to the case I offer in this paper, raises the question: "How is it possible for an immaterial substance to interact with a physical body?" There are two reasons why I do not deal with this important question here: (1) Himma is a dualist as well (though a Cartesian one) and affirms what he calls the "interaction thesis," and thus the question raised by the referee is not in dispute between Himma and me; and (2) others have dealt with this objection with great sophistication, and for me to have included in this essay a summary of those responses would have pushed this essay to the limits of the space allotted to me. The reader interested in learning about two such responses should see J P Moreland<sup>5</sup> and Mark Bedau.<sup>6</sup>

A substance is an individual being of a certain sort. So—for example, the substance Bill Clinton is a *human* substance, a being with a particular nature that we call "human". The substance Lassie too is an individual being, but she is a *canine* substance, a being with a particular nature that we call "canine". W Norris Clarke offers a four part definition of what constitutes a *human* substance:

(1) it has the aptitude to exist *in itself* and not as a part of any other being; (2) it is the unifying center of all the various attributes and properties that belong to it at any one moment; (3) if the being persists as the same individual throughout a process of change, it is the substance which is the abiding, unifying center of the being across time; (4) it has an intrinsic dynamic orientation toward self expressive action, toward self communication with others, as the crown of its perfection, as its very *raison d'être*...<sup>7</sup>

Thus, a substance maintains absolute identity through physical change, is the place from which thought arises (and thus, it has mental properties not reducible to matter), and because souls have natures (or essences) they have the teleological function that internally directs the growth and development of the human being. That is, "human person" is a natural kind whose members all instantiate the same nature (or essence).<sup>8</sup> "A substance's **inner nature**," writes J P Moreland, "is its ordered structural unity of ultimate capacities. A substance cannot change in its ultimate capacities; that is, it cannot lose its ultimate nature and continue to exist."<sup>8</sup> Consider the following illustration.

First, a German Shepherd dog, because it has a particular nature, has the ultimate capacity to develop the ability to bark. It may die as a puppy and never develop that ability. Regardless, it is *still* a German Shepherd dog as long as it exists, because it possesses a particular nature, even if it never acquires certain functions that by nature it has the capacity to develop. In contrast, a frog is not said to lack something if it cannot bark, for it is by nature not the sort of being that can have the ability to bark. A dog that lacks the ability to bark *is still a dog* because of its nature. A human being who lacks the ability to think rationally (either because she is too young or she suffers from a disability) *is still a human person* because of her nature. Consequently, a human

being's lack makes sense *if and only if* she is an actual human person.

Second, the German Shepherd remains the same particular German Shepherd over time from the moment it comes into existence. Suppose you buy this German Shepherd as a puppy and name him "Fred". When you first bring him home you notice that he is tiny in comparison to his parents and lacks their intellectual and physical abilities. But over time Fred develops these abilities, learns a number of things his parents never learned, sheds his hair, has his nails clipped, becomes ten times larger than he was as a puppy, and undergoes significant development of his cellular structure, brain, and cerebral cortex. Yet, this grown up Fred is identical to the puppy Fred, even though he has gone through significant physical changes.

Another way to put it is to say that organisms, including human beings, are ontologically prior to their parts, which means that the organism as a whole maintains absolute identity through time while it grows, develops, and undergoes numerous changes, largely as a result of the organism's nature that directs and informs these changes and their limits. This is in contrast to a thing that is not ontologically prior to its parts, such as an automobile, cruise ship, or computer. Much like a basketball game, an automobile, ship, or computer does not exist *through* time. It is, in the words of Moreland, "a sum of each temporal (and spatial) part...". Called *mereological essentialism* (from the Greek "meros" for "part"), it "means that the parts of a thing are essential to it as a whole; if the object gains or loses parts, it is a different object" (Moreland, *et al.*,<sup>4</sup> p 178). Organisms, however, are different, for they may lose and gain parts, and yet remain the same thing over time.

Consequently, a human being is intrinsically valuable because of the sort of thing it is and the human being remains that sort of thing as long as it exists. What sort of thing is it? The human being is a particular type of substance—a rational moral agent—that remains identical to itself as long as it exists, even if it is not presently exhibiting the functions, behaving in ways, or is currently able to immediately exercise these activities or functions that we typically attribute to active and mature rational moral agents.

