# The moral status of the human embryo: implications for IVF

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## Abstract

The Human Fertilisation and Embryology Act (1990) accords a special status to human embryos generated *in vitro* and this has resulted in strict limitations on the nature and extent of embryo research and fertility treatment that can be carried out in the UK. This special status derives from the embryo's recognized potential to become a human being. What do we understand by the concept of 'human being', how does this differ from 'conscious being' or 'person' and how does this affect our attitude towards 'microscopic clusters of cells' that may progress by an uncertain but inexorable process from the Petri dish to the crib?

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It is felt, rightly in my view, that there is something special about human beings – something that distinguishes them, in morally relevant ways, from other animals. Philosophers customarily use the term 'personhood' in referring to this specialness. A *person*, according to the great 17th-century philosopher and physician John Locke, is: '. . . a thinking intelligent being, that has reason and reflection, and can consider itself as itself, the same thinking thing, in different times and places' (Locke, 1694).

Persons, in this sense, have a highly articulated concept of self, and of themselves as persisting over time, and as rational beings, they are not mere slaves to their urges and passions. They can shape their behaviour according to plans that encompass more than the immediate future and act in ways that are rooted in values and goals that transcend mere animal instinct. Admittedly, there are other animals that display elements of personhood, thus characterized. Nevertheless, there is a huge gulf between a normal human being beyond earliest infancy and even such sophisticated mammals as chimpanzees and dolphins. Though these animals possess their own complex signalling devices, what they have in the way of language – and what we could conceivably teach them – falls far short of our own linguistic capacities. Much of the richness of a normal human life derives directly or indirectly from language, not merely because of the depth that conversation lends our relationships with others, but also because it liberates the imagination and facilitates abstract thought.

These considerations, however, give rise to an awkward dilemma when an attempt is made to decide at what point in the development of the human organism a creature with a serious right to life has come into being. For the question now arises as to whether it is only the actual possession of personhood that generates such a right, or whether the mere potentiality for personhood is sufficient to make it morally wrong, in general, to nip this development in the bud, and neither alternative seems very inviting. If only actual personhood is regarded as generating a serious right to life, it would follow that we do nothing seriously wrong to a perfectly healthy, but unwanted, baby by killing it painlessly. For a newborn human baby is manifestly not a person in Locke's sense.

Suppose, on the other hand, that mere potential personhood is taken to confer a serious right to life. Then the only grounds on which a termination of pregnancy could be defended would be (i) the need to protect the life or health of the mother, or (ii) the presence in the fetus of an incurable defect that would either rob it of the potential for personhood, or make its life not worth living. Such a potential could be lacking either because the fetus was suffering from a condition that would undoubtedly



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kill it before it could develop into a person, or because untreatable neural dysfunction would make such a development impossible. In the absence of any such justification, even the use of the 'morning after pill', in effect, would be equivalent to murder, assuming that conception had already occurred and the pill was successful in preventing implantation.

Both positions have their advocates. Many philosophers have argued that neonatal infanticide is both morally permissible and on a par with early termination (or even contraception), see, for example, Tooley (1972, 1983), Glover (1977), Singer (1979) and Harris (1985) and the view that there is a serious right to life from conception is, of course, held by most Catholics. But many readers will, like myself, regard both views as implausibly extreme, and this prompts us to wonder whether there is a morally defensible 'middle way' that avoids the two horns of the dilemma. I believe there is. Let us, therefore, return to the question of why we should ordinarily shrink at the thought of killing a perfectly normal, albeit unwanted, newborn baby. The reason, I take it, is that it is very much in this baby's interest that it be allowed to live, given that it has every prospect, in due course, of achieving personhood. For the kind of life that a person is capable of living is of great value to its possessor. But then why doesn't the same argument apply from the moment of conception, given that the potentiality for personhood is already present? To answer that question, it is necessary to make a threefold distinction, between a living human organism, a person and a human being; what matters here is not the words I have chosen, but the distinction that they mark, and the question is which of these things we are essentially. What you and I are essentially is what we could not but have been, given that we existed at all.

