

## # TWO OBJECTIONS TO THE RIGHT TO BE UNIQUE

(BİRİCİK OLMA HAKKINA İKİ İTİRAZ)

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### ÖZ

*Bu kısa değerlendirme yazısı, insanların biricik bireyler olduğu varsayımına karşı çıkmamaktadır. Fakat bu varsayıma dayanan bir biricik olma hakkı talebi problem arz eder. Haktan yana olan görüş esasen insanların genetik benzersizliğiyle ilgilenmekte, bireysel biricikliğin genetik özgünlük ile sınırlı olmadığı gerçeğini görmezden gelmektedir. Buna göre, genetik benzersizliğe dayanan bir biricik olma hakkı söz konusu değildir. Bununla birlikte biriciklik doğru anlaşıldığında bile biricik olma hakkı denilen hakka gerekçe teşkil etmez. Bütün insan hakları, korunmadıklarında potansiyel olarak insanların mahrum edilme riski altında olduğu bir değeri korur. Biriciklik böyle bir koruma gerektirmez, çünkü insanlar ondan mahrum edilemezler. Bireysel biriciklik dokunulmazdır. İnsan hakkı olarak talep edilmek yerine insan hakları fikrini meşrulaştıran bir temel olarak ele alınmalıdır.*

**Anahtar Kelimeler:** Biriciklik, Benzersizlik, Bireysellik, Biricik Olma Hakkı, Benzersiz Olma Hakkı, Benzersizlik Hakkı, Dördüncü Kuşak Haklar, İnsan Hakları

### ABSTRACT

*This brief review does not challenge the assumption that human beings are unique individuals. Claiming a right to be unique based on this assumption, however, is problematic. The pro-right argument is essentially concerned about the genetic uniqueness of human beings, overlooking the fact that individual uniqueness is not limited to genetic authenticity. Therefore, claiming a right to be unique based on genetic uniqueness is not relevant. But even the uniqueness in its proper sense cannot comprise a basis for the so-called right to be unique. All human rights protect a value*

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# Eserin Dergimize geliş tarihi: 06.09.2021. İlk hakem raporu tarihi: 09.12.2021. İkinci hakem raporu tarihi: 13.12.2021; Onaylanma tarihi: 29.01.2022.

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**Esere Atıf Şekli:** Recep Ersel Erge, "Two Objections To The Right To Be Unique", YÜHFD, C.XIX, 2022/1, s.129-149.

*potentially at risk of being deprived from people if not protected. Uniqueness does not require such protection, because people cannot be deprived of it. Individual uniqueness is inviolable. Instead of being claimed as a human right, it had better be considered as a ground to justify the idea of human rights.*

**Keywords:** *Uniqueness, Individuality, Right to Be Unique, Right to Uniqueness, Fourth-Generation Rights, Human Rights*

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## INTRODUCTION

Chickens do not have chicken rights just for being chickens, but humans have human rights just for being humans.<sup>1</sup> People are considered to be worthy of those special rights, because as a species human beings are regarded to have a dignity, requiring the utmost protection and thus justifying the idea of human rights. The issue of this review is not to elaborate philosophically on the source and nature of human dignity, but acknowledging this concept is important because the implications of dignity go even beyond the uniqueness of human beings as a species, reaching to the idea of uniqueness of human beings as individuals. The latter idea, the idea that human beings have something *unique* to themselves *individually*, apart from being a member of human species, might be as widely remarked as the first one. Indeed, the identification of the subject or the recognition of the individual is always related to the idea that people are unique entities. This review is going to be based on that very assumption. Therefore, the issue here is neither to discuss the individual uniqueness *per se*.

The problem tackled in this review is whether it is justified to claim a right to be unique to protect the uniqueness of human beings. The aim is to challenge that claim, arguing such a right might not fit the mentality of human rights. If human rights are not rhetoric, they must seriously protect some values that help people have a dignified life.<sup>2</sup> The point is, whether the right to be unique satisfies this criterion is doubtful. This review asserts that

<sup>1</sup> Ioanna Kuçuradi, *İnsan Hakları: Kavramları ve Sorunları*, 2. b. (Ankara: Türkiye Felsefe Kurumu Yayınları, 2011), 56-57.

<sup>2</sup> There might be other ways to justify human rights, but human dignity is arguably the most widely relied upon concept to that end: Nihat Bulut, "Eski Yunan'dan Aydınlanma Çağına İnsan Onuru Kavramının Gelişimine Genel Bir Bakış," *Erzincan Üniversitesi Hukuk Fakültesi Dergisi* 12, no. 3-4 (2008): 1; Oktay Uygun, "Çağımızın İnsan Onuruna Yöneltilmiş Tehditler Karşısında İnsan Haklarının Önemi," *Kamu Hukuku İncelemeleri*, ed. Oktay Uygun (İstanbul: On İki Levha Yayıncılık, 2013); Elif Çelik, "İnsan Hakları Hukukunda İnsan Onurunun Yeri ve Rolü," *Hacettepe Hukuk Fakültesi Dergisi* 9, no. 2 (2019): 286.

the right to be unique cannot be claimed as a human right. The most important part of the discussion below will be the examination of the true meaning of “uniqueness” of human beings, which is to some extent misrepresented by the pro-right argument. The discussion will begin with a brief presentation of the pro-right views, then a challenge to those views based on a proper understanding of the concept of uniqueness will follow that, and as a final step the unconformity between the asserted right and the human rights will be demonstrated.

