

A Case for Equal Basic Rights for All Human Beings, Born and Unborn: A Response to Critics of *The Ethics of Abortion*

Christopher Kaczor*

ABSTRACT: This essay is a response to various criticisms raised by Don Marquis and William May about my book *The Ethics of Abortion*. The main criticisms raised by Marquis is that the argument of this book rest on the speciecism latent in the assumption that all human beings should be accorded basic rights and that all human beings are equally entitled to the same basic rights. Among the points raised by May are questions about the nature of the positive arguments in support of the book's main claims.

IN *THE ETHICS OF ABORTION: Women's Rights, Human Life, and the Question of Justice*, I argue that all human beings have equal basic rights and that all intentional abortions are morally impermissible. I tried to take into account every defense of abortion and offer critiques of them. I also attempted to establish a positive case for protection of the unborn. I would like to respond

* *Christopher Kaczor* was graduated from the Honors Program of Boston College and earned a Ph.D. four years later from the University of Notre Dame. A Fulbright Scholar, Dr. Kaczor is a former Federal Chancellor Fellow at the University of Cologne and William E. Simon Visiting Fellow in the James Madison Program at Princeton University. His twelve books include *The Gospel of Happiness*, *The Seven Big Myths about Marriage*, *A Defense of Dignity*, *The Seven Big Myths about the Catholic Church*, *The Ethics of Abortion*, *O Rare Ralph McInerney: Stories and Reflections on a Legendary Notre Dame Professor*, *Thomas Aquinas on the Cardinal Virtues*, *Life Issues-Medical Choices*, *Thomas Aquinas on Faith, Hope, and Love*, *The Edge of Life*, and *Proportionalism and the Natural Law Tradition*. Dr. Kaczor's views have been in *The New York Times*, *The Washington Post*, *The Wall Street Journal*, *The Los Angeles Times*, *Huffington Post*, *National Review*, *NPR*, *BBC*, *EWTN*, *ABC*, *NBC*, *FOX*, *CBS*, *MSNBC*, *TEDx*, and *The Today Show*.

to some of the critiques of my work, in particular from Don Marquis and William May.

In *Notre Dame Philosophical Reviews*, Don Marquis offers a generally positive evaluation of my work. He calls it “the most complete, the most penetrating and the most up-to-date set of critiques of the arguments for abortion choice presently available. It is required reading for anyone seriously interested in the abortion issue. It is a good introduction for anyone who wishes to read a serious and thoughtful account of all of the various serious philosophical views that support the right to abortion. It deserves careful study.... I highly recommend it.”¹

Despite these kind words, Marquis believes that my basic argument against abortion ultimately fails because it rests on the premise that all human beings should be accorded basic human rights. Marquis raises a number of difficulties with this proposition that could be fatal to my overall argument.

The first problem is called speciesism. Peter Singer defines speciesism as “a prejudice or attitude of bias in favor of the interests of members of one’s own species and against those of members of other species.” On this view, to hold that all human beings have moral status is an insidious “-ism” and so should be rejected.

Although in *The Ethics of Abortion* I did not critique the notion of speciesism (one can only fight so many battles at once), we have good reason to reject the view that speciesism is akin to racism or sexism. Accepting the wrongfulness of speciesism commits one to implications that are deeply counter-intuitive. Dale Jamieson points out, “As Singer notes in *Animal Liberation*, everything else being equal, someone who rejects speciesism should be morally indifferent between a human and a dog who are at the same level of consciousness.” Let’s say I rush into a burning building, and I have time only to save one of two beings at the same level of consciousness. I find a one-year-old girl, Catherine, and nearby her dog, Fido, both passed out from smoke inhalation. I should just flip a coin to decide whether to save Catherine or Fido, since (on Singer’s view) her potential for rational functioning is irrelevant, and they are equally sentient. This is absurd, even if Catherine is an orphan.

Marquis also finds fault with various justifications that I give in favor of

¹ Don Marquis, *Notre Dame Philosophical Reviews*, <http://ndpr.nd.edu/review.cfm?id=21890>, 2010.11.10

the equal basic moral worth of all human beings:

Kaczor argues that the right to life must be based upon endowment, not performance. What people are capable of doing comes in degrees. This is incompatible with our commitment to human equality. Therefore, the right to life must be based on our endowment, on the genetics that we have in common with all other human beings.... [O]ne wonders why the right to life cannot be an equal right that one obtains by meeting some performance threshold, just as all students who pass their junior year in high school have the equal right to enroll for their senior year, whether they passed their junior year with flying colors or barely eked out passing grades.

Important differences exist between meeting the performance threshold for academic advancement and various performance accounts of personhood. In standards for grade advancement, there ought to be a non-arbitrary pedagogical relationship between what is to be learned in one grade and what is needed to be prepared to learn in the next grade. By contrast, as I argued in the book, there is no non-arbitrary rational basis for determining which performance characteristic grants personhood (self-awareness, reasoning ability, or sentience?) and what degree of that characteristic gives moral worth.

