

Call for Papers

Recognizing the Presence of a Person

James C. Peterson

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Jahi's mother refused to accept that her thirteen-year-old daughter was dead. Despite meeting the standard Harvard brain death criteria of no electrical activity in her brain, Jahi was transferred to a facility that was willing to feed her through a tube and maintain a respirator to oxygenate her blood. Her unconscious body could no longer be sustained after five years.

At the other end of life, the United States Supreme Court has agreed to rule on the *Dobbs v. Jackson Women's Health Organization* case (No. 19-1392) that many think will be the occasion to overturn the 1973 *Roe v. Wade* decision that declared abortion a constitutional right. If the court so rules, abortion laws will go back to each individual state: there has already been preemptive legislation in some states to protect abortion, and in others to largely ban it.

For the end and beginning of human life, and the time in between, the recognition of the presence of a fellow human being makes a difference in what we should do from in vitro fertilization to organ donation. The following essay describes a continuum of when and why human presence has been recognized over a lifespan. Which arguments make the most sense? Why? What are the important and unresolved questions and applications?

Readers are encouraged to take up one of the insights or questions in the following invitation essay, or maybe a related one that was not yet mentioned, and draft an article (typically about 5,000–8,000 words) that contributes to the conversation. These can be sent as an attachment to jpeterson@roanoke.edu. An abstract should be included in the text of the email. The best essays will go on to peer review and the potential for publication; if accepted, they will be published either in a *PSCF* theme issue, or as part of a *PSCF* variety issue.

The editorial in the December 2021 issue of *PSCF* outlines what the journal looks for in the articles we publish. For best consideration for inclusion in a theme issue, manuscripts should be received electronically before August 31, 2022.

Looking forward to learning from your contributions,

James C. Peterson, *Editor-in-Chief*

We should treat a human corpse with great respect, because it was associated with a person. Yet since it is not now a person, it can be buried or cremated, or separated completely into parts for autopsy, education, or organ transplantation. A corpse has a different moral status from that of a person.

If a dead human body is not a person, when *is* a human body a person? When and how do we recognize that a fellow human being is present at the end, center, or beginning of life? How people have answered this question varies greatly over time and place. This essay will line out the spectrum of how the moral status of persons has been perceived, in hope that readers will offer essays to *PSCF* that make a thoughtful case for where in this spectrum a person is present. Such recognition will then be an important consideration in an array of personal and

societal decisions including, for example, the practice of in vitro fertilization (IVF), prenatal genetic diagnosis (PGD), intrauterine birth control (IUD), abortion at various stages of development, brain death, organ donation, slavery, and genocide.

So, we will begin here with genocide, in which a whole people group is not recognized as fellow human beings, and then work our way step by step to earlier stages. Often the first example that comes to mind of the horror of genocide is the Nazi systematic killing of six million Jews, a million Roma, and millions of Russian prisoners of war. That genocide actually began with the medical establishment of Germany ending the life of the physically and mentally less fit in hospitals and custodial care institutions.¹ They deemed many persons of various ages to have lives not worth living. We do well to remember that genocide is not only a Nazi

problem. It is a human problem found on every continent. The Armenians in Turkey, the Tutsi in Rwanda, the urban dwellers wiped out by the Khmer Rouge in Cambodia, and the Rohingya in Myanmar are heartbreaking examples of persons of all ages not recognized or honored as fellow persons.

Also, slavery has been characteristic of almost every society in the human past. In slavery, people of every age are treated as property rather than as persons. This was stated explicitly by the US Supreme Court in the Dred Scott case decision (1857) that ruled that Dred Scott was not a person, rather mere property. Thankfully slavery has made the list as no longer acceptable in the *Universal Declaration of Human Rights* that was adopted without a no vote by the United Nations in 1948. Slavery is prohibited now by every country in the world, although there are still places and practices that are far too close to it.