Robert Joyce has made the observation that a "major flaw in" thinking of human beings as becoming intrinsically valuable when they acquire certain "parts"—that is, properties such as brain activity—"is its subtle or not so subtle projection of a mechanistic model of development onto an organically developing reality". That is to say, the proponent of this position "fails to distinguish between natural process and artefactual process. Only artefacts, such as clocks and spaceships, come into existence part by part. Living beings come into existence all at once and then gradually unfold to themselves and to the world what they already, but only incipiently, *are*." Although Joyce is writing about what he calls "the gradualist thesis", his critique may be applied to the other "decisive moment" theories—for example, an intact brain, self consciousness, and sentience as well.<sup>9</sup> Consequently, one can only develop certain functions because of the sort of being one *is*. Therefore, a human being, at every stage of her development, is *never* a potential person; she is *always* a person with potential even if that potential is never actualised due to premature death or the result of the absence or deformity of a physical state necessary to actualise that potential. A human being without vocal chords in a society in which there are no artificial or transplant vocal chords—for example, never loses the potential to speak, but she will in fact never speak because she lacks a physical state necessary to actualise that potential. (Let me remind the reader that I am not offering a defence of

the substance view. Rather, I am presenting it as an alternative account of personhood that seems to me to have more explanatory power than its rivals. Other thinkers, including Moreland and Rae<sup>4</sup> and Lee,<sup>3</sup> do provide a sophisticated philosophical defence of the substance view that space constraints and the modest purpose of this essay do not allow me to provide here.)

In response to this sort of account of personhood, Dean Stretton offers a thought experiment that may lend support to Himma's case.<sup>10</sup> He asks us to imagine an organism, such as a dog (who we will call "Phydeaux") (the example of a dog is mine, not Stretton's), which is not an intrinsically valuable entity. Suppose, however, we have the technological sophistication to add to Phydeaux's brain the higher brain (or cerebrum) of a fully mature human brain and we in fact do it. According to Stretton, because Phydeaux now possesses the properties of an intrinsically valuable being—that is, he has the physical architecture that allows for the immediate exercisable capacity for rational thought, moral agency, etc—this is an example of an organism remaining identical to itself but changing from non-intrinsically valuable (a non-person) to intrinsically valuable (a person) as a result of acquiring higher brain function. Thus, one may remain identical oneself throughout one's existence but still change from non-intrinsically valuable to intrinsically valuable. There are, however, reasons to doubt that this thought experiment properly accounts for our intuitions on this matter. As Patrick Lee points out, the thought experiment "works" for Stretton because he presupposes in his interpretation of it that his view of persons is correct—that is, he reasons in a circle. One need not, however, interpret the story in this way. Lee offers two options: (A) the person whose cerebrum was transplanted to Phydeaux continues existence whereas Phydeaux does not. "One could say this," writes Lee, "if one believed that the human being is an organism but that his cerebrum is his only indispensable organ".<sup>11</sup>

(B) According to this option (which Lee prefers, and I do too), if the human being "continues to live" minus his cerebrum, "she remains a (damaged) human person; and if combining a cerebrum with" Phydeaux's "bodily parts produces a rational animal, a substantial change occurs and so" Phydeaux goes out of existence "and a new rational animal, a new person, comes to be".<sup>11</sup> To employ an analogy, Phydeaux's body and the human's cerebrum are like a sperm and egg, playing the roles of two living parts of other organisms that, when combined, "dynamically interact", (Joyce,<sup>9</sup> p 101) and become a brand new organism. According to Lee, the second option makes perfect sense under a substance account, which holds "that a rational animal is a type of substance, and that being rational (having the natural capacity for conceptual and free thought) is a specific difference, a feature expressing (in part) what the substance is instead of an accidental characteristic" (Lee,<sup>11</sup> p 256). To put it another way, a human person is a rational moral agent by nature from the moment it comes into being; it is a substantial unity identical to itself that subsists through time. No being *becomes* such a substance, for substantial change is a change that eliminates the being rather than something that the being undergoes. Phydeaux does not *become* an intrinsically valuable person when his living bodily parts dynamically interact with the human cerebrum; rather, Phydeaux ceases to exist and his living bodily parts contribute to the bringing into being of a substance that never was.

### 3. THE PROBLEM OF PURPOSELY CREATING ANENCEPHALIC-LIKE CHILDREN

Himma seems to say that anencephalic children are not moral persons, because they lack the requisite brain structure

