

# Marginal Cases and the Moral Status of Embryos

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## Introduction

It is widely held among moral philosophers that membership in the moral community guarantees direct moral standing to each member. Direct moral standing ensures that the life and well being of each member matters in a special way: members of the moral community are assured protection from, among other things, cruelty, mistreatment, neglect, destruction, and exploitation. As social contract theorists have long emphasized, there are very strong prudential reasons to gain entrance into the moral community.

It is also widely held that no special protection extends to those outside the moral community. Those who are often excluded from the moral community—cows, pigs, lambs, goats, early-term fetuses, human embryos, and so on—are therefore at a very serious disadvantage. The destruction of those without direct moral standing does not in general require any moral justification at all.

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Recent work in moral theory bodes well for many beings traditionally excluded from the moral community. It is now a dominant view among moral theorists that the moral community extends to all sentient beings. One may call the thesis that every sentient being has direct moral standing the *inclusiveness thesis*. The most powerful argument for the inclusiveness thesis is the argument from marginal cases (AMC). AMC challenges human beings to provide a principled and relevant reason to include *all* and *only* human beings in the moral community. Every well-known criterion for admission to the moral community—rationality, language ability, self-consciousness, a sense of the future, memory, an emotional life, imagination, purposiveness, and so on—excludes at least some so-called marginal human beings. Because predominant moral judgment rejects the proposal that marginal human beings have no direct moral standing, we are moved to conclude that sentience is the criterion for direct moral standing. The moral community is therefore expanded to include all sentient beings.

Of course, the inclusiveness thesis does not include every marginal human being in the moral community. It remains a dominant view among moral theorists that the moral community does not extend beyond the set of sentient beings. One may call the thesis that there is direct moral standing for early-term human fetuses and human embryos the *greater inclusiveness thesis*. Most moral theorists maintain that the greater inclusiveness thesis is false. Nonsentient human beings are not among those included in the moral community.

In the next section, *The Argument From Marginal Cases*, I show that the standard argument from AMC cannot establish the inclusiveness thesis. AMC cannot provide a reason acceptable to everyone that sentience is a sufficient condition for direct moral standing. In the following section, *The Impartial Argument From Marginal Cases*, I show that an improved argument from marginal cases—the impartial argument from marginal cases or IAMC—can provide a reason acceptable to everyone that sentience is a sufficient condition for direct moral standing. IAMC, there-

fore, establishes the inclusiveness thesis. But IAMC also provides a reason acceptable to everyone that early-term fetuses and human embryos are members of the moral community. IAMC therefore establishes the controversial greater inclusiveness thesis. I conclude that the inclusiveness thesis is true only if the greater inclusiveness thesis is true. We are therefore led to conclude that early-term fetuses and human embryos have direct moral standing.

The greater inclusiveness thesis entails that there is no greater moral justification to destroy human embryos in stem cell research than there is to destroy other members of the moral community—including more developed sentient, rational, or self-conscious beings—in research demanding the extraction of stem cells. All of these beings are members of the moral community and all have direct moral standing.

## **The Argument From Marginal Cases**

AMC is designed to expose a disposition toward *speciesism* among human beings. Speciesism is the unprincipled and morally unjustified partiality toward one's own species. Because there is no significant difference between some human beings and sentient nonhumans, there is no principled basis for including every human being in the moral community and excluding every sentient nonhuman. Below is a standard version of the argument from marginal cases.

1. Many sentient human beings—including human infants, the profoundly developmentally challenged, and others—lack the normal adult qualities of rationality, language use, purposiveness, self-consciousness, memory, imagination, expectation, a sense of the past and future, and so on. These are the so-called marginal human beings.
2. There are many other species that lack the qualities found in normal adult human beings but are nonetheless capable of enjoying pleasurable experiences and suffering painful