### THE PRO-RIGHT ARGUMENT

The right to be unique is so far “recognised” as a fundamental right only in the “*Constitution of the Republic of Užupis*”, giving it a legal status no more than that of a good wish, since the so-called republic is only a popular neighbourhood in Vilnius, the capital of Lithuania. The right to be unique is provided under article 5, and the other articles include such rights as the right to make mistakes, the right to love, the right to cry.<sup>3</sup> But even someone who is barely familiar to the idea of human rights may object this way of introduction for the pro-right argument with the example of *Užupis*, reminding that human rights are given to people neither by states in their constitutions nor by the international agreements or organizations. Indeed, human rights are not given at all. Philosophically they are considered to be innate to human beings, but this consideration is also accompanied by the understanding that human rights are products of a social evolution.<sup>4</sup>

Human rights have been claimed in a temporal context in return for alleged mass attacks on human dignity. Karel Vasak’s classification of human rights under three generations has long been a classical explanation of this evolutionary approach.<sup>5</sup> To remind it briefly, first-generation rights had been demanded primarily by the bourgeois in their effort to obtain political power while feudalism has been in the phase of dissolution in Europe. The argument was that the old feudal establishment, restraining the new relations required by the market economy, was infringing individuals’

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<sup>3</sup> For an English translation see “Užupis,” Wikipedia, accessed April 14, 2019, <https://en.wikipedia.org/wiki/U%C5%BEupis>.

<sup>4</sup> Mehmet Yüksel, “İnsan Haklarının Sosyo - Tarihsel Temelleri,” *İnsan Hakları Yıllığı* 25, no. 1 (2007): 3.

<sup>5</sup> A brief restatement of his views can be read in English in: Karel Vasak, “A Thirty-Year Struggle: the Sustained Efforts to give Force of law to the Universal Declaration of Human Rights,” *The Unesco Courier*, (November 1977): 29. <https://unesdoc.unesco.org/ark:/48223/pf0000048063>

liberty and equality.<sup>6</sup> Once the fundamental rights required by the new social order –particularly the right to property– were secured by the liberal revolutions of the West, however, it was argued that the new legal and political establishment itself emerged as the source of a new kind of inequality for the masses who had supported the bourgeois in their demands regarding the first-generation rights. And with the effect of the Industrial Revolution sharpening the social differences, the masses started to call for a second-generation of rights, *i.e.* the economic and social rights, which were acknowledged by the states in the democratisation process came as a result of World War I, and were increasingly secured by constitutional guarantees after World War II.<sup>7</sup> Yet another progress in the evolution of human rights after World War II is the argument for a third-generation of rights, such as the right to environment, the right to development and the right to peace, which have been claimed in return for various global problems affecting the international community, and claimed with a demand of equal participation to the resolution of those problems.<sup>8</sup> Although increasingly gaining more ground within the law of human rights, the third-generation rights –or the “solidarity rights”– are still causing more dispute than the first two generations of rights do.<sup>9</sup>

And finally, there is an emerging literature on the fourth-generation rights, in addition to the three classified by Vasak. Although the variety of rights enumerated in this final category<sup>10</sup> does not allow a common and unequivocal justification for those rights, there is also a prevailing approach indicating that the fourth-generation rights have been emerging in return to the threats directed to human dignity by the recent developments in science

<sup>6</sup> M. Semih Gemalmaz, “Tarihselliği Bağlamında İnsan Hakları,” *İnsan Hakları Yıllığı* 7-8, no. 1 (1986): 59. For more on the evolution of the first generation of human rights, see Yüksel, “İnsan Haklarının Sosyo - Tarihsel Temelleri,” 8-14.

<sup>7</sup> Gemalmaz, “Tarihselliği Bağlamında İnsan Hakları,” 62-64; Bülent Algan, *Ekonomik, Sosyal ve Kültürel Hakların Korunması* (Ankara: Seçkin Yayıncılık, 2007): 35-37.

<sup>8</sup> Ahmet Akbaba, *İnsan Hakları Hukukunda Üçüncü Kuşak Haklar* (İstanbul: Legal Yayıncılık, 2016), 32-34.

<sup>9</sup> For more on the long-standing debate, see İbrahim Ö. Kaboğlu, “‘Dayanışma Hakları’nın Hukuksal Değeri (Soyut Talepler mi, İnsan Hakları mı?),” *İnsan Hakları Yıllığı* 13, no. 1 (1991): 37-48; Bülent Algan, “Rethinking ‘Third Generation’ Human Rights,” *Ankara Law Review* 1, no. 1 (2004): 126-153; Akbaba, *Üçüncü Kuşak Haklar*, 296-304.