Secondly, if a degreed characteristic grants moral status, then it would seem to follow that the more you have of the valuable characteristic, the more valuable you would be. The junior who barely passed and the junior who earned a 4.0 both count equally as seniors, but they do not have equal academic achievement as students. Likewise, performance-threshold accounts of personhood can establish that two normal adults both count as persons, but given human inequalities in degreed qualities (self-awareness, etc.), such accounts cannot establish that any two individual adults have equal moral worth as persons, and hence equal rights.

Marquis critiques a third way of justifying the thesis that all human beings should be accorded moral status:

Kaczor's strongest argument appeals to what he describes as the orientation of all human beings toward freedom and reason. The virtue of this move is that it gets our values into the account of the basis for our rights. The trouble with this move is that either this orientation is entirely a matter of the genetics that make us members of the human species or it is not. On the one hand, if it is just a matter of our human genetics, then, perhaps, it may yield the equality of all human beings. The trouble is that some individuals who are genetically enough like us to be counted as humans, such as the irreversibly unconscious, are not capable of freedom and reason.

The orientation towards freedom and reason is *not* abolished in irreversibly unconscious human beings, though this orientation is frustrated by disease or injury. Indeed, it is the orientation to freedom and reason of all human beings that makes it so tragic when injured human beings cannot pursue distinctively human goals. The illiterate man is tragically deprived; the illiterate ape is not. This concept of flourishing plays a similar role in my justification of universal human rights as the “future-like-ours” plays in Marquis’s own justly famous essay on abortion.² I am disappointed that Marquis did not notice the parallels between his view and my own view (both of which are non-species specific) in the following passage of my book:

Aside from just punishments, it is a violation of your rights when someone intentionally undermines your flourishing or what is necessary for your flourishing. To kill you is to undermine... your flourishing because being alive is necessary for you to flourish and is itself partially constitutive of your flourishing, so it is wrong to kill you. This is true not simply of you as an individual but of all others whose flourishing is similar to yours. So, it is wrong to kill any other being who shares flourishing-like-yours. This norm then would exclude the intentional killing of all innocent human beings and any other being sharing flourishing-like-yours. My account secures the right to life of irreversibly comatose human beings whose flourishing is like ours, but whose flourishing is greatly compromised by their unfortunate disability.³

This brings us to the over-commitment objection to universal human rights. Marquis writes:

The claim that all human beings have a serious right to life seems to imply that a human being who is in an irreversibly unconscious state, such as an anencephalic child or someone who has experienced severe trauma to her brain or is totally brain dead, has a serious right to life. It certainly seems counterintuitive to suppose that it would be as wrong to end the life of such a human being as it would be to end the life of you or me.

I think that human beings who are permanently unconscious retain their intrinsic dignity and basic human rights. “Total brain death” is a different

² Donald Marquis, "Why Abortion Is Immoral." *Bioethics: An Anthology*. Eds. Kuhse, Helga and Peter Singer. Malden, MA: Blackwell Publishing, 1999.

³ Christopher Kaczor, *The Ethics of Abortion: Women’s Rights, Human Life, and the Question of Justice* (London UK: Routledge, 2011), p. 97.

matter, because if (it remains a disputed matter) brain death truly is death, then there is no human being in such cases, but rather only a corpse with residual activities resembling life.⁴ Such entities, being already dead *ex hypothesi*, cannot have a right to live. Brain death aside, Marquis is correct that killing you or me is worse than killing a permanently unconscious human being, but one need not deny equal basic human rights to come to this conclusion. In addition to violating the right to life shared equally by all innocent human beings, killing us also thwarts our future plans and makes it impossible for us to fulfill our duties. These additional circumstances add to the depravity of intentionally killing the innocent, but are missing in cases of human beings who are permanently unconscious.

Marquis provides no argument as to why permanently unconscious human beings should not be respected, but merely appeals to his intuition—contrary to our current legal practice – that permanently unconscious humans do not have an equal right not to be intentionally killed as you or I do. So, let’s change the case. Women have a right not to have sexual intercourse without their consent. It is obvious, therefore, that a hospital janitor who rapes an unconscious woman does wrong, whatever the duration of her lack of consciousness. But if a permanently unconscious woman retains her right not to be raped, then her neurological condition does not result in the loss of her basic human rights, so she would also retain her right not to be intentionally killed, a right that she shares with her brothers and sisters who are in utero.

Marquis’s critique of my case for universal human rights does not succeed. It is certainly not, as Marquis describes it, “the Catholic view” in any sectarian sense, but the view endorsed by the 1948 United Nations *Declaration of Human Rights*: “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, *birth* or other status.”⁵ Unfortunately, political, legal, and social recognition for all human beings remains more an aspiration than an achievement in the contemporary world, especially with respect to human beings who await birth.

In reviews of my book in both the *Lincacre Quarterly* and the *Fellowship*

⁴ Patrick Lee and Germain Grisez, “Total Brain Death: A Reply to Alan Shewmon.” *Bioethics*.

