

23. When is a Person a Person – When does the “Person” Begin?

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1. Introduction

One of the most polarized ethical disputes in human embryonic stem cell research (hESCR) is the question about the moral status of embryos: should embryos be treated as human beings, and as such, as potential persons, or as mere biological cell material, appropriate to be used for research? Since embryonic stem cells have the ability to differentiate into all types of cells of the human body, human embryonic stem cell therapy offers a hope for cure for severe diseases such as cancer, Alzheimer's, leukemia, or multiple sclerosis, among others. Despite its great therapeutic promise, hESC research is facing strong opposition since these stem cells can only be gained through the destruction of early stage embryos.

On the opponents' side of human stem cell research, arguments are often drawn from philosophy, to critique innovative technologies in life sciences, such as gene manipulation and cloning, and to support the ethical agenda to call for a restriction of hESCR. The main ethical references drawn from philosophy are concepts of personhood and human dignity, and one of the main arguments employed by hESCR opponents stresses that Kant's categorical imperative prohibits treating a person just as a means to an end (*Mittel zum Zweck*). Rather, persons are to be treated as ends in themselves (*Zwecke an sich*). For opponents, the very fact that embryos, from the moment of conception on, bear in themselves the potential of personhood, gives reason to call for an end, or at least for a significant restriction, of hESCR. Following this approach, human embryos should not be disaggregated to obtain stem cells for research and cloning, since, when human embryos are persons *in potentia* in a Kantian sense, destroying them to obtain their cells for research fails to treat them as ends in themselves. Consequently, opponents of hESCR claim that on the basis of their ontological status (as potential

persons), the same constraints that hold for killing adult humans apply to human embryos as well: killing cannot be justified with therapeutic promises of higher social ends. But the assumptions about the ontological as well as the moral status of early stage embryos in their first five days—so called blastocysts, and only these are used for harvesting stem cell lines—are controversially disputed in the current discourse, with the main question on the table being: when does a human being come into existence—when does the “person” begin? This question remains theoretically as well as empirically unsolved.

In this essay I will point out that if one wants to argue against hESCR by appealing to the Kantian concept of “personhood”, one has to bear in mind that this concept is rich and complex, since it presupposes the capacities of reason, free will, and moral agency. Only by possessing these features does a being, in the Kantian sense (human or not), have dignity, and herewith deserve respect and protection. Since in the current controversy, the line regarding the ontological and moral status of embryos cannot be drawn, not just opponents are using Kantian ethics and concepts to support their agenda, but proponents of hESCR are also able to draw on Kant to argue in *their* favor. Proponents question these assumptions of the “potential person” in an embryo and deliver quite challenging readings of Kant’s conception of personhood.¹ Manninen’s argumentation, for example—I will come back to it later in the essay—differentiates between biological and ontological categories, denying any causal relation between them. The main argument goes as follows: when Kant claims that humans have to be treated as ends in themselves, does that mean all members of the biological species *homo sapiens* have to be treated as ends in themselves? If so, then Kant would regard personhood as equivalent with being part of the biological species. But this is not the case, since Kant sets the very distinct definition: only intelligent beings (*vernunftbegabte Wesen*) are persons! Manninen’s argument draws a line between the biological and ontological dimension of the *homo sapiens* species and claims that, while a human being in the ontological sense (a person) is always also representing its biological species, the same does *not* hold vice versa: not every member of the *homo sapiens* species is a human being, such as an early stage embryo that biologically belongs to the *homo sapiens* species,

1 Bertha Alvarez Manninen, “Are Human Embryos Kantian Persons?: Kantian Considerations in Favor of Embryonic Stem Cell Research”, *Philosophy, Ethics, and Humanities in Medicine* 3.4 (2008), 1–16.

but is not regarded as a human being in the ontological sense, since it does not display the capacities of reason and moral agency. This position also denies that the event of conception would already causally entail the genesis of a person, since conception, cell fusion, and embryonic development are regarded as mere biological phenomena. This approach is clearly based on a distinction between biological/empirical phenomena on the one side and ontological concepts of human dignity and rational personhood on the other side. Consequently, the biological tissue of an early stage embryo does not constitute a person, and hESC research is justified.

