

THE NEW ATLANTIS

A JOURNAL OF TECHNOLOGY & SOCIETY

Fall 2004/Winter 2005

The Embryo Question III

Equality Reconsidered

Eric Cohen's essay raises a number of deeper issues—about the meaning of human equality, the experience of sickness and suffering, and the nature and limits of human reason. The New Atlantis asked Leon Kass, Yuval Levin, and Amy Laura Hall to address these larger themes and consider their significance for facing the embryo question with wisdom and seriousness.

Human Frailty and Human Dignity

Leon R. Kass

In the aftermath of an election season, with the question of stem cell research in the public eye and demagogued in the most awful way, Eric Cohen has chosen to ask more fundamental questions. His essay reflects upon the morality of nature, the redemptive aspirations of medicine, the character of human rationality, and the human quest for justice. And it uses the embryo question to illuminate fundamental tensions and troubles in our culture.

Cohen begins by arguing that the embryo debate is not strictly speaking a contest between science and religion or between reason and faith. Rather, it is a story about the fate of our idea of human equality. In order to redress nature's inequitable treatment of the sick, especially children, we are threatening our core social and political ideal of radical

human equality, itself an article of democratic faith. In the desire to rescue the afflicted, we are creating, exploiting, and destroying human embryos, embryos that reason can show to be human beings in the decisive moral sense, human beings like and equal to us. The essay is thus a tale of the “tragedy of equality.” It is about our willingness to seek justice for the sick by committing injustice against the weak, to serve equality by denying equality.

I have to express my sympathy for the moral sentiment of the paper and the moral conclusion to which it points. But if there is a tragedy here, it is not a tragedy best told in terms of the story of equality. It is the tragedy of compassionate humanitarianism, in which devotion to a partial (and egalitarian) view of the human good—health and avoidance of suffering—is allowed to ride roughshod over richer and fuller accounts of dignified human life.

The first moment of Cohen’s argument has to do with the seeming injustice of nature. Nature is decidedly non-moral. But is it really right to call it “unjust”? The complaints we could have against nature are twofold: First, there is nature’s capriciousness in bestowing favors on some and inflicting evils on others, through no fault of their own. When seen from the human viewpoint, and with certain human expectations, this strikes us as unfair. Second, one could say that nature is ultimately “unjust” to the degree to which it is finally inhospitable to human need and desire, including the human desire for immortality.

Now, regarding the first charge, I would suggest that people who understand that nature is dumb and blind and indifferent to us—as opposed to those who would remonstrate with nature’s God for allowing nature to be that way—will not complain of injustice in nature. Harm from nature yes, but injustice, no. Being indifferent, dumb nature is not the sort of thing against which one can have a tort claim for injury. Moreover, we do not have standing in the world to make such a claim. Nature’s indifference to us becomes a kind of moral absurdity only if we have a justified reason to expect nature to love us as we love ourselves. But we do not.

Even if I’m wrong about this, when we come to the question of the absurdity that Cohen discusses, do we find the suffering and death of children absurd because it violates equality? Or is it because, deep down, we regard all disease, and ultimately mortality, as absurd? And if so, are they held to be absurd because they are contrary to the self-loving desire of particular human beings? Or is it because they are

contrary to what is actually good for the world as a whole? Does not the human world rather benefit from the cycle of birth, death, and renewal of human life, sad as the death of each person may be to those who love him? If so, is mortality not only not absurd, but actually a blessed necessity? I leave those questions open.

Having characterized the problem of nature as one of seeming injustice, the paper then takes up medicine's aspirations. It asks: What is the cause or purpose of medicine? Traditional medicine or pre-modern medicine was understood as art in the service of nature, with health and wholeness as its end. The physician was nature's assistant, helping nature work from within to heal. Mindful of finitude and decay and death, medicine was a cooperative rather than a transformative or redemptive art. And this remains true of medical care and medical practice today, even if it is not always true of the grander aspirations of medical science. In the very fact that medicine still cares for individuals, we have an answer as to why we don't really sacrifice the weak for the strong. Every weak individual has his or her own defender in the physician at hand.