We have significant global consensus now against genocide and slavery. The victims of these practices are persons who should not be treated in these ways. Continuing from persons of all ages to persons of specifically younger age, in the Roman Empire, babies were born on approval. The father could decide that a newborn was one more mouth too many to feed, or lacked promise for producing sufficiently for the family, or not the desired sex, and discard it.² The DeCamp Professor of Bioethics at Princeton University still advocates an approval process for whether an infant will be cared for to become a person, or not, and die.³

Others have recognized the presence of a fellow human being at first breath. Before a first breath what is in the womb can be terminated. After a first breath, there is a person who should be sustained and protected. Breath here seems to gain its import as a concrete manifestation of independence from the womb. At first breath, the baby can be supported by any number of willing people, and so can lay claim to such support without making a demand upon any one particular person. This distinction is of first importance if one focuses on the rights of the pregnant woman to control fully her own body. The argument may draw from the analogy that we do not require a person to donate an organ to someone else even if that other person will die without the transplanted organ. Our organs are uniquely our own, including one's womb, and cannot be demanded by

someone else. First breath is at the point of separation, so that from this perspective one can put aside that concern as no longer the sole determinant.

A related perspective is that of viability. To describe viability, it is necessary to use terms for the individual in the womb. To not assume one's discernment in this regard, this essay will use the word one, or individual, or fetus, which is Latin for offspring or child and yet is used freely by writers who do not deem the fetus a person. "Fetus" seems then a compromise term. In 1973 the United States Supreme Court overruled the abortion laws of 44 states by declaring that the US Constitution required honoring privacy in regard to abortion until the fetus was viable, able to live outside the womb at the sixth month of pregnancy. While the words "privacy" and "abortion" do not actually occur in the constitution, the ruling was that they are implied sufficiently by the text for the court to enforce them in this case. Sandra Day O'Connor, the first woman on the supreme court, observed that this ruling was on a collision course with itself.⁴ She said that viability is a measure of external technical support and will progress to earlier ages as techniques improve. So, if six months is currently encoded as law for when the state can intervene because of viability, assuming that this reasoning is correct, then the date for state interest will have to move earlier as support technology improves.

A further complication: if viability determines the personhood of the individual in the womb, then being a person depends and can change with the pregnant woman's location or finance. Say a pregnant woman is driving to the airport and is passing an excellent neonatal intensive care unit in the local hospital. If her fetus was in distress, she could access immediate care for it to survive, and, if it could survive, it would be viable and therefore a person. Once her plane is flying over the hospital, she might be only a few miles away from it but could not access immediate care and the individual in her womb would not be viable and hence not a person. Upon landing at her destination, as soon as she is back in quick reach of a hospital again, the one in her womb would be back to being a person. Viability is measuring external support as much as it is the fetus. An externally determined personhood could also be manifested in two women who have been pregnant for the same amount of time: one can afford the best

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medical care immediately and the other cannot. The fetus of the same age might then be a person in the affluent woman, and not a person in the financially poorer woman.

Around five months, there is enough of a brain to feel pain.⁵ If a foreign object enters the womb, the fetus will recoil away from it. This implies an ability to feel, or maybe even the beginning of minimal consciousness. At the other end of a lifetime, brain death is equated with the loss of life by the Harvard brain death criteria. If one has no EEG measured electrical activity in one's brain, one is deemed dead. Organ donation or autopsy can proceed. Symmetrically, some argue that if the absence of brain activity is a sure sign of the end of a human life, then the presence of brain activity indicates the start of one.

In pregnancy, just a month earlier, there is an experience recognized by some, that a fellow person is present in the womb. It is called quickening. Quickening often occurs around four months, when the pregnant woman feels independent movement. This has a powerful psychological effect. Something in her womb is moving when she has not directed it to do so. The fetus is inside her body and volitional, but it is not her. The hesitation with making this a standard for personhood is that it is measuring primarily the sensitivity of the pregnant woman. Some women feel this kind of movement quite early in pregnancy "like butterflies." Others never do—right up to birth. If one is shipwrecked on a tropical island, one does not cease to be a person simply because no one knows one is there; so, while a powerful experience, quickening might not be a regular guide to when a person is first present in the womb.

In the same vein as brain activity at the end and start of life, some argue that if a permanently stopped heartbeat is a sure sign of death, then the beginning of a heartbeat is the mark that a new human life and person has begun. Heartbeat is monitorable about six weeks into pregnancy.