These hESC cultures are derived from a blastocyst or early stage embryo (four to five days old), consisting of 50 to 150 cells. These cells are pluripotent, meaning they can develop into any of the more than 200 cell types of an adult body. Hence cultivated stem cells can be specialized to grow into various organs or tissues such as muscles or nerves. Whereas the medical application of embryonic stem cells is still in the state of basic research, with their therapeutic efficiency and applicability on adult patients not yet proven, adult stem cells, mostly gained from bone marrow, are already routinely used in medical treatments today.

Opponents disapprove of the scientific use *only* of embryonic stem cells while approving all other possible types of stem cell research. Therefore, much effort has been made in recent years to find methods for producing pluripotent stem cells, so called “induced pluripotent stem cells” (iPSC) artificially. These cells are derived via reprogramming of non-pluripotent adult cells, such as skin tissue and are regarded to possess the same, much desired capacity for differentiation as natural pluripotent stem cells, such as embryonic stem cells, do. This important achievement could in fact allow research with pluripotent stem cells *without* the controversial use of embryonic stem cells. Currently, scientific research on hESC as well as on iPSC is conducted, since it is not clear yet, whether iPSCs really do have the same qualities and therapeutic potentials of hESC cells; at this point, *neither* iPSCs *nor* hESC cells have been used on patients. Both lines are in the stage of basic, foundational research, and it may take at least another decade until firm results can be expected.²

Proponents, however, make yet another valid and in fact quite utilitarian point, why research should not abandon work with embryonic

2 J. Yu, et al., “Induced Pluripotent Stem Cell Lines Derived from Human Somatic Cells”, *Science* 318 (2007), 1917–20.

stem cells, despite the many other options.³ The embryos that stem cell lines are drawn from are actually handed over to researchers as leftovers from fertility clinics, where thousands of abundant blastocysts are produced, frozen, and stored; Manninen mentions a number of about half a million within the US.⁴ These frozen and stored blastocysts will be discarded and washed down the drain eventually. Since there is no way that these abundant blastocysts would ever be transplanted into a person's womb, and brought to birth, they will die anyway, and, so the reasoning goes, why not use them for research that could serve and benefit all mankind?

What would Kant say if he lived today? Kant could not foresee the developments in technology the twentieth century has taken and the twenty-first century is heading into. So why refer to Kant? Isn't that a highly speculative and scholastic enterprise? An abundance of material on Kant's concepts of personhood and human dignity is facing scarce textual references Kant provided on the status of children, not to speak of the unborn. It takes a lot of exegetical analysis, as well as an in-depth overall understanding of Kant's philosophy and ethics, to answer the speculative question: which moral status would Kant ascribe to embryos? But no matter how one draws on Kant, his relevance for today's as well as for future discourses is unbroken as ever, since his ethics is still the only normative reference Ethics Commissions can draw on as an alternative to utilitarian, pragmatic, and other types of reasoning.

In the following parts I will give an overview of the main dispute in stem cell research, then take a closer look at Kantian arguments, referring to the *Groundwork of the Metaphysics of Morals*, the *Metaphysics of Morals*, and the *Critique of Pure Reason*. In the summary and concluding part I will argue against those who claim that Kant's ethics is compatible with hESC research, or that the justification of hESC research is *derivable* from this ethics. I doubt this approach, and I will try to support my point through a textual exegesis, although I have to admit that the references are quite scarce. Coming to the conclusion that a justification of embryonic stem cell research is not derivable from Kantian ethics does not mean I personally oppose this research. But from my point of view as a Kant scholar I will argue that *if* someone wants to provide argu-

3 Katrien Devolder, "Human Embryonic Stem Cell Research: Why the Discarded-Created Distinction cannot be Based on the Potentiality Argument", *Bioethics* 19 (2005), 167–86.

4 Manninen, 13.

ments for embryonic stem cell research, one would not find support for them within Kant’s philosophy.