<sup>10</sup> See for example İlker Gündüzöz, “Yeni Kuşak İnsan Hakları Çerçevesinde Türkiye’de Mülki İdare Amirliğine Analitik Bir Yaklaşım,” *İnsan Hakları Yıllığı* 33, no. 1 (2015): 25. *YÜHFD Cilt: XIX Sayı:1 (2022)*

and technology.<sup>11</sup> Since the developments especially in biotechnology and information and communication technologies constitute the main concerns for human dignity; the right to personal integrity and the right to protection of personal data are said to be the first two rights that have been well framed and included to the international human rights law.<sup>12</sup> The right to be forgotten might also be added to those two, for it is another “*fundamental human right that the information age has discovered.*”<sup>13</sup> Although it has not yet been a part of international human rights law, it is claimed as a human right on the ground that it helps individuals move away from their pasts and change themselves both in their own eyes and in the eyes of others, and thus let their free will free from the oppression of the past mistakes and finally help fulfil themselves.<sup>14</sup> Indeed, its close relations to the right to protection of personal data and the right to privacy at large makes it a real candidate of a fourth-generation human right. The only practical obstacle on its journey to transform to a human right seems to be a consensus thereon.<sup>15</sup>

The same is not true for “the right to be unique.” It is among the less clarified fourth-generation rights. Meanwhile, one may also encounter “the right to be different”<sup>16</sup> among the fourth-generation category, but those two seem to have different functions. As it is understood from the literature, the right to be different is claimed to meet the needs of vulnerable groups of people such as disabled persons<sup>17</sup> and especially disabled children,<sup>18</sup> persons

<sup>11</sup> Oktay Uygun, “Çağımızın İnsan Onuruna Yöneltiği ...”, 71; Oktay Uygun, *Devlet Teorisi* (İstanbul: On İki Levha Yayıncılık, 2014), 498-499; Oya Boyar ve Sezen Kama Işık, “Dördüncü Kuşak Haklar ve Bilişim Teknolojilerinin Doğuşunda Mahremiyet Kavramına Karşılaştırmalı Bir Bakış,” *Marmara Üniversitesi Hukuk Fakültesi Hukuk Araştırmaları Dergisi* 25, no. 2 (2019): 564; Hamide Bağçeci, “Post-Human’s New Generation Rights: An Utopia? The Near Future?” *Kadir Has University Law Faculty Newsletter*, 15 January 2021. <https://hukukbulteni.khas.edu.tr/bulten/28>.

<sup>12</sup> Uygun, *Devlet Teorisi*, 499.

<sup>13</sup> Hasan Elmalca, “Bilişim Çağının Ortaya Çıkardığı Temel Bir İnsan Hakkı Olarak Unutulma Hakkı,” *Ankara Üniversitesi Hukuk Fakültesi Dergisi* 65, no. 4 (2016): 1603.

<sup>14</sup> Yaşar Salihpaşaoğlu ve Burcu Değirmencioğlu, “Unutulma Hakkının Bir ‘İnsan Hakkı’na Dönüşme Yolculuğu,” *Ankara Hacı Bayram Veli Üniversitesi Hukuk Fakültesi Dergisi* 24, no. 2 (2020): 381.

<sup>15</sup> Salihpaşaoğlu ve Değirmencioğlu, “Unutulma Hakkının...,” 381.

<sup>16</sup> Gündüzöz, “Yeni Kuşak İnsan Hakları Çerçevesinde...,” 25, 27.

<sup>17</sup> Francesco Seatzu, “The right to live and be different and the European Convention on Human Rights,” *International Journal of Human Rights and Constitutional Studies* 1, no. 4 (2013): 301-321.

<sup>18</sup> Earl Schenck Miers, “The Right to Be Different,” *Exceptional Children* 18, no. 8 (May 1952): 225-228. <https://doi.org/10.1177/001440295201800801>; Theresia Degener, “The  
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within a religious community,<sup>19</sup> or individuals confined and subjected to enforced therapy due to their lack of criminal capacity.<sup>20</sup> Only exceptionally, the right to be different seems to be associated with “*individual human identities*.”<sup>21</sup> The right to be unique, however, is claimed for every individual regardless of their social identities, based on the idea that every human being has something special to himself.

But what exactly makes an individual unique and how does this fact justify a right to be unique? As reminded above, all generation of rights are deemed to be a reaction to the threats directed to human dignity, and the fourth-generation rights are claimed against the threats arise from the developments in science and technology. Therefore, if there is a right to be unique there must be some solid grounds on which it is claimed. The justification for that right is asserted to be found in the developments in biotechnology – but more on that in a minute. An earlier claim of a right to be unique was not openly linked with the threats originate from the developments in biotechnology or even linked with the theory of human rights at large. Jerry Parsons made an interesting case for the asserted right in 1977. In his editorial titled “*The Right to be Unique*” he complained on writers not being able to determine their own reference style and instead being obliged to abide by the rules of the journals. Parsons referred a dilemma in fact not limited to academic writing: People are assumed to be unique, but various regulations deny their uniqueness by lumping everyone together, restraining free will and individual creativity. Parsons approved that rules, standards and guidelines are needed for people to work together but he suggested that they should be used in a flexible way not to hinder the uniqueness of human beings.<sup>22</sup>

In the mid-nineteenth century John Stuart Mill complained in another context that “*so few now dare to be eccentric*” (because of a “*tyranny of*

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Right to be Different: Implications for Child Protection.” *Child Abuse Review* 1, (1992): 152.

<sup>19</sup> Bernard Mandelbaum, “The Right to Be Different,” *Tradition: A Journal of Orthodox Jewish Thought* 12, no. 3/4 (Winter-Spring 1972): 35-42.