- experiences. These are the so-called sentient nonhumans.
3. Marginal human beings rightly have direct moral standing as members of the moral community. There are direct moral objections to raising marginal human beings for food, subjecting them to lethal scientific experiments, treating them as chattel, and so on.
  4. Sentient nonhumans do not rightly have direct moral standing and are not included in the moral community. There are no direct moral objections to raising sentient nonhumans for food, subjecting them to lethal scientific experiments, treating them as chattel, and so on. (Assumption)
  5. If marginal human beings rightly have direct moral standing and sentient nonhumans do not rightly have direct moral standing, then there must be some morally significant property R that marginal humans possess and sentient nonhumans lack.
  6. There is no morally significant property R that marginal human beings possess and sentient nonhumans lack.
  7. Therefore, either marginal human beings do not rightly have direct moral standing or sentient nonhumans do rightly have direct moral standing (from premises 5 and 6).
  8. Therefore, sentient nonhumans rightly have direct moral standing (from premises 3 and 7).<sup>1</sup>

The argument from marginal cases is clearly valid, but there is good reason to doubt its soundness. Consider, for instance, premise 6. Among the proposals for relevant property R, some have received almost no serious consideration. The property “made in the image and likeness of God” or the property “ensouled beings who are the objects of salvation” at least appear to be morally relevant properties that characterize all and only human beings. But it is generally taken to be a decisive objection to these proposals that the possession of such properties is *unverifiable*. Lawrence Becker offers a typical observation.

...[T]here does not seem to be a morally relevant characteristic that distinguishes all humans from all other animals. Sentience, rationality, personhood, and so forth all fail. The relevant theological doctrines are correctly regarded as unverifiable and hence unacceptable as a basis for a philosophical morality.<sup>2</sup>

But the violation of verifiability is by no means decisive, contrary to what Becker and others seem to suggest. There simply is no convincing argument that verifiability constitutes a suitable criterion of meaning, existence, or anything else. Indeed, no version of verifiability has been credible since the lost days of logical positivism. So we are in no position to conclude that only properties whose possession we can verify—in some sense or other of “verify”—matter morally. And so we cannot conclude that there does not exist a morally relevant property that all and only human beings possess.

But the more serious objection to the soundness of the argument from marginal cases concerns premise 3. There is no rationale in AMC for the claim that marginal human beings should have direct moral standing as members of the moral community. It is no doubt abhorrent to most human beings to consider raising marginal humans for food or treating them as chattel. It is also true that predominant moral judgment prohibits using marginal humans in scientific experimentation even for the most admirable goals. But moral judgment and moral sensibility, however widely shared, do not constitute good moral reason for including marginal humans in the moral community. After all, it is also a predominant moral judgment that sentient nonhumans are *not* members of the moral community. However, that popular moral judgment is regarded by many as poor reason for denying sentient nonhumans direct moral standing. Therefore, dominant moral judgments, even well-considered moral judgments, are simply not sufficient to establish premise 3.

Imagine a community consisting of beings that possess the standard list of possibly relevant capacities. Let's call this group the *advanced community*. Each member of the advanced community has the properties of rationality, language use, purposiveness, self-consciousness, memory, imagination, expectation, a sense of the past and future, and so on. In addition to the standard list of possibly relevant abilities each member of the advanced community possesses a capacity for telepathy, psychokinesis, psychoprojection, mental healing, and so on. A whole series of possibly relevant mental capacities that normal adult human beings lack. Members of the advanced community might arrive at the conclusion that R specifies a cluster of morally relevant properties, including many that normal adult human beings do not possess. Now suppose that there are no marginal cases in this community and, as a matter of contingent fact even the least developed members of the advanced community possess capacities sufficient for inclusion in the moral community. Members of this community might quickly arrive at the conclusion that direct moral standing does not extend to every adult human being and certainly not to every sentient nonhuman.

The advanced community offers a principled basis for excluding every sentient nonhuman and every human being from the moral community. The standard argument from marginal cases therefore offers them no reason at all to accept the inclusiveness thesis. Of course there are familiar highhanded responses available. We might simply insist, for instance, that normal adult human beings are members of the moral community and discontinue the discussion. Or we might charge the advanced community with an underdeveloped moral sense and end discussion in this way. But these highhanded responses do not constitute a reason for anyone in the advanced community to accept the inclusiveness thesis. Indeed it is difficult to escape the conclusion that these responses simply beg the question in our favor.<sup>3</sup> But do we really have no reason acceptable to everyone—including everyone in the advanced community—that every human being is rightly included in the moral community?