2. The Question of the Ethical Status of Human Embryos in the Current Debate

Why is it that the moral status of human embryos is so controversially discussed and that this question is able to polarize the discourse so strongly? Maybe it is because this question entails one of the most fundamental issues regarding the nature of human life. To be able to draw the line on what is human life and what is not seems to be crucial, since the status of a human being commands dignity, respect, and the right to live.

So, is a five-day-old human embryo a human being or not? While this question is in dispute, it is *not* in dispute that a five-day-old embryo is a *living being*. For this fact, hESC research opponents, including Christian and other religious and humanitarian groups, claim the classic view that, since human life begins to exist at the event of conception, when an egg and sperm fuse to form a one-cell zygote, human embryos should already at this early stage be regarded as living members of the human society with the *potential* to become adult persons. As such, they deserve protection and the right to live. On the opponent’s argument against hESC research, membership in the homo sapiens species confers on the embryo a right not to be killed. This view is grounded in the assumption that human beings have the same moral status at all stages of their lives, as soon as they come into existence as a living entity.

Proponents for hESC however have, as mentioned before, developed elaborate arguments to reject giving human embryos the status of human beings. Apart from the biological/ontological distinction, the point is made that the cells of blastocysts do not in any way form a human organism, since these cells are not differentiated but rather homogeneous. Cells start to grow into a human embryo after cell differentiation, usually starting from day 14 to 16. Although the cells of blastocysts are in fact living cells, they are *not* regarded as a human organism; so again, research with them is justified.⁵ From this approach the conclusion is drawn that species membership, as is undoubtedly the case

5 J. McMahan, “Killing Embryos for Stem Cell Research”, *Metaphilosophy* 38 (2007), 170–89.

with human zygotes and blastocysts, does not entail the ontological or moral status of a human being, with a right to live. Instead, higher order capacities, such as reasoning, self-awareness, and moral agency are claimed as criteria to ascribe a being the right to life. But basing the foundation for a right to live in capacities such as reasoning, self-awareness, and moral agency entails the difficulty that human newborns and infants lack these capacities, even to a greater degree than some non-human animals, as chimpanzees, do. To challenge this difficulty, the potentiality argument comes in again, with the attempt to conceptualize a distinction between “exercisable capacities” and “basic natural capacities” as innate, inborn presumptions for higher mental capacities. Exercisable capacities are current actualizations of these innate natural capacities.⁶ Following this approach these basic natural capacities exist already in an early stage of embryonic life. The difference between these types of capacities is regarded as a difference between certain *degrees of actualization* along a developmental continuum line. In fact there are differences in actualization between the capacities of embryos, fetuses, infants, children, and adults.⁷

But the question is: do these differences of actualization justify the introduction of the same moral and ontological standards for all of an individual’s developmental stages? Again, proponents deny that being endowed with a certain potentiality would logically entail the same status as having *realized* some or all of these potentials.⁸ Furthermore, so the argument goes, if the basis for protecting embryos were grounded in their potentiality to grow into human, intelligent beings, the thousands of frozen and stored cells, in order to realize their potential, would need to be implanted into (willing) females’ wombs—an idea that would raise

6 R.P. George and A. Gomez-Lobo, “Statement of Professor George and Dr. Gomez-Lobo”, in: *Human Cloning and Human Dignity: An Ethical Inquiry. President’s Council on Bioethics* (Washington: Council Publications, 2002), 258–66. Available online at: www.bioethics.gov.

7 Allen Wood, in his reading of Kantian ethics, draws a distinction between persons “in the strict sense” and persons “in the extended sense”. Whereas persons in the strict sense possess the full range of capacity for reason and moral agency, individuals in the extended sense (including children) would expose only partial stages of rationality, or preconditions of it. See Allen Wood and Onora O’Neill, “Kant on Duties Regarding Nonrational Nature”, *Proceedings of the Aristotelian Society*, Supl., 72.1 (1998), 189–228.