<sup>20</sup> Nicholas N. Kittrie, *The Right to be Different: Deviance and Enforced Therapy* (Baltimore, Johns Hopkins Press, 1972).

<sup>21</sup> C.B. Muthamma, “The right to be different,” *India International Centre Quarterly* 25, no. 2/3 (Summer/Monsoon 1998): 100.

<sup>22</sup> Jerry Parsons, “The Right to be Unique,” *Journal of Extension* 15, no. 2 (March 1977): 2-3, <https://www.joe.org/faes-joe/joe/1977march/>.

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*opinion*”).<sup>23</sup> Parsons seems to acknowledge that the same was true for his time at least in academia (he was particularly interested in authors’ freedom to choose style, as noted above), and it can be said that this had been generally no more true in history than it is today in the twenty first century. A noteworthy feature of the understanding of uniqueness here in this view is that it refers to the immaterial aspect of human beings. It is about choices, character, manners, and everything not related to the organic/material aspect of people. (This way of understanding uniqueness does not provide a justified ground for a right to be unique, too, but it is a more realistic and thus appropriate way to look at individual human uniqueness. Both issues are going to be explained under the following titles of this review, starting with the latter.)

The main context within which the right to be unique is asserted, however, is human cloning. In the discussion of ethics regarding human cloning, individual uniqueness is classified as one of the new rights emerging as a result of the developments in medicine, science, and gene technology<sup>24</sup> and more concretely, it is said that being one of the fourth generation of rights, the right to be unique provides protection that the classical rights cannot provide against the abuse of biotechnology.<sup>25</sup> Particularly when claimed against human cloning, the right to be unique is clearly about the genetic uniqueness of human beings.<sup>26</sup> Thus, it refers to the material aspect of individuality.

So far it has been presented that there were two ways to approach individual uniqueness. One cares about the immaterial aspect and the other focuses on to the material aspect. As for the constitution of a full-fledged

<sup>23</sup> John Stuart Mill, *On Liberty* (London: Penguin Books, 2010), 97-98. He obviously means authenticity.

<sup>24</sup> Öztürk Aydın, “Üremeye Yardımcı Tedavi Yöntemlerinden Doğan Hukuki Sorumluluk” (Yüksek Lisans Tezi, İstanbul Üniversitesi, 2013), 3, 155, Ulusal Tez Merkezi (342132).

<sup>25</sup> Hamide Bağçeci, “Biyotıp Hukuku Bağlamında İnsan Onuru Kavramına Güncel Bir Bakış,” *Yeditepe Üniversitesi Hukuk Fakültesi Dergisi* 15, no. 2 (2018): 13, <https://www.jurix.com.tr/article/18501>.

<sup>26</sup> For a summary of the debate, see M. Onursal Cin, “Üreme Amaçlı Klonlamanın Cezalandırılabilirliği Üzerine Etik ve Hukuki Argümanlar,” in “Selçuk Üniversitesi Hukuk Fakültesi 20. Yıl Armağanı,” *Selçuk Üniversitesi Hukuk Fakültesi Dergisi* 11, no. 1-2 (2003): 128-30, <https://dergipark.org.tr/en/pub/suhfd/issue/26631/281052>; George Onyango, “Human Cloning: Assessing Existing Kenyan Law,” *Whittier Law Review* 31, no. 3 (2010): 497-98, <https://heinonline.org/HOL/P?h=hein.journals/whitlr31&i=515>; Ceren Gültüter, “Biohukuk Dersinin Düşündürdükleri,” *İnsan Davranışları, Belirleyicileri ve Hukuk: Toplantı Sunumları ve Tartışmalar*, ed. Yücel Sayman (İstanbul: İstanbul Medipol Üniversitesi, 2014), 14.

right from those approaches, writers *prima facie* seem to comprise both of them in their arguments. Ömer Ömeroğlu, for example, who was to the best of my knowledge the first writer to tackle the right exclusively in Turkish literature, defines it as “*individual’s right, in terms of his body and personality, to be like oneself and not someone else.*”<sup>27</sup> Obviously the *body* here refers to the material aspect and the *personality* refers to the immaterial aspect of human beings. This definition also says that the right to be unique involves two sub-rights –namely (1) to be like oneself, and (2) not to be like someone else– in terms of both material and immaterial aspects. To clarify his definition, Ömeroğlu gives separate definitions for all the elements therein,<sup>28</sup> which can be summarized as in Table 1.

Table 1

Four elements of the right to be unique, as explained by Ömeroğlu

	Regarding material aspect	Regarding immaterial aspect
To be like oneself	Being able to have an appearance determined by one’s own genes and choices.	Being able to act authentically.
Not to be like someone else	One’s appearance, determined by one’s own genes and choices, being not identical to someone else’s.	Not to be obliged to act in a way that is authentic to someone else.

When put like this in a symmetrical table the understanding of uniqueness in fact seems balanced, comprising both the material and immaterial aspects of individuals. However, while determining the scope of the right under the following five titles,<sup>29</sup> Ömeroğlu clearly gives more weight to the material uniqueness of individuals than to the immaterial aspect:

1. To be born with uninterfered genes.
2. Not to artificially constitute a genetical copy of the person.
3. Not to constitute individuals, by aesthetic or plastic surgery, who shares distinctive body features.