by which a self may exercise certain functions (Himma<sup>1</sup>). I would like to explore Himma's theory of moral personhood in light of a grisly proposal offered by Carol Kahn.<sup>12</sup> David W Brock cites Kahn's proposal, in which she argues that "[a]fter cell differentiation, some of the brain cells of the embryo or fetus would be removed so that it could then be grown as a brain dead body for spare parts for its earlier twin".<sup>13</sup> According to Brock, "this body clone would be like an anencephalic newborn or presentient fetus, neither of whom arguably can be harmed because of their lack of capacity for consciousness" (Brock,<sup>13</sup> p E8). Yet, Brock maintains, "most people would likely find" the practice of purposely creating non-sentient human beings "appalling and immoral, in part because here the cloned later twin's capacity for conscious life is destroyed solely as a means to benefit another" (Brock,<sup>13</sup> p E8). Setting aside the question of whether such beings would still retain the ultimate capacity for consciousness, it is not precisely clear, given Himma's account of moral personhood, what would be wrong with cloning brainless human beings for the purpose of harvesting their organs. That is to say, if there is no injustice done to another and someone receives a benefit, it is difficult to know where exactly the wrong is to be located in the act. I suspect that some would locate it in the moral intuition that the prebrain fetus is deprived of something to which he is entitled. If that is the case, however, then current possession of brain activity is a condition that is sufficient, but not necessary, for a human being to possess both rights and a present capacity to be harmed.

What this means is that, if one can identify actual persons by determining whether they have a current capacity for consciousness (C), it only follows that C is a sufficient condition for being an actual person. That is, if a person (X) were to lack C, it would not follow that X is *not* an actual person, for if a condition is sufficient it does not follow that it is necessary. Being a sister is—for example, a sufficient condition for being female, though not a necessary condition, for one may be a female and an only child. Being female is, however, a necessary condition for being a sister, though not a sufficient one, for one may have no siblings. Thus, we could reject C as a necessary condition for being an actual person on the grounds that we have good independent reasons to believe that there are actual persons that lack C—for example, presentient fetuses, the comatose, etc.

Yet, what follows is that the intentional creation of brainless children (or embryos) for the purpose of harvesting their organs is a serious wrong whose prohibition should be reflected in our laws, for their prebrain selves are rights bearers entitled to some protection by the wider community. If, however, we were to extract from this insight the principle that seems to ground this wrong—it is *prima facie* wrong to destroy the physical structure necessary for the realisation of a human being's present capacity for the exercisability of a function that is a perfection of its nature—then a fundamental aspect of reproductive freedom in the United States, the right to abortion, is imperilled by that principle. For, according to the United States Supreme Court, the right to abortion is justified precisely because a woman undergoing an abortion is merely destroying the unborn's capacity for, as opposed to its current possession of, actual life. In the majority and plurality opinions of the leading cases that affirm a woman's right to abortion<sup>14</sup> <sup>15</sup> the court refers to the unborn as potential, rather than actual, life. This is important because if the unborn were considered actual life by the court, then there would be no right to abortion. "If the suggestions of personhood [of the unborn] is established, the appellant's case, of course, collapses, for the fetus's right to life is then guaranteed specifically by the [fourteenth amendment]" (Roe,<sup>14</sup> pp 157–8).

Consequently, according to Himma's legal recommendation, a prebrain fetus may be exterminated when in the judgment of its mother, its continued existence, and its acquisition of a brain, imperils her interests. If a fetus's acquisition of a brain will result in legal restraint on the woman (or someone else) from using the fetus's organs for her (or another's) continued benefit, then it is not clear on what grounds Himma may object to interfering with the fetus's development in such a way that it becomes an anencephalic-like child whose organs the woman (or someone else) may use.

#### 4. A QUESTION AND A COUNTEREXAMPLE

An anonymous referee raises one question and one counterexample in response to my case, I will respond to each.

##### A question

The reviewer writes: "In many cases women abort at an early stage in their pregnancy (some estimate that 2/3 pregnancies end in such early abortions). If we believe that the person exists from conception, we should consider these deaths tragedies (comparable to the death of you or me)." Let me offer two replies.

(1) The position I am defending does not commit me to the view that life begins at conception if—for example, there are good reasons for one to believe that there is not a whole being present until the primitive streak arises at around 14 days after conception. Thus, someone could hold that an intrinsically valuable substance—a whole human being with certain basic capacities—begins its existence long before it acquires a brain but after conception.) In fact, this is precisely the thesis held by Jason T Eberl.<sup>16</sup> The purpose of my essay is to offer a critique of Himma's argument by suggesting a different understanding of personhood that connects a human being's intrinsic value to the moment at which it comes into being as a whole organism with basic capacities it has by nature. That may or may not occur at conception. Virtually no one, however, disputes that a whole human organism does exist after the primitive streak is in place, though some argue that it is not a person until some time later—for example, at the acquisition of consciousness, a sense of self, ability to reason, etc.