8 A. Sagan and P. Singer, “The Moral Status of Stem Cells”, *Metaphilosophy* 38 (2007), 264–84.

serious concerns about the dignity and moral status women possess.⁹ These problems raise serious doubts regarding an embryo’s potential and the potentiality argument as a foundational argument for a right to live, suggesting the conclusion that the moral status of early stage embryos is not great enough to restrict research that may yield valuable therapeutic benefits for all mankind.

3. A Kantian Analysis of Embryonic Stem Cell Research: Potentials and Limitations

Kant did not deal with the question, so crucial for the current debate: when is a human a human, a person a person? Kant’s starting point is: humans are intelligent beings (*vernunftbegabte Wesen*) having intrinsic moral value and moral dignity. As such they are ends in themselves, and not just means to an end. In the *Groundwork of the Metaphysics of Morals* Kant sets the axiom: intelligent beings exist as ends in themselves (als *Zwecke an sich*). From this axiom the categorical imperative, in its four different formulations, is derived; I pick here the second, the practical imperative toward mankind:

... Now I say: that the human being and in general every rational being exists as an end in itself, *not merely as a means* for arbitrary use by this or that will: ... instead he must always be regarded at the *same time as an end* ... The practical imperative will therefore be as follows: Act in such a way that you always treat humanity, whether in your own person or in the person of any other, never simply as a means, but always at the same time as an end.¹⁰

Kant draws a clear distinction between persons and things. Whereas persons have the capacity to reason, things (including animals) do not have this capacity. According to Kant, only beings with the capacity to reason and the capacity for moral agency are subject to dignity and respect. Be-

9 Susan Feldman, “From Occupied Bodies to Pregnant Persons: How Kantian Ethics should Treat Pregnancy and Abortion”, in J.E. Kneller and Sydney Axinn (eds.), *Autonomy and Community: Readings in Contemporary Kantian Social Philosophy* (Albany: New York State University Press, 1998), 265–282; Ronald M. Green, “Is There a Kantian Perspective on Human Embryonic Stem Cells?”, in Stephen Palmquist (ed.), *Cultivating Personhood: Kant and Asian Philosophy* (Berlin: Walter de Gruyter, 2010), ch.###.

10 Immanuel Kant, *Groundwork of the Metaphysics of Morals*, tr. H.J. Paton (New York: Harper Torchbooks, 1964), 95–6.

ings without the capacity to reason (i. e., “things”) do not have dignity; this entails that we do not owe them the same kind of respect we owe beings with the capacity to reason. On this basis, the argument goes on further and links with a being’s capacity for moral agency, as the capacity to set and perform moral laws within the community of moral beings, the “realm of ends”. By the “realm of ends” Kant denotes the community of intelligent beings, regulated through moral laws all intelligent beings are subject to, and where no one regards her/himself and other fellow members just as means, but rather as ends in themselves. Within the Kantian framework, the capacity for free will and moral agency *actually* entails dignity, due to the fact that intelligent beings are *at the same time* also moral beings and, as such, legislative as well as subject to moral laws.

Another interesting differentiation Kant makes is the one between “price” and “dignity”: in the realm of ends, he says, everything has a price *or* a dignity. What has a price is replaceable; what is priceless, and is, as such, above all pricing, has dignity (4:102). This distinction obviously follows from the thing/person distinction, and it is easy to see what goes with what. Human embryos, produced in fertility clinics, surely have a price; in fact, a quite high one, but do they also have dignity? In the exclusive reading of the “or”, what has a price does not have dignity, and vice versa: what has dignity, does not have a price. Since this distinction in Kant’s *Groundwork* suggests that the price/dignity distinction goes along with the thing/person distinction, can we now logically conclude that, according to Kant, *since* human embryonic stem cells *do* have a price, they do not have dignity?

Due to the fact that Kant leaves so much open, both opponents as well as proponents of hESC research are able to draw on Kantian ethics in their favor. If within the Kantian framework stem cells can be regarded as “things”, they only have a relative value and can be used as means, for higher ends, and therefore research is justified. If they are regarded as rational beings (*in potentia*), they would have an absolute value and their consumption for research would not be justified.