This may also be roughly the mark for formation.⁶ The argument from formation is that one does not have an ensouled body until there is a body to ensoul. Whether a soul is a developing phenomenon or a separate entity assigned as a whole to a developing human, when the rudiments of a full body are present in primitive miniature, a soul is present, hence a person. Throughout the early and medieval church,

the longstanding consensus among theologians was that either God created a soul at the point when a body had formed in the womb, or, from the perspective of traducianism, a soul inherited from one's parents develops with the body and is at last completely present when a body has formed. Both soul creation and traducianism reasoned that one needed a body to have a soul, whether the soul is assigned or emergent. In short, there is not a fully ensouled body until there is enough of a body to ensoul. Before a body was present, the life developing in the womb was described as "unformed." This distinction between unformed and formed was used specifically by early church theologians including Tertullian, Lactantius, Jerome, Augustine (in the *Enchiridion*), Cyril of Alexandria, Theodoret, and the most influential shaper of Roman Catholic doctrine, Thomas Aquinas.⁷

Theologians saw allusions to this distinction between unformed and formed in three scriptural texts. One reference was clearest in the language chosen by the Septuagint. The Septuagint was the widely used Greek translation of the Hebrew Bible that was the primary Bible for the early Christian church. Its translation of Exodus 21:22–23 makes this distinction. There is a monetary penalty for ending unformed life, but if formed life is killed, the death penalty is required, life for life. Second, in the Hebrew language scripture, human beings are often called "nephesh," an animated body. Can one be an animated body, without a body to animate? Granted one still has a body after a leg amputation or the removal of a cancerous kidney, but having a substantial body of some sort is basic to being a human being in this world. Third, in Job 10:10–11, Job prays, "Did you not pour me out like milk and curdle me like cheese, then clothe me with skin and flesh and knit me together with bones and sinews?" This was read as a description of life beginning with an unformed state and then later developing to a formed one. By this distinction between unformed and formed, not yet having a body and having a body, miscarriage or abortion before formation was seen as loss of what was becoming a body. Miscarriage or abortion after formation was the tragic loss of a present body and person.

For Islam, when a person is present is a matter of revelation. The Qur'an states directly that a person is not present until sometime after the presence of

bones covered with flesh. This was pegged at forty days.⁸ Orthodox Jews affirm the same forty-day mark after fertilization. Before then, the developing life in the womb has a status “like water.”⁹ They read texts such as Psalm 139:13, “You knit me together in my mother’s womb,” as a description of God’s close involvement in the psalmist’s life from the beginning. However, the psalm does not say when what is developing in the womb becomes a person. God is intimately involved in the formation of the body that will be the psalmist, but this verse does not tell us when the developing body *is* the psalmist. Trying indirectly to extrapolate the timing of the presence of a person from this text is reading in affirmations that are not in context, the point of the text.

The next often cited line of demarcation is implantation. Implantation occurs six to nine days after fertilization. At this point the fertilized egg embeds in the womb where it will grow until birth. Only about a third of fertilized eggs successfully make this step,¹⁰ and for women in their forties, probably ninety percent of embryos do not implant,¹¹ so if there is a human being present before implantation, two-thirds of the people God has created were never born. Now it could be said that infant mortality has been that high at some times and places of human history, and that infants are no less persons as a result. But if a person is present from conception, it seems then that God’s design for human beings is that a majority will never experience life on Earth. Of course, God could choose to do this, but it seems contrary to what has been revealed as God’s plan for human beings, to first meet God here.

Ronald Green raises the further note that if we are convinced that two thirds of humanity is being lost in the days before implantation, should not the greatest share of federal research money and all other available resources be devoted to saving them?¹² If two thirds of all the people who have ever been, are lost in those first days, that is a far greater loss of life than to cancer, AIDS, or other diseases that currently attract our greatest efforts.

Others have settled on fourteen days as the point at which a person is present, because only then is it clearly settled how many persons will occur in this developing pregnancy. Through day thirteen, an embryo may split and form identical twins, or two embryos may merge to form one mosaic embryo. If

the number of persons is not settled yet, then there is not a person yet present. The usual counter argument is that God could assign an extra soul to a single embryo, knowing ahead that it will split, or no soul to an embryo that will be absorbed into another. Norman Ford responds that a better description would be that instead of viewing development in the first two weeks after fertilization as development of a human individual ... the process ought to be seen as one of development *into* a human individual.¹³