Nevertheless, modern medical *science* is much more messianic than ancient medicine. The conquest of nature for the relief of man's estate is the Baconian motto; it is the banner under which modern medical science marches. Compared to clinical medicine, the research enterprise is both more distant from personal disease and death and more ambitious to "conquer" them. Yet insofar as modern medical science is "redemptive," I would submit that it serves not justice but love or charity. The aim is not the restoration of justice in an unjust world, unless death itself is held by definition to be unjust.

Like religion, modern medical science is less in the "equality business" and more in the "immortality business." But medical science comes not to wash away the sins of the world but to undo the wages of sin, here and now. It seeks the tree of life by means of the tree of knowledge. Medicine is not interested in giving people what they deserve but in providing what they want, whether they deserve it or not. And what people want is not to be sick and not to die and not to have those they love be sick or die. Medicine bespeaks life's vote in favor of life.

Cohen rightly points out that even if medicine were to pursue a limitless campaign against death, it is, at least for the time being, doomed to failure. The physician's desire to cure must ultimately give way to the obligation to care. But this is also a place where we face the

temptation to sacrifice those for whom one should care in the service of those whom we might cure. These are the dilemmas that transplant medicine and perhaps stem cell research set before us.

Paradoxically, I would suggest that medicine's very success in curing is also the source of our contemporary grievances with it. By curing all kinds of fatal, infectious, and short-term illnesses, medicine has provided us with the gift of much greater longevity. But the price for that gift is a long stretch of time of life lived with chronic and incurable diseases. The elderly are healthy and vigorous as no elderly people have been before. And yet, 40 percent of us will die after a period of protracted debility and feeble dementia stretching on average for some seven to 10 years. The price to be paid for our great medical triumphs is, in fact, a protracted period of considerable misery.

In addition, thanks to medicine's success in curing disease and forestalling death, it is not clear that we haven't produced a culture in which death is even more unacceptable and more feared than ever before. We may have increased the demand for new remedies without being properly grateful for the remedies that we have already received. This is a perfect example of the ever-expanding character of human desire, in which we are now doing better but feeling worse. And the corollary of this is that the failure to do everything possible to save life is now regarded as morally culpable.

Take the case of organ transplantation. Forty years ago when this area of medicine began, it was regarded as a miracle that there could be a kidney transplant, that we could move an organ from one person to another or from the dead to the living. But now organ transplantation is regarded as an obligation, and the people who stand in the way of allowing the buying and selling of kidneys, which could boost supply and save lives, are regarded as responsible for the deaths of those who die needing organs. Here is a case where medicine's very success has increased the demand for pushing beyond previous limits, such as "no paying for organs." This demand is not foisted upon the public by the medical profession. It is rather the natural outcome of modern medicine's merely partial success in correcting nature and the correlative growing discontent with medicine's remaining limitations.

But, as Cohen points out, notwithstanding our demand for limitless medical progress in the battle against death, we do in fact accept certain moral limits on the medical quest: we place limits on human experimentation, we do not sacrifice some lives to save others. The

moral principle supporting these limits, according to Cohen, is the principle of human equality. He cites several times the American Declaration of Independence as its source. He forces us to ask: What is the meaning of equality as we understand it in America, and on what does it rest? Of course, the idea that all men are created equal does not mean that all men are created the same. We are not equal in every respect. But we are equal in some very important respects, and the question for us is in what respects are all men equal. Are human beings equal in “dignity”? And is dignity what the founders had in mind at the birth of American society?

Well, not exactly. The argument of the Declaration, the liberal argument for equality as opposed to the biblical argument, is that we are equal in having certain equally inalienable rights, and that these rights are somehow grounded in the fact that we are equally self-loving, equally vulnerable, and equally killable creatures. To be human means to be the kind of being that has these rights. That is, to be a human being means that your right to defend yourself cannot be abrogated without self-contradiction. It means that you cannot justify putting a saddle and a bridle on a person and riding him like a horse. It means that you cannot deny that a human being has the rightful liberty to pursue—to practice or to seek—happiness as he sees fit.