In order to support the being or person *in potentia* argument, one has to browse Kantian texts other than the *Groundwork* or the *Critique*, since, as mentioned, Kant did not incorporate children and the unborn into his philosophy. To my knowledge, the only statement on the moral status of children can be found in the *Metaphysics of Morals* (Rechtslehre, 28); due to its exegetical value, let me quote the whole length of the passage (6:280–1):

... children, as persons, have by their procreation an original innate (not acquired) right to the care of their parents, until they are able to look after themselves ... for the offspring is a person, and it is impossible to form a concept of the production of a being endowed with freedom through a physical operation, so from a *practical* point of view it is quite a correct and even necessary idea to regard the act of procreation as one by which we have brought a person into the world without his consent and on our own initiative, for which deed the parents incur an obligation to make the child content with his condition so far as they can. They cannot destroy their child, as if it were something they had *made* (since a being endowed with freedom cannot be a product of this kind) or as if it were their property; nor can they even just abandon him to chance, since they have brought not merely a worldly being but a citizen of the world into a condition which cannot now be indifferent to them even just according to the concepts of Right.

With the act of procreation a person is brought into being, is “drawn into this world” without his/her approval, says Kant. Furthermore, Kant makes the interesting and for the current interpretation crucial point that it is impossible, to obtain an idea about how a being, endowed with reason and freedom, is brought into this world via “physical operation” (here: conception), giving a hint to the puzzle of how a biological event is able to render beings endowed with reason and freedom.

This is the vague line the Arizona scholar Bertha Alvarez Manninen draws on in her paper “Are human embryos Kantian persons?” Manninen provides a very appealing and challenging interpretation to create strikingly supportive arguments for hESCR, based on Kantian philosophy. With Kant she reads that it is impossible to understand how beings, endowed with reason and freedom, come into existence through the physical occurrence of conception.¹¹ Furthermore, Manninen draws on the first *Critique*, where Kant elaborates the tension that humans are biological as well as intelligent beings. As such, they are subject to natural laws, hence causally determined, as well as being not causally determined, but free. This tension Kant tries to resolve with the phenomenal (empirical) and noumenal (intelligible) distinction. Indeed, these two spheres are crucial within Kant’s theoretical framework, since the first does not causally influence the second. So, to claim the biological event of conception *causally* entails the existence of a being, endowed with reason and freedom, seems to contradict Kant’s statement that we cannot understand the creation of a free being from a purely physical

11 Manninen, 8.

operation. Kant's conclusion, formulated in the Third Antinomy, is that we cannot ground the existence of transcendental freedom by referring to the phenomenal world (A448/B476 f).

I agree with Manninen's argument; but the noumenal/phenomenal distinction bears unsolved tensions in Kant's philosophy, so the interpretation can also go the other way round: *if* empirical ("physical") operations cannot causally render the creation of a free being, then *nowhere* along the line of the development of a human being can the coming into "existence" of reason and freedom be pointed out, because these developmental stages from zygote, blastocyst, embryo, infant, and so on, are *all* empirical or biological, phenomena. So this leaves open when the noumenal or intelligible *causally* comes into play, unless it has already always been there! But that brings us back again to the potentiality argument, since Kant seems to indicate that the noumenal ground has been there all along.

It may be worth taking a closer look at the wording in the cited passage above: whereas the English translation uses "bringing a person into the world", Kant's German uses the verb "*herübergezogen*", literally meaning "drawn to ... from ..."; this is actually quite a strong verb, indicating an operation of movement, of a drawing, or pulling of a subject from point A to B. Why would have Kant chosen exactly this particular verb? In the overall framework of Kant's distinction between the empirical and transcendental, this wording could suggest that *via* the act of procreation a being is drawn *from* the "intelligible" *into* the phenomenal world. Given the cultural and historical context of Kant's time, regarding prevalent views of the immateriality and immortality of the soul that Kant was also dealing with, I think this is a possible reading of what Kant might have been indicating.

