A Legal Perspective on Humanity, Personhood, and Species Boundaries

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While debates about the morality of therapeutic versus reproductive cloning or whether human beings should be genetically enhanced are currently in vogue, Jason Scott Robert and Françoise Baylis (2003) are correct in noting that little is being said about chimeras and the creation of new species. As I have previously written (Glenn 2003), further advances in the blending of nonhuman animal and human embryonic tissue could result, intentionally or not, in chimeric entities possessing degrees of intelligence or sentience never before seen in nonhuman animals. These mix'n'match creations could impact the next phase of our evolution but most certainly will challenge our concepts of what it means to be human and what it means to be a "person." How might these new creations fit within the context of historical ethical and legal analysis? An analysis of the law adds a further layer of complexity to the "moral confusion," especially because the law, at least in the United States, does *not* require humanness to be a necessary condition for "personhood." A historical review of the law reveals that nonhuman animals (as well as slaves, women, and children) have been considered "property," while nonhuman entities, such as corporations, municipalities, and ships, have been recognized and given rights as "persons" (Glenn 2003). Yet, slowly and over time (hundreds of years), legal and moral notions of "persons" and "human rights" have evolved and expanded. Despite intermittent setbacks, the overall history of the U.S. Constitution has been one of increasing protection and expansion of individual rights and liberties. Although there has been no attempt on the part of any legislature or court to attempt to define "human," there have been proposed definitions in academic literature, legal and philosophical (Glenn 2003).

Robert and Baylis set forth two standard Western frameworks for attributing moral status, both of a hierarchical nature, then declare them to be incommensurable. Rather than declaring these frameworks to be incommensurable, I would argue that this presents an opportunity to examine other frameworks for attributing moral status, including a wholistic or interdependent approach. As Robert and Baylis note, the idea of the Great Chain of Being has crumbled; alternative frameworks can provide commensurability, starting with the premise that both human and nonhuman life has intrinsic value and is worthy of moral status. This is a view consistent with environmental and global ethics. Does this premise somehow "denigrate" humanity's status? Not if it is applied with the perspective of stewardship (Glenn 2003).

Which leads to another important question raised by the spawning of highly intelligent nonhuman beings through technology: What moral and legal obligations do we have to these novel entities that we have helped to create? Phrased another way, what ethical obligations might science have to promote the survivability of the novel sentient chimera, a de novo endangered species? Is it comparable to the obligation that parents have to their children, because their actions brought them into existence?

Some in the bioethics community have argued that a complete ban on experimentation with human embryos is warranted—that research that blends human nature with other natures alters our understanding of personhood, undermining our notion of human dignity and human rights (Annas, Andrews, and Isasi 2002). But such a ban assumes that tampering *solely* with the human species presents a meaningful risk; the ban does not anticipate that human genes inserted into another species might create a sentient life-form that is worthy of moral respect and status. Should every human gene sequence be banned from insertion into another species? As Robert and Baylis point out with their introductory examples, we are far beyond that point. Current U.S. and Canadian laws do not prohibit the patenting and marketing of DNA sequences, cell lines, or stem cells of human origin. How many human gene sequences would it take to make another species have those human characteristics we hold so dear? When does a "nonhuman" with human genes become human, deserving full human rights? As Robert and Baylis deftly illustrate, the answer is not as clear-cut as some would like it to be. When scientists applied for a patent for a half-human, half-chimpanzee, the U.S. Patent and Trademark Office denied the application, claiming such a patent would violate the constitutional protection against slavery, as set forth in Thirteenth Amendment.

Robert and Baylis rightly point out that these developments might force us to revisit some of our current patterns of behavior toward human and nonhuman animals. If traditional notions of personhood prevail, society runs the risk of denying essential basic liberties to sentient beings. Rather than attempting to freeze our human nature, such as it currently is, in order to preserve human dignity and rights, perhaps we need to rephrase the question: "How

can we preserve human rights and human dignity despite the fact that our 'humanness' might no longer be the exclusive possession of *Homo sapiens?*" And as different forms of intelligent life are created through transgenics and genetic engineering, the courts, legislatures, and legal community will be forced to determine where these creations fall on the person-property continuum. ■

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Hopes against Hopeful Monsters

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Admixtures of living but unrelated material to make new organisms include conventional (grafts, wide-crosses, hybrids) and unconventional biotechnology (transgenics, chimeras, and mosaics). All of these amalgamations raise the same concern but to varying degrees. Does the combination of otherwise disparate forms of life pose a special ethical problem? If transgenic plants are a simmering controversy, the issue comes to a boil when we consider human-nonhuman interspecifics [HNHIs (pronounced *honeys*)]. Should these creations be allowed? Jason Scott Robert and Françoise Baylis (2003) claim that reasonable opposition is possible because HNHIs introduce moral confusion. Confusion arises, they say, because HNHIs are the embodiment of the clash between the absolute moral status of human beings qua human beings and the conditional moral status of other organisms. Creating HNHIs is like mixing the oil and water of fundamental moral intuitions—a problem aggravated, not assuaged, by the metaphysics of species. If a unique species identity could be claimed for human beings, it would provide a biological basis for drawing moral contrasts between HNHIs and fixed human essences—naturalistic fallacy notwithstanding. But species are not fixed biological essences. Thus no biological doctrine of hu- man essence can backstop a stance on the moral status of HNHIs. They are ontologically ambiguous and morally ambivalent, so their manufacture should be disallowed.

Are HNHIs ontologically ambiguous? To start with a basic observation, species ranks are controversial because they have been regarded as the most basic evolutionary unit and the lowest classificatory rank. Biologists are flexible and use different species concepts as specific conceptual tasks demand, but their commitment to evolution (and interaction with real organisms) requires that some taxa are phylogenetic units. The species taxon will fulfill this function, although as a *concept* it is notoriously plastic, having at least a dozen plausible candidates. Species-concept pluralism has led one philosopher to the development of species-concept antirealism (Ereshefsky 1998) and subsequently to challenge the Linnaean classification system (Ereshefsky 2001). Yet only global antirealists doubt the reality of taxa described by any taxonomic rank. So it is partly excusable if biologists sometimes lapse into species vernacular—the typological species concept—to describe taxa they take to be uncontroversially real. One must consider the context in which they might give in to temptation. In the media and funding epicycles of science, typological overstatement *is* science marketing.

No one can think seriously about evolutionary biology with the typological species concept, but it is an operationalizable concept with respect to anthropogenic interspecifics, including HNHIs, which are otherwise orphaned by evolutionary biologists' classification schemes. Biotechnologists have no other option but to name their creations using "typology-without-the-essentialism," or, more succinctly, nominalism. No one balks at "golden rice" or "geep," because these are just names. The taxa are real and they need to be named, just like the HNHIs. Biotechnologists' alchemy with these life forms is an act that permanently dispenses with any last vestiges of species fixity in the life forms, whereas the need for nominalism in biotechnology, and species-concept antirealism more generally, suggests that nothing much trades on the names, either.

If HNHIs are no more ontologically ambiguous than any other living thing, then the literature on the species concept cannot be counted on to dispel great myths about human or HNHI essences. Furthermore, the moral ques-