This American idea of equality understood as equal rights is not grounded in something elevated called human dignity, but in something much lower to the ground—the equal desire to pursue one’s own well-being. What is really dignified in the Declaration is not the possession or exercise of rights, but the willingness to defend them, expressed in the founders’ pledge of their lives, their fortunes, and their sacred honor to secure the inalienable rights of men.

Cohen describes equality as either a commandment to be obeyed or as a proposition to be served and defended. But the Declaration famously calls the human equality of rights a “self-evident truth”—not an article of faith, but a self-evident truth. Now a self-evident truth is like an axiom in Euclidian geometry. It neither admits of proof, nor does it require proof. Because it carries its evidence in itself, to understand it is to affirm it. (For example, “the whole is greater than the part”: if one understands “whole,” “greater,” and “part,” the truth of the axiom is immediately and indisputably evident.) In addition, like other self-evident truths, the notion that all men are created equal is discernable by the mind directly. It is not rational in the sense that it requires or can be proved by an argument, but it is not a mere construct or sentiment. Rather, it is an intuitively grasped idea regarding what human beings as

human beings are. To understand what it means to be human requires affirming that all human beings possess certain natural rights.

Now, one could argue that America is not just the land of Locke but is also the land of the Bible, and that there is an American account of human equality which is rooted not in natural rights, but in our being equally created in God's image: that is to say, not natural rights, but natural or divinely bestowed right or rightfulness. It is the equal god-like-ness of all human beings that lies behind the biblical view of the sanctity of human life. In the Bible's first enunciation of the principle of radical human equality, in the Noahide Code, every man's god-like-ness serves as the ground for compelling punishment for homicide: "whosoever sheds man's blood, by man shall his blood be shed, for in God's image was he made."

But how do these teachings of human equality bear on the embryo question? The truth is that neither the biblical nor the liberal view of human equality, neither the idea of being made equally in God's image nor the idea of equal natural rights, extends that equality to life prior to birth. While life in the womb is valued, the Hebrew Bible nowhere explicitly indicates that the obligation to regard each human life as made in God's image extends to fetuses or embryos. And the text of the United States Constitution makes it perfectly clear that the American republic does not regard intrauterine life as the equivalent of live-born persons. For example, in judging the number of persons who count for representation, we do not count pregnant women as two. And while some people cite our changing attitudes toward slavery as precedent for extending equal worth also to embryos, the Constitution undermines this analogy by imputing from the beginning full humanity to slaves. The very constitutional passage that is notoriously (and wrongly) cited to show that the original Constitution thinks that black slaves are not persons (the "three-fifths clause") actually refers to them as "other persons." Slaves have human standing in the text, embryos and fetuses do not.

But would Locke and Jefferson or even the biblical author have thought differently about this question if they had learned modern embryology? Have we learned enough about developmental biology in order to extend the ground of human equality to what we cannot see before it naturally appears, to extend it back to the very beginning?

And here I have to say that the argument rooted in the continuity of development is very, very powerful. There is no question that there is a

human beginning, an ontological beginning, that comes with fertilization. From that particular moment onward, there is a new entity unfolding under its own powers, self-differentiating, always an integrated unity. And if nothing obstructs the developing embryo, and one doesn't keep it from finding its natural home, it could develop into a fully formed human being. All of us began that way. An early human embryo is what a human being looks like at that stage—though in fairness it has to be said that although all mature individuals begin naturally as embryos, not all embryos naturally become mature individuals: many are called, but few are chosen, that is the sad fact of the matter.

Cohen criticizes those who think that there is some kind of magical moment in the process of development where humanity somehow enters. And I agree. There is no particular place or moment of discontinuity one can locate if one doesn't start at the very beginning. And yet, is it really the case that because each stage is virtually indistinguishable from the one right next to it, that the beginning point and the end point—the zygote and the newborn baby—are morally indistinguishable in terms of what counts? To this question, unasked, Cohen gives no answer. He assumes, but does not argue, that the rational argument from continuity requires accepting that the earliest embryo is our equal—a small, young, vulnerable human being. Then he puts that conclusion to an existential test—the parent and the sick child on the moral precipice, which he compares to Abraham and Isaac.