Yet others focus on four days after fertilization. In this journal, Bruce McCallum proposed that the first chapter of Luke is already “absolutely clear” in verse 43 about a person being fully present at that point.¹⁴ For McCallum, because Elizabeth calls Mary “the Mother of my Lord” four days after the annunciation, Jesus must have been fully present; hence, all embryos are fully present persons. Actually, there is no statement in this text that Mary is pregnant at that moment. Now Elizabeth does use the phrase “the Mother of my Lord” (a confirmation undoubtedly much to Mary’s encouragement), but that title does not tell us that the Holy Spirit had already created the start of the life that would be Jesus or that the Second Person of the Trinity was already incarnate inside Mary. God’s promises are so sure that they are often stated in the Bible as if already accomplished before they chronologically take place. For example, God directed Abram to be called always “Abraham,” which means “the father of multitudes,” on the basis of God’s trustworthy promise a year before he and Sarah had even one promised child, let alone a multitude (Gen. 17:5, 21). A biblical title can mean that a referenced event is sure to happen, not necessarily that it already has happened.

Some look to syngamy, because at that time the genetic material of a unique individual (unless an identical twin is also formed) is united in one nucleus of the fertilized embryo.¹⁵ This is completed about twenty-four hours after fertilization. Granted, skin cells that are genetically unique (unless there is an identical twin), and alive, and human, are not persons. Sometimes it is said that they are not persons because they lack the context and programming to develop into a baby, but actually they do have the necessary genetic instructions onboard. As to a signaling and nurturing environment, that could be provided intentionally to form a pluripotent embryo. Is there then an obligation to gather and save all

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sloughed-off skin cells with such potential? The billions of people possible would all be delayed identical twins, often called clones.

And is potential the same as actual? An acorn is of the oak genus, but is it already an oak tree because it has that potential? Is something that has the potential to grow into a born baby, already at the status of a born baby? If the lab has caught fire, do you save the test tube rack with twenty human embryos entrusted to your care by prospective parents, or the one newborn baby that a coworker left with you during lunch?¹⁶

Now there is an involved metaphysical argument that a human being is fully present as an embryo and only unfolds that presence over time, but this ignores the required and formative role of the environment in the womb and beyond. Genes do not determine all the physical characteristics of an individual, let alone who the person will be as a person. A set of genes does not a person make. Think of identical twins with identical genes who have different finger prints and become and remain unique persons. One can become a carpenter and the other an attorney, one a Buddhist and the other a Christian. Further, even if a genetic start guaranteed a later outcome, which it does not, that does not mean what is present should be treated as what it will be. All readers of this article can expect to someday be corpses, but that does not mean that we should be treated as corpses now.

Others argue for fertilization as the point at which a full human person is present, because, while not yet united in the nucleus, at least all of the genes of a unique individual are in one cell. Jeremiah 1:5 is often quoted here, "Before I formed you in the womb I knew you." But if this is a description of Jeremiah's existence, it refers to *before* he was in the womb. Human preexistence is not the point any more than for Ephesians 1:4 which states that "God chose us in him before the creation of the world." The texts are marveling at God's foreknowledge and choice, not human existence before time. God knows what is in even the secret place of the womb (Job 31:15). God knows all there is to know. Embryos are in God's presence as is all the rest of life. We are responsible for how we treat embryos, but when precisely they become persons is not taught in these texts.

The Roman Catholic tradition, in particular, goes even earlier than the starting points described so far. The unitive act of sexual intimacy must always be open to beginning a new person. This explains why barrier contraception is unacceptable to that tradition. Sexual intimacy must always welcome any person who might begin at that point. If the argument is correct, that maximum support for possible human life is always required, then forbidding any interference in procreation is more consistent than allowing contraception to interrupt a God-designed continuum of marital intimacy to birth. As a sole standard, maximum support of the possibility of human life leads to complete openness to procreation, not starting to protect only at the point of conception.

It should be noted that recognizing a person at any of these particular points is not suggesting that human beings can be more or less human according to their mastery of certain capabilities, as if being a human being was a degreed property. That would leave people with various disabilities vulnerable to being declared nonhuman, and we are all, at best, only temporarily able bodied. The lines described above are each proposed as thresholds. Once the threshold is crossed, a human being is present whether attaining an ideal or not.

Questions are often raised about how to weigh likelihood, doubt, risk, and burden of proof. Such is not unique to the above challenges. When a parent drives a child to school, that parent is risking the child's life. Thankfully it is a small risk, but an accident along the way is a real possibility. If one had an obligation never to risk harm, one would have to stay home. However, home is where most accidents happen. There are no risk-free choices. A standard of do nothing unless one has absolute surety that no one will be harmed, is not livable.