## **The Impartial Argument From Marginal Cases**

Certainly everyone will agree that the advanced community might be unfairly favoring itself. The argument against including normal adult human beings in the moral community appears to take advantage of certain contingent characteristics of the advanced community. For instance, members of the advanced community enjoy, as a matter of contingent fact, certain developmental advantages over other species and other beings. If speciesism is the unprincipled partiality toward one's own species, then we should add that *developmentalism* is the unprincipled partiality toward one's own level of development. But how do we show that those developmental advantages do not constitute a morally relevant difference between the advanced community and the human community?

We might suppose that no member of the advanced community or human community knows the level of development they happen to enjoy. If the possession of certain developmental advantages constitutes a morally relevant difference between the advanced community and the human community, then the possession of such advantages would still constitute a morally relevant difference were it unknown to everyone who possessed them. But if it is unknown to everyone who possesses those developmental advantages then no member of either community is in a position to unfairly exploit their possession. Members of these communities are therefore in a position to consider whether an impartial assessment of these developmental advantages would lead them to the conclusion that these advantages constitute a morally relevant difference.

But it is very unlikely that any member of the human community or the advanced community would risk exclusion from the moral community on the chance possession of certain contingent properties, psycho-kinetic properties for instance, or psycho-projection, or mental healing, or even rationality, and so on. We are simply not that sure that any one of these properties makes a morally relevant difference. And membership in the moral community provides protection for each member that is too valuable

to risk on the possession contingent properties that might be morally relevant. And so we will not find members of these communities converging on the conclusion that these developmental advantages constitute a morally relevant difference between the human community and the advanced community.

The argument against including normal adult human beings in the moral community takes advantage of certain contingent characteristics of the advanced community. But those developmental advantages do not provide a morally relevant reason for favoring anyone. Excluding adult human beings from the moral community because adult humans lack such advantages is therefore a form of developmentalism. It is simply an unprincipled partiality toward the level of development found in the advanced community.

Notice, however, that an impartial consideration of the contingent advantages of adult human beings also provides no moral reason for excluding sentient nonhumans from the moral community. It is again unlikely that any member of the human community would risk exclusion from the moral community on the chance possession of rationality, language use, purposiveness, self-consciousness, memory, imagination, expectation, a sense of the past and future, and so on. No one is sufficiently certain that rationality, language use, and so on, are properties that make a moral difference large enough to exclude sentient nonhumans from the moral community. And so the impartial argument from marginal cases also provides a convincing basis for the inclusiveness thesis.

But among those who accept the inclusiveness thesis, the developmental advantages of normal adult human beings are widely regarded as a relevant reason for excluding early-term fetuses and human embryos. It is obvious that normal adult human beings enjoy many developmental advantages over early-term fetuses and human embryos. Early-term fetuses and human embryos are not rational or purposive, for instance, and they have no sense of the past and future, and so on. But let's consider how



certain we are that these developmental advantages constitute a moral difference large enough to exclude early-term fetuses and human embryos from the moral community.

Suppose that no member of the human community knows the developmental point that—as a matter of contingent fact—he or she happens to have reached. If early-term fetuses and human embryos are not members of the moral community, then they possess no moral protection from destruction and exploitation. No direct moral justification is required for the termination of early-term fetuses and human embryos.<sup>4</sup> But human beings who are prepared to permit the termination of human embryos or early-term fetuses must be prepared to prevent the existence of many adult human beings. Of course we have assumed that no one knows his or her own level of development—no one knows whether he or she is a normal adult human being, a newborn, an early-term fetus, or not yet existing.<sup>5</sup> So everyone is aware that, for all anyone knows, his or her own precursor currently exists among those early-term fetuses and human embryos. Those prepared to permit the termination and exploitation of human embryos must therefore be ready to forfeit a world in which he or she exists as a normal adult human being for a world in which he or she never existed or never existed as an adult.<sup>6</sup> But certainly no one is willing to risk his or her normal adult existence on the chance occurrence that he or she has already reached a normal adult level of development. No one is *that* certain that the developmental advantages of normal adult human beings make a moral difference so significant that the termination of his own precursor is morally unimportant.<sup>7</sup> And there is obviously a great deal to lose if, as we found in our discussion of the advanced community, those developmental advantages make no moral difference at all.<sup>8</sup> For those who are not in a position to exploit their own level of development, then, it is not unreasonable to conclude that the moral community includes early-term fetuses and human embryos. The impartial argument from marginal cases therefore offers a convincing basis for the greater inclusiveness thesis.