<sup>27</sup> Ömer Ömeroğlu, “Yeni Bir İnsan Hakkı: Benzersiz Olma Hakkı,” *Dokuz Eylül Üniversitesi Hukuk Fakültesi Dergisi* 10, no. 2 (2008): 100, <https://dergipark.org.tr/en/pub/deuhfd/issue/46843/587409>.

<sup>28</sup> For details, see Ömeroğlu, “Benzersiz Olma Hakkı,” 101-02.

<sup>29</sup> Ömeroğlu, “Benzersiz Olma Hakkı,” 107-18.



4. Being able to determine one's own appearance in accordance with one's perception of body and not to be obliged to be like someone else in this respect.
5. Being able to constitute one's authentic personality and not to be obliged to be like someone else in this respect.

Only the last content stated above can be associated with the immaterial aspect of individual uniqueness.

The same can be observed in another pro-right study done as a master's thesis. Defining the subject-matter of the right to be unique as "*the contribution provided for the protection and promotion of the material and immaterial entities of human beings, against the developments in science and technology,*"<sup>30</sup> Fatima Kandemir Ergün seems at first to give equal importance to the two aspects of uniqueness, because this definition can be visualized in a symmetrical way either. Indeed, she designates two sub-rights regarding each aspect<sup>31</sup> as shown in Table 2.

Table 2

The four sub-rights of the right to be unique, as explained by Kandemir Ergün

	Material aspect	Immaterial aspect
1	Prohibition of human cloning.	Right to constitute one's own personality.
2	Right to be born with uninterfered genes.	Right to personalized education.

But while determining the scope of the right to be unique, she also mentions another sub-right, namely the right to personalized medical care, which she does not place anywhere on the material-immaterial distinction. Thus, she too counts five items as the subject-matters of the right to be unique,<sup>32</sup> three of them being essentially in agreement with Ömeroğlu's items at number 1, 2, and 5. The different content that those researchers attributed to the asserted right are Ömeroğlu's items number 3 and 4, and

<sup>30</sup> Fatima Kandemir Ergün, "Benzersiz Olma Hakkı" (Yüksek Lisans Tezi, Atatürk Üniversitesi, 2019), 5, Ulusal Tez Merkezi (585888).

<sup>31</sup> Kandemir Ergün, "Benzersiz Olma Hakkı," 17-18.

<sup>32</sup> Kandemir Ergün, "Benzersiz Olma Hakkı," 7, 9-10. The second chapter of the study exclusively deals with the scope of the right: Kandemir Ergün, "Benzersiz Olma Hakkı," 58-107.

the rights to personalized medical care and personalized education, mentioned by Kandemir Ergün. Including a sub-right to personalized education, Kandemir Ergün even gives more weight to the immaterial aspect of uniqueness than Ömeroğlu does.

On the other hand, she thinks the material aspect of uniqueness constitutes a more important content for the asserted right than the immaterial aspect. Although she argues that the threats caused by the developments in biotechnology since 1990s reach beyond the material aspect of human beings, she emphasizes the view that those developments are threatening first of all their material aspect. She writes that the right to be unique was required “*especially*” because of “*human cloning and the possibility to make changes in the genetical structure of a human being in a way to affect future generations.*”<sup>33</sup> Accordingly, with the purpose of indicating the legal foundations of the asserted right, she uses more than six pages to explain four prominent international human rights instruments regarding human genome and bioethics, while using only about one page to explain the legal foundations regarding the immaterial aspect of uniqueness.<sup>34</sup>

As a result of all the above-mentioned disparities, it should be legitimate to say that there is a misunderstanding, on the part of the pro-right argument, regarding the true meaning of individual uniqueness of human beings. It is even plausible to question why the concept of human dignity is so tightly attached with the idea of genetic uniqueness (*i.e.* what is the moral ground to oppose human cloning?) but this philosophical debate is beyond the scope of this review. The argument made here is –as the first objection promised in the title– that it is the immaterial aspect of human beings that really defines their uniqueness, so that it must be regarded at least as important as the material side of human beings, otherwise the right to be unique proves to be substantially ill-defined. The two pro-right studies mentioned above surely do not reduce uniqueness to its material aspect, yet emphasizing the involvement of biotechnology and genetics, they insistently highlight the importance of the material uniqueness. Furthermore, despite mentioning to some extent the immaterial aspect of uniqueness too, they do not actually explain how the immaterial uniqueness requires a human right’s protection. The point is, even if they cared to explain this, they could not have accomplished it, because –and this is the second objection to the

<sup>33</sup> Kandemir Ergün, “Benzersiz Olma Hakkı,” 32.

<sup>34</sup> Kandemir Ergün, “Benzersiz Olma Hakkı,” 32-40.  
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asserted right— the immaterial aspect of uniqueness basically does not require the protection of any right. But before that, the true meaning of individual uniqueness must be revealed.