Let us start by asking whether we are essentially persons in Locke's sense. Otherwise put, could you or I have failed to be, or at some point ceased to be, persons? The answer to that is 'Yes'. If the newborn baby from whom I derive had died in early infancy, it would still be true, I suggest, that I existed briefly, in spite of never achieving personhood. Likewise, if in old age I develop Alzheimer's, it is possible that my mental faculties will eventually deteriorate to the point of loss of personhood. But in a literal sense it would surely still be me. Indeed, were it not me, that would do something, from my current perspective, to ameliorate the horror of the prospect!

So if you and I are not essentially persons, are we essentially living human organisms? Well I take it that the living human organisms associated with you and me will continue to exist for as long as respiration, digestion, metabolism and so forth continue. But does that suffice for us to continue to exist? Surely not. The continuation of mere biological life is not enough.

Suppose you were suffering from severe heart disease, so severe as to be life threatening. In such circumstances, you would be delighted if a compatible heart became available for transplanting into your chest. Now suppose, instead, that you were suffering from an inoperable brain tumour. Once again, your days appear to be numbered. But at the eleventh hour you are told that a new breakthrough in surgical technique has made it possible to remove your brain and replace it with another; and that a suitable brain has just become available in consequence of a tragic road accident. What then would be your reaction? Scarcely, I suggest, one of great delight or relief. For you would view such an operation not as saving your life but as saving that of the donor. So, far from its being a matter of your getting a brain transplant, it would be a matter of the alleged donor getting a body transplant. This reaction fits well with the fact that, in law, death is now equated with brain death, and that is why the continuation of biological life (with or without artificial aid) is insufficient for the continued existence of a human being. At a certain point, when a grieving relative objects to the doctor's proposal to withdraw life support, it is appropriate – given certain brain injuries – for the doctor to say: 'I'm very sorry Mrs Brown, but your Harry isn't there any more.'

What ceases to exist at brain death is what I call a human being and this, I shall argue, is what we are essentially. The essential me is the mental me, which resides in the brain. The rest of the body is merely a support system, toolbox, power pack and vehicle for getting about. (And I say that not merely because I happen to be a philosopher. This is equally true of police officers, postmen, physicists, plumbers and paediatricians.) Having said that, however, much of what goes on in the brain has nothing directly to do with our mental life: one such function is regulation of body temperature. Central to our being are those brain structures that are directly implicated in consciousness. We cease to exist when these structures become irreparably damaged in such a way that the brain can never again sustain any form of conscious mentality, and by the same token, we come into existence only with the onset of what I shall call *brain life* – the moment at which such structures have matured to the point of being able to generate consciousness. Here I follow the American philosopher Thomas Nagel (1974) in regarding something as consciousness or sentient (I use these terms as synonyms) only if it is appropriate to ask what it is like to *be* that thing. I've often wondered what it is like to be a cat or a dog. But I do not wonder what it is like to be a tree, since I assume that there is nothing that it is like to be a tree – unless one wants to say that it is like being dreamlessly asleep. Trees, I take it, are not sentient beings, and for the same reason, I do not wonder what it is like to be a one-month fetus.

What I am advocating is that it is not mere potentiality for personhood that gives a serious right to life; it is potentiality plus identity. A normal newborn baby has a serious right to life because, in spite of not yet being a person, it is the very same human being that, barring some mishap, will in due course enjoy personhood. This cannot be said early in pregnancy, when the brain structures whose persistence over time embody one's continuing identity have yet to come into existence.

My view, therefore, is that before the onset of brain life, the termination of pregnancy should be regarded as no more problematic, morally, than the use of contraception, and equally, I would not personally object to research being carried out on a human embryo or fetus before that point, assuming that it could be reliably identified. As I see it, no actual human being would thereby be damaged or destroyed. I therefore regard as mistaken a joint statement of the Catholic Archbishops of Great Britain (1980), according to which what exists from the time of conception '. . . is the life not of a potential human being but of a human being with potential'. I