Human beings who insist that there are developmental reasons for excluding early-term fetuses and human embryos from the moral community are therefore developmentalists. The developmental reasons advanced for excluding human embryos from the moral community are not reasons anyone would accept for excluding their own precursors from the moral community. Excluding early-term fetuses and human embryos from the moral community simply expresses an unprincipled partiality toward the level of development found in normal adult human beings.

### Concluding Remarks

Every member of the moral community has direct moral standing. Direct moral standing provides protection from, among other things, cruelty, mistreatment, neglect, destruction and exploitation. The inclusiveness thesis claims that the moral community includes among other beings every sentient nonhuman. The greater inclusiveness thesis claims that the moral community includes among other beings early-term fetuses and human embryos. We found that the impartial argument from marginal cases establishes both the inclusiveness thesis and the greater inclusiveness thesis. We appealed to the following impartial argument from marginal cases, now presented in standard form:

- 1\*. Normal adult human beings rightly have direct moral standing as members of the moral community. There are direct moral objections to subjecting normal adult human beings to lethal scientific experiments, even for good goals.
- 2\*. Early-term fetuses and human embryos lack the developmental advantages of normal adult human beings, including rationality, language use, purposiveness, self-consciousness, memory, imagination, expectation, a sense of the past and future, and even sentience.

- 3\*. Early-term fetuses and human embryos do not rightly have direct moral standing and are not included in the moral community. There are no direct moral objections to subjecting them to lethal scientific experiments (Assumption).
- 4\*. If normal adult human beings rightly have direct moral standing and early-term fetuses and human embryos do not rightly have direct moral standing, then there must be some morally significant property, termed R, that adult human beings possess and early-term fetuses and human embryos lack.
- 5\*. There is no morally significant property R that adult human beings possess and early-term fetuses and human embryos lack. The developmental advantages of adult human beings do not constitute a morally relevant difference between human embryos and normal adult human beings.
- 6\*. Therefore either adult human beings do not rightly have direct moral standing or early-term fetuses and human embryos do rightly have direct moral standing (from premises 4\* and 5\*).
- 7\*. Therefore, early-term fetuses and human embryos rightly have direct moral standing (from premises 1\* and 6\*).

The impartial argument from marginal cases is sound if premise (5\*) is true. But we established in the previous section that it is reasonable to believe that premise (5\*) is true. Perhaps more cautiously we found that no one would risk his normal adult existence on (5\*) being false. And this is because we are simply not that certain that (5\*) is false. For similar reasons members of the advanced community were unwilling to risk membership in the moral community on the moral relevance of psychokinetic powers, or telepathic powers, or powers of mental healing. No one is so certain that these are relevant capacities that they are willing to risk their own exclusion from the moral community on it.

Among the central consequences of the impartial argument from marginal cases is that lethal experimentation on early-term

fetuses and human embryos is morally unjustified in the absence of direct moral reasons. The developmental differences between adult human beings and human embryos are not sufficient to exclude human embryos from membership in the moral community. Therefore, the lives of early-term fetuses and human embryos have every protection afforded members of the moral community. It is well known that stem cell research on early-term fetuses and human embryos has extraordinarily promising implications for medical therapy.<sup>9</sup> But if early-term fetuses and human embryos are members of the moral community—and we have offered reasons to believe that they are—then the termination of fetuses and human embryos in well-intended research lacks all of the moral justification of the termination of more advanced humans in well-intended research.

## Notes and References

<sup>1</sup>The foregoing version of AMC is based on Lawrence Becker's formulation in Drombroski, D. A. (1997) *Babies and Beasts: The Argument from Marginal Cases*. University of Illinois Press, Chicago. See Drombroski for an extended discussion of the importance of AMC in recent moral debate.

<sup>2</sup>See Becker, L. (1983) The priority of human interests, in *Ethics and Animals* (Miller, H. and Williams, W., eds.), Humana Press, Totowa, NJ.

<sup>3</sup>See, for instance, Kuhse, H. and Singer, P. (2002) Individuals, humans, and persons: the issue of moral status, in *Unsanctifying Human Life* (Kuhse, H., ed.), Blackwell Publishers, Oxford.