The incorporation of Kantian ethics into bioethical discourses still leaves open the question: where do the capacities of reason, self-awareness, and freedom come from? The interpretation of Peter Baumanns also denies that supportive argumentation for hESC and other controversial bio-technologies can be drawn from Kant's ethics. Baumanns states "that the personal and moral status of the human embryo is one of the philosophically unresolved problems of the current bioethical discussion"¹² and finds that Kant's concepts of the individual as autonomous, within the community of the autonomous, entail the idea of

12 Peter Baumanns, *Kant und die Bioethik* (Würzburg: Königshausen & Neumann, 2004), 5.

an embryo as a moral subject to come. Baumann introduces into the discussion the term *nasciturus* (from Latin: “one who is to be born”) to indicate the embryo’s special status, not just as plain biological cell material but, in line with Kant, as a world being and world citizen about to become. For Baumanns the “drawing into being” of a “person in potentia” into this world, into the community of humans, via conception, pregnancy, birth, and education, is not reducible to biological processes, and therefore all developmental stages of human lives deserve protection.

4. Summary and Conclusion

As modern reproduction technology with its high tech equipment like ultrasound, x-rays, etc.—and Kant had seen none of that in his days—demonstrates so impressively, every moment of procreation and pregnancy can be traced and observed but also manipulated and altered. But no matter how severely we ultrasound uteruses, no matter how thoroughly we scan human brains, all we can “see” is still plain cell material, all we can “observe” are biophysical, biochemical events and phenomena—“physical operations” as Kant would have put it. No neuroscientist has ever been able to locate the “I”, a free will, and this not due to the poor level of technology, with the hope for future generations to detect. With Kantian philosophy it can be shown that no neuroscientist will ever be able to “see” an “I”, a “free will”, since these are not empirical phenomena, and as such remain the unsolved puzzles of human existence. “What it means to be human” remains invisible, immeasurable, and unobservable at its beginning—wherever this beginning is, or comes into play: at the event of conception, in the first weeks, in the ninth month, in an infant’s first years, or in an adolescent teenager. Kant could not unveil this puzzle, nor can we, despite the high-tech equipment available today.

Digging into the bioethical discussion around stem cell research gave me the impression that what goes on is a highly scholastic dispute between pro and con; instead of adding to this, I would like to take a step back, to get a look at the bigger picture. Let us draw attention away from the question of the moral, metaphysical, or ontological status of a zygote, blastocyst, or embryo, and reflect upon the reproduction industries that produce these entities in abundance, as we have learned. Financially potential couples and single women invest thousands of dol-

lars for a genetically bio-child, but why, when there are plenty of babies and children waiting for adoption? Where does the “desire” to have one’s own bio-kids come from; through which cultural practices and values is this desire established and nurtured, allowing reproductive industries to capitalize and earn millions of dollars? These issues I found nowhere addressed in the current discourse.

As the development in biotechnology progresses, in the end the potential medical benefits gained from hESC research will probably outweigh the loss of embryos involved. As I stated above, I do not oppose embryonic stem cell research, but I would not support my argument with Kantian ethics. Zygotes and blastocyst cells are artificially produced in tubes. From a certain developmental stage on, outside a uterus, a woman’s womb, these entities could not exist. Therefore I agree with the statement of Rabbi Elliot Dorff, cited in Manninen’s paper, who finds that “extracorporeal (ex utero) embryos have no legal or moral status outside the womb under Jewish law because, “outside the womb ... they have no such potential to become persons”.¹³

Another rather complex relationship has come to the surface through the bioethical discourse: the relationship between technology, science, and society, the dialectics between scientific progress versus ethical values and standards, calling for certain restrictions, and the need for ethical norms. The search and quest in life sciences will go on—no doubt about that—and will always try not just to go to its limits but to transgress them. This principle, that what drives science—the unsolved (and unsolvable) questions and search for answers—will never come to an end, we can already find in Kant’s first *Critique*; see, for example, the First Antinomy (A426/B454 f). Are there any boundaries that should not *ever* be transgressed? I have to leave this to the Science and Ethics Commissions.

13 Elliot Dorff, “Testimony for the National Bioethics Advisory Commission”, in M. Ruse (ed.), *Stem Cell Controversy: Debating the Issues* (Amherst, NY: Prometheus Books, 2003), 197, quoted in Manninen, 16.