(2) It does not logically follow from the *number* of unborn entities who die that these entities are by *nature* not human person who have begun their existence. To cite an example, it does not follow from the fact that underdeveloped countries have a high infant mortality rate that their babies are not as human as those born in countries with low infant mortality rates. After all, what if it were discovered that the numbers cited above are mistaken, that in fact 90% of all conceptions come to term? Would it now be the case that the early embryo *is* an individual human person that began her existence at conception? Again, why would the number of entities who perish make a difference as to whether these entities were human persons who had begun their existence very early in pregnancy? After all, *all* human beings who are conceived *die*, whether they die as a result of a miscarriage at 3 months gestation, or as an adult in Memphis, Tennessee at the age of 42. Are we to infer from this 100% mortality rate that none of these beings are human persons who have begun their existence?

It should be noted, however, as Lee points out, that "the percentages mentioned by proponents" of the spontaneous abortion "argument are disputable. For one thing....., in many cases the fertilisation process is in effect incomplete, so that what is growing is not a complete human being. Many of the products of fertilisation which fail to implant are no doubt the results of incomplete fertilisations and so are not human persons [or human beings]" (Lee,<sup>3</sup> p 104).†

Suppose, however, that someone were to respond to this analysis by arguing that if we really believe that every conception is a human person are we not obligated to prevent all spontaneous abortions even though it may lead to overpopulation and an appropriation of medical and other resources that may have catastrophic results.

First, this response does not show that the newly conceived entity is *not* a human person who began her existence very early in pregnancy; rather, it is an attack upon the intellectual consistency of those who offer arguments to support their belief that the newly conceived entity is a human being whose existence began at conception. It is those arguments, and not the people who offer them, that are the proper object of analysis.

Second, assuming that the unborn from very early in pregnancy (perhaps conception) is a subject of moral concern (that is, a person), this response is flawed in another way: it confuses our obvious *prima facie* moral obligation not to commit homicide (that is, to intentionally kill an innocent human person) with the questionable moral obligation to interfere with natural death of a human person in every instance. Clearly the former does not entail the latter. Consider an illustration outside of the context of abortion: a healthy 82 year old man is clearly a human person as would be his twin even though the latter is in the last stages of cancer and no known remedy can save him. Suppose, however, he could prolong his life for a little while but only if he undergoes painful chemotherapy that will result in several months of misery. Our *prima facie* duty not to kill the healthy twin does not entail that we have a duty to require that the dying twin undergo the chemotherapy, even though both are human persons. Consequently, just as difficult questions about withholding and withdrawing treatment from dying patients do not count against our prohibition against killing innocent healthy adults, the question of how we should ethically respond to spontaneous abortions does not count against the prolife position that it is morally wrong to *directly* and *intentionally* kill the healthy and normally developing unborn.

##### A counterexample

The anonymous reviewer offers a counterexample to my case: "Suppose that in an in vitro fertilisation (IVF) clinic, an earthquake causes (1) a couple of glass dishes to break resulting in 10 eggs being accidentally fertilised and (2) a fire in a room in which five patients are trapped. I can either save the fertilised eggs (they will then be implanted in another clinic) or the patients. Most of us believe that I should save the patients but it is not clear that the sort of substance dualism espoused by the author is compatible with this claim."

These types of stories can, of course, always be adjusted to make an entirely different point. Suppose—for example, the five patients are aging Nazi war criminals and the 10 embryos are one's own offspring. It is pretty clear which group one would save. The sort of fictional scenario offered by this referee has, however, been responded to by a number of others. Because of space constraints, I will offer a reply put forth by Scott B Rae, who argues that this story confuses epistemology with ontology—that is, it confuses how things appear to us with what things actually are. As Rae writes: "[T]he surface appearance of an embryo seems too distant and impersonal. But surface appearances and the emotions they engender are, by themselves, inadequate guides for moral reflection. To a lesser degree, this same sort of .....

†Lee is here citing Benedict Ashley and Albert Moraczewski: Is the biological subject of human rights present from conception? In: Cataldo P, Moraczewski A, eds. *The Fetal Tissue Issue: Medical and Ethical Aspects*. Braintree, MA: Pope John Center, 1994:47.

‘argument’ could be used to justify racism, an unjustified preference for individuals who share many of one’s own surface features. Since the presence or absence of surface features may be the real basis for the intuitions in this argument, we do not consider it has the force its advocates claim it has” (Moreland *et al.*,<sup>4</sup> p 275).

## 5. CONCLUSION

Although the brain activity criterion of moral personhood offered by Himma has much merit, it seems to me that it wrongly locates the wrongness of killing another being in that being’s present architecture—for example, a brain with the presently exercisable capacity for certain functions—rather than the sort of thing it is by nature and which it remains so as long as it exists. To illustrate why this is the case, I argued that Himma’s suggestion cannot account for the wrongness of purposely creating brainless children.

Please see Ken Himma’s article page 48.

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