Why do we think that killing human beings is so much more serious than killing these other [sentient non-human] beings? . . . The *obvious* answer is that human beings are different from other animals, and the greater seriousness of killing them is a result of these differences. But which of the many differences between human beings and other animals justify such a distinction? Again, the *obvious* response is that

the morally relevant differences are those based on our superior mental powers—our self-awareness, our rationality, our moral sense, our autonomy, or some combination of these... . That the particular objection to killing human beings rests on such qualities is very plausible (p. 193, *my emphasis*).

But these responses are not at all obvious and simply beg the question against the advanced community, who find such qualities of little or no moral significance.

<sup>4</sup>Of course, the termination of human embryos might be prohibited for its instrumental disvalue. But because human embryos are not members of the moral community, the termination *per se* of human embryos is not something for which a moral justification is required.

<sup>5</sup>I do not assume in this argument that anyone is identical with the embryo or fetus that is his precursor. On some theories of personal identity that identification fails, on others it does not. But neither assumption affects the argument that follows. The argument also does not assume that the embryo possesses (or is identical to) a hylomorphic soul or a Cartesian soul. For an interesting series of arguments on whether the embryo is ensouled and the permissibility of killing “early life,” see McMahon, J. (2002) *The Ethics of Killing*. Oxford University Press, Oxford, pp. 7–19 and p. 267 ff.

<sup>6</sup>The argument I am proposing applies to existing human beings at various levels of development. I do not conclude or propose that potential human beings—unfertilized ova, for instance—are also members of the moral community. But it should be clear that I am not using “human being” synonymously with “human person.”

<sup>7</sup>But compare Kuhse, H. and Singer, P. (2002) The moral status of the embryo, in *Unsanctifying Human Life* (Kuhse, H., ed.) Blackwell Publishers, Oxford. In a series of hypothetical cases Singer contends that there is no obligation to preserve the lives of embryos. Suppose it is permissible to dispose of an egg and sperm from a certain couple. If so, then argues Singer, suppose

... [T]he couple is asked if they are prepared to consent to the newly created embryo being frozen to be implanted into someone else, but they are adamant that they do not want

their genetic material to become someone else’s child. Nor is there any prospect of the woman’s condition [viz. her medical condition precluding the possibility of pregnancy] ever changing, so there is no point in freezing the embryo in the hope of reimplanting it in her at a later date. The couple ask that the embryo be disposed of as soon as possible. (cf. pp. 182–183)

Now Singer asks “how plausible is the belief that it was not wrong to dispose of the egg and sperm separately but would be wrong to dispose of them after they have become united?”

I take it that the question is rhetorical. But the impartial argument from marginal cases would have us conclude that the embryo is a human being (the sperm and egg separately are only potential human beings) and a member of the moral community.

<sup>8</sup> We have arrived at the conclusion that the developmental differences between adult human beings and human embryos is not so significant that human embryos are excluded from the moral community. The reasoning can be set out in matrix form.

	Qualities Are Relevant	Qualities Are Not Relevant
I Conclude Qualities Are Relevant	Loss of My Adult Life (Permissible)	Loss of My Adult Life (Extreme Moral Disvalue)
I Conclude Qualities Are Not Relevant	No Loss of My Adult Life (Permissible)	No Loss of My Adult Life (Extreme Moral Value)

If I conclude that the developmental differences between adult human beings and human embryos are so significant that human embryos are not members of the moral community, then I risk the extreme moral disvalue that my own adult life is precluded. If I were sure that the qualities were morally relevant, then there would be no risk of extreme moral disvalue. If I conclude that the developmental differences are not so significant, then I risk no more than that my adult life is not precluded when it may have been so. But if I cannot conclude that those developmental differences are relevant in my own case, then I cannot conclude that they are relevant in any other case. We arrive at the conclusion that the

developmental differences are not relevant in any case. This is enough to establish the greater inclusiveness thesis.

<sup>9</sup>Compare Holland, S., Lebacqz, K., and Zoloth, L., eds. (2001) *The Human Embryonic Stem Cell Debate*. MIT Press, Cambridge. Among the extraordinary potential of stem cells is allowing permanent repair of failing organs. Medical therapy could not only halt the progression of chronic disease but also restore entirely lost organ function. Patients with spinal cord injury, for instance, could receive cell-based treatments restoring central nervous system functions.