### UNDERSTANDING UNIQUENESS CORRECTLY

There is no point in challenging that the technological advancements might threaten the material uniqueness of human beings. It is hard to understand, however, why such threats are regarded to be so much significant. Because in any case the true meaning of individual uniqueness must be based on the immaterial aspect of human beings. In contradiction to the understanding presented by the pro-right argument, consider for example how Rothbard explains uniqueness within the context of individual liberties:

*“If men were like ants, there would be no interest in human freedom. If individual men, like ants, were uniform, interchangeable, devoid of specific personality traits of their own, then who would care whether they were free or not? Who, indeed, would care if they lived or died? The glory of the human race is the uniqueness of each individual, the fact that every person, though similar in many ways to others, possesses a completely individuated personality of his own. It is the fact of each person’s uniqueness—the fact that no two people can be wholly interchangeable—that makes each and every man irreplaceable and that makes us care whether he lives or dies, whether he is happy or oppressed. And, finally, it is the fact that these unique personalities need freedom for their full development that constitutes one of the major arguments for a free society.”<sup>35</sup>*

Obviously, there is no mention of genetic uniqueness here. This is why individuality claim against cloning is insufficient too.<sup>36</sup> To put it briefly, identical (monozygotic) twins are “clones” too, and actually they share as

<sup>35</sup> Murray N. Rothbard, *Egalitarianism As a Revolt Against Nature and Other Essays*, 2nd ed. (Auburn, AL: Ludwig von Mises Institute, 2000), 247. <https://mises.org/library/egalitarianism-revolt-against-nature-and-other-essays>.

<sup>36</sup> See John A. Robertson, “Liberty, Identity and Human Cloning,” *Texas Law Review* 76, no. 6 (1998): 1411-15, <https://ssrn.com/abstract=84948>; Evangelos D. Protopapadakis, “Clones, Prototypes and the Right to Uniqueness,” *Agrafa* 1, no. 2 (2013): 42, [https://philarchive.org/rec/PROCPA?all\\_versions=1](https://philarchive.org/rec/PROCPA?all_versions=1). David Elliott discuss this individuality claim as “*the un-uniqueness objection*” and he refutes it too: David Elliott, “Uniqueness, Individuality, and Human Cloning,” *Journal of Applied Philosophy* 15, no. 3 (1998): 220-28, <https://doi.org/10.1111/1468-5930.00092>.

similar gene-sets as possible,<sup>37</sup> but their physical and even behavioural resemblance does not diminish their individuality. The same conclusion should apply *a fortiori* to the clones, for firstly they are not genetically as similar to their donor (and to their clone siblings if any) as twins are similar to each other,<sup>38</sup> and secondly a clone's age and environment, unlike in the case of twins, would not be the same with those of his donor's too.<sup>39</sup> Thus even a clone would immediately start differentiating psychologically from his donor, developing his own unique personality every other day he lived. "*A clone of X may look like X, but will not be X, although she may be much more like X than like Y*" says Professor Robertson and considering "*the roles of genes in forming personal identity*," he rightly points out that "*[a]ssigning significance to genes ... risks becoming a crude form of genetic essentialism or determinism.*"<sup>40</sup>

This is because a human being is an organism not only made out of its genes or biological material at large; it is a *social organism* interactively developed in a particular environment.<sup>41</sup> "*My identity is what prevents me from being identical to anybody else*" says Amin Maalouf.<sup>42</sup> And here is his approach to identity:

*"Each individual's identity is made up of a number of elements, and these are clearly not restricted to the particulars set down in official records. Of course, for the great majority these factors include allegiance to a religious tradition; to a nationality sometimes two; to a profession, an institution, or a particular social milieu. But the list is much longer than that; it is virtually unlimited. A person may feel a more or less strong attachment to a province, a village, a neighbourhood, a clan, a professional team or one connected with sport, a group of friends, a union, a company, a parish, a community of people with the same passions, the same sexual preferences, the same physical handicaps, or who have to deal with the same kind of pollution or other nuisance.*

<sup>37</sup> Protopapadakis, "Right to Uniqueness," 44.

<sup>38</sup> Protopapadakis, "Right to Uniqueness," 44.

<sup>39</sup> Nancy K. Segal, "Psychological Features of Human Reproductive Cloning: A Twin-Based Perspective," *Psychiatric Times* 23, no. 14 (December 1, 2006). [https://www.psychiatristimes.com/psychological-features-human-reproductive-cloning-twin-based-perspective?qt-resource\\_topics\\_rightrail=0](https://www.psychiatristimes.com/psychological-features-human-reproductive-cloning-twin-based-perspective?qt-resource_topics_rightrail=0). See in the same direction: Elliott, "Uniqueness," 225.

<sup>40</sup> Robertson, "Liberty, Identity and Human Cloning," 1373.

<sup>41</sup> See, *mutatis mutandis*: Elliott, "Uniqueness," 218, see also 23.

<sup>42</sup> Amin Maalouf, *In the Name of Identity: Violence and the Need to Belong*, trans. Barbara Bray (New York: Penguin Books, 2003), 10.

*Of course, not all these allegiances are equally strong, at least at any given moment. But none is entirely insignificant, either. All are components of personality - we might almost call them 'genes of the soul' so long as we remember that most of them are not innate.*

*While each of these elements may be found separately in many individuals, the same combination of them is never encountered in different people, and it's this that gives every individual richness and value and makes each human being unique and irreplaceable.”<sup>43</sup>*

Again, as is in Rothbard's exposition, there is no mention of genetic uniqueness in this passage. On the very contrary, Maalouf consistently refers to the apparently numerous “*components of personality*,” naming them at one point as the “*genes of the soul*.” Even more interestingly, he warns that this metaphor is actually misleading, because those components of personality, or in other words the elements constituting identity, are mostly not innate. People are born with their real genes, this is inevitable, because their bodies are made of those genes in the first place. But the “*genes of the soul*” are acquired later in life, within and by way of the social life of an individual. This approach acknowledges the claim that individual uniqueness cannot be reduced to genetic uniqueness,<sup>44</sup> but it further allows us to claim that genetic uniqueness is not even relevant to individual uniqueness in its proper sense.