⁵ *United Nations, Declaration of Human Rights* article 2; emphasis added <http://www.un.org/en/documents/udhr/index.shtml>.

of *Catholic Scholars Quarterly*, William E. May's assessment of the book is generally positive:

Kaczor summarizes the different positions taken by a wide variety of authors who vigorously defend the right of pregnant women to abort the unborn on the grounds that the unborn simply do not meet their criteria of personhood. Kaczor here has mastered the writings scores of the most influential defenders of this right—Peter Singer, Michael Tooley, David Boonin, Mary Anne Warren (the “early” and the “later”), Julian Savulescu, Judith Jarvis Thomson (the “early” and the “later”), Jeff McMahan, Ronald Green, and the list goes on and on. He has not only mastered their thought and brilliantly summarized it but he has also shown how utterly arbitrary and subjective are the ever evolving “criteria” they propose that an entity must possess if it to be considered a “person.”

May concludes his review generously saying, “Kaczor’s book is exceptionally valuable and makes a great contribution to the abortion debate.”

May does, however, offer several critiques. Some of these are absolutely on target, and if there is ever a second edition of the book, I intended to revise it accordingly. Here, however, I would like to respond to some criticisms with which I still disagree. May writes, “Does the Human Embryo Have Rights? In answering “Yes” to this question Kaczor does *not* give arguments to show that embryos have rights. His strategy is to consider and answer major objections to the view that the human embryo is a person, a being due fundamental respect.” Similarly, May writes, “Kaczor does *not*, as one might expect, give reasoned arguments here to show that human embryos are endowed with inviolable rights and that, corresponding to such rights, all other human persons, including their mothers and their mother’s doctors, have a strict moral duty to forebear intentionally killing them.”

May’s repeated assertion that no arguments are given in *The Ethics of Abortion* in favor of embryonic human rights is false. In Chapter Five, the book considers the question of whether *all* human beings enjoy basic human rights and provides numerous arguments in favor of an affirmative view. I argue that all human beings have basic rights for a variety of reasons, including the following: because they are endowed with a rational nature, because they share in an orientation to flourishing-like-ours, because our moral status is a constitutive property rather than an accidental property and so arises when we first begin to exist as biological organisms, and because prudentially all previous attempts to divide the human family into those with basic rights and those without basic rights have been atrocious moral mistakes. If any one of

these arguments is successful, then the book has shown that all human beings have rights.

On May's view, these arguments have been successful, "Kaczor's book gives good arguments to show that individual personal life begins at conception." If *all* human beings have rights from conception, then it is superfluous to provide arguments that any given *subset* of human beings have dignity, be they Englishmen, Eskimos, or embryos. The chapter addressing objections unique to embryos is not meant to stand alone but rather to go along with the conclusions established in the previous chapter which provided several arguments that all human beings from conception have rights. All that remains to do is to refute objections to the view that embryos have rights which is the task of Chapter Six. May also finds a lacuna in chapter seven. He writes:

Kaczor begins this chapter by declaring: "If every human fetus is a person, is abortion always wrong? It would seem so. Since having others respect one's right to life is a *necessary condition* for the possibility of enjoying all other rights (including the right to privacy and bodily integrity) it has a necessary priority over all other rights (Spitzer, 2000 [a reference to Spitzer's *Healing the Culture*]) (p.145). But Kaczor does not show precisely why *intentionally* aborting a person, including unborn persons is *always* morally wrong.

I do not believe this critique is accurate either. If it is always wrong to intentionally kill an innocent person, then it is always wrong to (intentionally) abort because, as was argued in the first chapter, abortion is just one kind of intentional killing. I presume that it is always wrong to intentionally kill an innocent person, so it is correct that I did not provide arguments to justify this premise, but I think this is conceded by most people when they think about morality (at least regular people, consequentialists aside):

I believe that sound reasoning informed by a careful and fair examination of the evidence leads to the conclusion that the vast majority of abortions are morally impermissible. If the human being in utero is an innocent person, a being with a right to life, then having an abortion would seem to be wrong, for the right to life of one person entails the duty of others not to intentionally kill him or her."⁶

⁶ Christopher Kaczor, *The Ethics of Abortion: Women's Rights, Human Life, and the Question of Justice*. Routledge Annals of Bioethics, eds. Cherry, Mark J. and Ana Smith Iltis (New York/London: Routledge, 2011), p.12.

I did not provide arguments for the proposition that the right to life of one person entails the duty of other persons not to intentionally kill him or her because I think this proposition is true analytically. One cannot provide arguments for analytically true propositions. If you are a bachelor, then you are an unmarried man of marriageable age, and there is no need for an independent argument to show this is true. Similarly, if you have a right to life that simply means that others have a duty not to intentionally kill you. There is a need to argue that all human beings have basic rights which I did. If human beings do have basic rights, this entails analytically without further argument that they ought not to be intentionally killed or deprived of any other right aside from just punishment after due process of law.

I am indebted to both William May and Don Marquis for their insights about my book. Some of their criticisms, I have found absolutely correct. This essay, however, concerns itself with some of their other criticisms.