When we recognize that a fellow person is present, the person—as a person—should be treasured, nurtured, and protected. This may not be the only consideration, but such would affect what we should do.

Your thoughtful, well-informed analysis, to help all work through this challenge and its implications, will be most welcome. ◀

Notes

- ¹Doris L. Bergen, *War and Genocide: A Concise History of the Holocaust* (Lanham, MD: Rowman and Littlefield, 2003), 126–29.
- ²Charles C. Camosy, *Too Expensive to Treat? Finitude, Tragedy, and the Neonatal ICU* (Grand Rapids, MI: Eerdmans, 2010), 18–20; and W. V. Harris, “Child-Exposure in the Roman Empire,” *Journal of Roman Studies* 84 (1994): 1–22, <http://dx.doi.org/10.2307/300867>.
- ³Peter Singer, *Practical Ethics*, 2nd ed. (Cambridge, UK: Cambridge University Press, 1993), 191–213, and —, *Rethinking Life & Death: The Collapse of Our Traditional Ethics* (New York: St. Martin’s Griffin, 1994).
- ⁴Richard F. Duncan, “Justice O’Connor, the Constitution, and the Trimester Approach to Abortion: A Liberty on a Collision Course with Itself,” *The Catholic Lawyer* 29, no. 3 (1984): 275.
- ⁵Stuart W. G. Derbyshire and John C. Bockmann, “Reconsidering Fetal Pain,” *Journal of Medical Ethics* 46, no. 1 (2020): 3–6, <http://dx.doi.org/10.1136/medethics-2019-105701>.
- ⁶Some of the descriptions and arguments that follow were first broached by this author in an earlier article for *PSCF*. James C. Peterson, “The Ethics of the ANT Proposal to Obtain Embryonic-Type Stem Cells,” *Perspectives on Science and Christian Faith* 58, no. 4 (2006): 294–302, <https://www.asa3.org/ASA/PSCF/2006/PSCF12-06Peterson.pdf>.
- ⁷John R. Connery, *Abortion: The Development of the Roman Catholic Perspective* (Chicago, IL: Loyola University Press, 1977), 40, 50–52, 56.
- ⁸*Qur’an* 24:12–14.
- ⁹Laurie Zoloth, “The Ethics of the Eighth Day: Jewish Bioethics and Research on Human Embryonic Stem Cells,” in *The Human Embryonic Stem Cell Debate: Science, Ethics,*

and Public Policy, ed. Suzanne Holland, Karen Lebacqz, and Laurie Zoloth (Cambridge, MA: The MIT Press, 2001), 95–112.

¹⁰See, for example, N.S. Macklon, J.P.M. Geraedts, and B. C.J.M. Fauser, “Conception to Ongoing Pregnancy: The ‘Black Box’ of Early Pregnancy Loss,” *Human Reproduction Update* 8, no. 4 (2002): 333–43, <https://doi.org/10.1093/humupd/8.4.333>.

¹¹R. John Elford and D. Gareth Jones, eds., *A Tangled Web: Medicine and Theology in Dialogue* (Oxford, UK: Peter Lang, 2008), 151.

¹²Ronald M. Green, “Stem Cell Research: A Target Article Collection Part III—Determining Moral Status,” *The American Journal of Bioethics* 2, no. 1 (2002): 26, <https://doi.org/10.1162/152651602317267790>.

¹³Norman M. Ford, *When Did I Begin? Conception of the Human Individual in History, Philosophy and Science* (Cambridge, UK: Cambridge University Press, 1988), 181.

¹⁴Bruce McCallum, “Are the Products of ANT and SCNT Equivalent? A Response to Peterson,” *PSCF* 59, no. 1 (2007): 87, <https://www.asa3.org/ASA/PSCF/2007/PSCF3-07McCallum.pdf>.

¹⁵*God and the Embryo: Religious Voices on Stem Cells and Cloning* (Washington, DC: Georgetown University Press, 2003), ed. Brent Waters and Ronald Cole-Turner, is a thoughtful collection of essays on the moral status of embryos. My own chapter in the book includes a number of arguments also addressed in this call for papers.

¹⁶This thought experiment is paralleled in work by George Annas, cited by Bonnie Steinbock in *Life Before Birth: The Moral and Legal Status of Embryos and Fetuses* (New York: Oxford University Press, 1992), 215.



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**WHAT IS A HUMAN?
Flourishing as a Person**