The keywords to the proper understanding of individual uniqueness of human beings are the *irreplaceability* regarding *personality*. Both Rothbard and Maalouf refer to the irreplaceability of people in terms of their personalities. Irreplaceability is an integral part of being human, in other words a feature of human nature, and it is strictly tied with the personality, regardless of being a clone or being the dearie child of one's loving parents. That means, if somebody was a clone, even then, this clone-person would be a unique individual, for he would have an irreplaceable personality. Thus, the individual uniqueness is only based on the immaterial aspect of human beings. Genetic uniqueness is another issue, not relevant to the uniqueness of human beings in its proper sense. Therefore, if the right to be unique is claimed on the base of genetic uniqueness, it is destined to be void. The pro-right studies, as noted earlier, surely do not reduce individual uniqueness to its material aspect, but they claim the right *mainly* based on the genetic

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<sup>43</sup> Maalouf, *In the Name of Identity*, 10-11.

<sup>44</sup> Bağçeci, “İnsan Onuru Kavramına Güncel Bir Bakış,” 36, 42.

uniqueness. Such a claim must be objected because it does not present a true understanding of the uniqueness of human beings.

### UNIQUENESS AS A RIGHT?

To support the argument for a right to be unique, pro-right studies rely on the concepts of individualism or uniqueness in an abstract way. Therefore, any idea that acknowledges the subject, cherishes the individual, or mentions the individual uniqueness is presented as an argument for a right to be unique;<sup>45</sup> or the development of the concept of individual in the history of thought is presented as the intellectual foundation of the right to be unique.<sup>46</sup> However, one cannot find in this abstraction the concrete link between those concepts and the asserted right. The truth is that there is not one. To say that human beings are individuals and to accept that they are individually unique do not mean that those ideas necessarily justify a right to be unique.

On the one hand, any claim can be asserted as a human right as long as it is somehow championed that a dignified life requires this asserted right to be recognized as a human right. Depending on the underlying ideologies, the issue of what a dignified life requires has been controversial, and thus the list of human rights has never been fixed. From this point of view, it seems that there should be no reason to object a right to be unique, too. From another point of view, on the other hand, human rights are at the end a subcategory of *rights* in general, and a right, in the sense it is used in the legal discipline, indicates an entitlement: “*To have a right to x is to be entitled to x.*”<sup>47</sup> But to be entitled to something is only meaningful if it is possible to deny this entitlement to the holder of the right. Only then, a right can have a function for its holder, and this function is nothing but to claim the denied entitlement to the substance of the right.

Accordingly, a right to be unique indicates *an entitlement to be unique*. The problem here is that one cannot be denied or deprived of his uniqueness even if he asks for it. And this is not a moral standard or a presumptive idea but a fact. Considering the nature of human beings, depriving an individual of his uniqueness is impossible. Let us assume that you want to become identical to someone else. You can try your best to change your appearance to resemble him, but to the extent that you are successful at this, you only

<sup>45</sup> Ömeroğlu, “Benzersiz Olma Hakkı,” 102-07.

<sup>46</sup> Kandemir Ergün, “Benzersiz Olma Hakkı,” 21-31.

<sup>47</sup> Jack Donnelly, *Universal Human Rights in Theory and Practice* (Ithaca: Cornell University Press, 2013), 7.

reduce your material uniqueness. Since you cannot *become* that very person himself, it cannot be said that you deprived yourself of your unique identity. Nobody else can force you to become someone else either. Deniability of individual uniqueness is nothing but a fictitious idea.

Therefore, individual uniqueness is something very different than the substance of the human rights. If someone is arrested because of his publications, that might involve a violation of his freedom of expression. If someone is convicted without trial, that is certainly a violation of his right to a fair trial. The most liberal states may be proud of not violating the freedom of expression, the right to a fair trial or the right to privacy of its citizens, but in any case a possibility for violations always exists. This is why people are considered to have those rights even when they are said to fully enjoy the subject-matters thereof. Unlike the human rights, however, there is no possibility in which a “right to be unique” can be violated. There is no way to deny individual uniqueness to any person. Being individually unique is a natural requirement of being human. Claiming a right to be unique would be as vain as claiming a right to be human. Being human is not a value protected under a right, it is a fact. So as the uniqueness.

The only conceivable threat to individual uniqueness is to copy somebody and paste him, as though he was a folder on a computer’s desktop, to make sure the produced person has exactly the same genes, looks and character with the first person, as a copied folder would have had the exact same look and content with the original one. Considering the human nature, even cloning is not capable of doing this.<sup>48</sup>

Having said that, it is worth noting here that, strictly speaking, even the genetic uniqueness is said to be not at stake in cloning. As Elliott points out, a clone’s genes may not always be the same with those of his donor’s too. It may sound strange, but considering different cloning techniques, Elliott concludes that “*the only ways to get a truly identical clone would be either to have nuclear DNA from a woman put into her own egg or to engage in embryo splitting. ... In all other cases of nuclear transfer, where another individual’s cells or eggs are used, the ‘copy’ is, strictly speaking, genetically non-exact.*”<sup>49</sup> Considering the empirical data, Protopapadakis goes even further than Elliott and concludes that “*exact genomic replication far exceeds the powers of genetic engineering.*” The data she presents show that even in the best attempt the clone –in terms of his genes– will only be

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<sup>48</sup> Protopapadakis, “Right to Uniqueness,” 42.