But if it came to a choice between the child I hope to save and the embryo I would need to destroy, I'm not sure that Cohen's conclusion passes the test of our moral intuition. More importantly, to let the child die rather than use an embryo that is destined to die anyway does not strike me as a morally self-evident truth. Cohen confesses to being the kind of father who would probably save his ailing son, but he seems to fault himself for doing so. He suggests that this fault lies with the failure of our limited human imagination, and perhaps our failure to see things the way God sees them. This is a strange conclusion for an argument that insists on its thoroughgoing rationality: one must postulate that God shares Cohen's argument that developmental continuity implies full human equality for embryos, and then insist that only a man who then holds this divine view of the matter may see things clearly. Moreover, Cohen forgets that the story of Abraham and Isaac teaches, among other things, that being a follower of the God of Israel does not require sacrificing your children in the name of holiness.

Now I think I share Cohen's moral sensibilities. We are on the same side of the argument. But in the end, I don't think that the cultural conflict surrounding the embryo question is best described as a tragic problem within our principle of equality. It is better understood in terms of a tension between humaneness and humanity, between a concern for human frailty and an appeal to human dignity. Indeed, modernity's preoccupation with the ways in which humans are at bottom equal in their frailty is no small part of the problem.

Modern liberal politics, teaching equal human rights, and modern medical science, tending to equal human neediness, both are rooted in a low but solid view of human life: the equally self-loving and equally vulnerable individual, who loves life and fears violent death. Modern liberal politics safeguards his life and his substance against his predatory neighbors; the modern scientific project preserves his life and his bodily substance against disease and death. The union of liberal politics and humanitarian science is present in the American founding, but the power of that union was anticipated already by Descartes, at the beginning of the modern era.

In his *Discourse on Method*, Descartes called for a new kind of social contract between modern philosophy (science) and modern society, in which better health and, ultimately, the conquest of mortality would be offered to the populace in exchange for and as a result of giving scientists full freedom to pursue their experiments and inquiries, free from the intrusions of Church and other moral strictures. His provisional morality, presented in part three of the *Discourse*, foreshadows the preferred morality of modern scientists: respect the laws and customs of your country, except when they interfere with your right to pursue your research and to seek the truth. In a word: Extremism in defense of my freedom to be a scientist is the essence of scientific "moderation." Not to worry: the people will eventually come around, because of all the blessings science and technology will provide for addressing their basic fears and meeting their basic needs.

Given this alliance between humanitarian science and needy society, the problems we face cannot be solved by appealing only or mainly to the principle of equality. It requires appealing to a sense of human dignity, tied not to our weaknesses but to our strengths as god-like and generous beings.

For myself, I don't know whether the earliest embryo is or is not my equal. I simply don't know. I see the power of the argument from continuity, and yet my moral intuitions cut in a somewhat different

direction, even if the existential choice were between preserving *my* embryo or rescuing *someone else's* child. And yet, I stand in awe and reverence before this very human beginning, because I know that if we ran the process backward, all of us came from that.

And since I don't know whether the early embryo is or is not one of us, and since the choice before us now is not this child versus this embryo but whether to engage in a speculative project of embryo research, I am inclined not to treat human embryos less well than they might deserve. In order to do so, I don't have to insist that the human embryo is the moral equivalent of my child. I can call instead for a certain kind of expansiveness, a certain kind of generosity, a certain insistence that we should not wish to live in a society that uses the seeds of the next generation for the sake of its own. This argument appeals to the dignity with which we conduct ourselves, not the indisputable equality of the early embryo. It is an argument grounded in prudence and restraint, not in equality or justice. It is an argument that remembers that we must not sacrifice the opportunities to live well simply in order to try to live longer.

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Leon R. Kass, "Human Frailty and Human Dignity," *The New Atlantis*, Number 7, Fall 2004/Winter 2005, pp. 110-118.

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