<sup>49</sup> Elliott, “Uniqueness,” 218.

very similar to the donor, but never *identical* to it. Adding “other variables that affect gene expression and have a major impact on our phenotype” to these genetic differences, it seems impossible to assert that the biological uniqueness of human beings is threatened.<sup>50</sup>

But there is no need to rely on the relatively small genetic differences or other variables affecting the phenotype, regardless of the importance thereof in biotechnology, to refute the so-called right to be unique. Let us assume for the sake of the pro-right argument, that the term “clone” refers to a biologically *identical* copy of a human being. And to materialize this thought experiment in our minds, we can appeal to an imaginative concept in the phantasy world of fiction: the *Polyjuice Potion* in the *Harry Potter* novels. According to the story, this magical elixir makes the wizard look *exactly* like another person, whose body part such as a strand of hair was added to the potion. Because this fictional drink is capable of what cloning in real life is not: It makes the wizard appear as the *exact* genetic copy of another person. Thus, it constitutes a perfect biological duplication imaginable. However, this is as far as it can do. A *Polyjuice Potion* cannot duplicate the personality of the copied person within the body and mind of the drinker. The disguised wizard, although biologically identical to the copied person, still has his own individual personality and if he wishes to deceive others, he has no option but to act as though he was the copied person.<sup>51</sup>

This thought experiment demonstrates that even in the world of fiction where is said to exist a magical way of cloning that produces an identical biological copy of a person, it is contrary to our common sense to imagine a replacement of an individual in terms of his personality. The point is, again, that regardless of their biological situation human beings are naturally always unique regarding their non-replaceable personalities and there exists no single threat to make people deprive of it. The fictional *Polyjuice Potion* could be a grave violation against the right to privacy of the copied person when applied against his will, but it would never be eligible to threaten the uniqueness of both the clone (the disguised wizard) and the copied person.

This is why it is important to understand uniqueness in its proper sense. And there have always been more assuring and elegant ways of

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<sup>50</sup> Protopapadakis, “Right to Uniqueness,” 43-44.

<sup>51</sup> *Polyjuice Potion* appears many times in the novels. Those who are not familiar with the story might want to refer to the last two pages of chapter nine and the whole chapter twelve in the second book, where it appears for the first time: J. K. Rowling, *Harry Potter and the Chamber of Secrets* (London: Bloomsbury, 2000), 174, 223-45.



demonstrating this understanding in fiction. I would like to finish by referring to two more works, which *literally* seem to refute each other, but *actually* speak in concert regarding the uniqueness of human beings. Firstly, in a story written by a twentieth century Hungarian writer István Örkény, two straggled soldiers travel together until one of them –the composer– is killed by hostile fire. The thing is that he was composing a new ballad at the very moment he was shot and was about to sing the final line of his original verse. His friend later tries to find a rhymed line to fill in the blank, but he cannot. This is because, according to the narrator, “[w]hat each of us know is different in this life and no one can fill the shoes of another.”<sup>52</sup> It is quite clear here that Örkény uses the verb “to know” in a broad meaning, including all the personal knowledge and feelings of an individual. This is more apparent in the second quote I would like to refer to. It comes from Goethe’s beloved character Werther, and arguably it might be the most romantic way of understanding individual uniqueness: “Ah, was ich weiß, kann jeder wissen – mein Herz habe ich allein.”<sup>53</sup> (Ah, what I know can be known by everyone – my heart belongs only to me).

## CONCLUSION

“The right to be unique” is a problematic concept. Because, firstly, if it aims to protect the material aspect of an individual’s uniqueness, that means it reduces uniqueness to its material aspect. In fact, immaterial aspect of uniqueness outweighs the material one. Claiming the right to be unique to defend the genetic uniqueness, therefore, reveals a misunderstanding regarding the uniqueness of human beings. That does not mean that one cannot demand a human rights protection against the potential risks on the uniqueness of human genome brought by the developments in biotechnology. Defenders of a moral and legal protection against the threats directed to the genetic uniqueness can surely demand and define relevant rights to that end. Such a right, however, cannot be named as a “right to be unique.” Because –and this is the second objection to the asserted right– once understood properly, individual uniqueness of human beings cannot be considered as a value requiring a right’s protection. If the right to be unique aims to protect the uniqueness in its correct meaning (comprising both its material and immaterial aspects), then it is a redundant claim. Uniqueness in

<sup>52</sup> István Örkény, *Bir Dakikalık Öyküleri*, çev. Sevgi Can Yağcı Aksel (İstanbul: Sel Yayıncılık, 2004), 40.

<sup>53</sup> Johann Wolfgang Goethe, *Die Leiden des jungen Werther* (Stuttgart: Philipp Reclam, 1986), 88. <https://archive.org/details/dieleidendesjung00goet>.

its proper sense is a part of human nature, so it is inviolable in that sense, not suitable for a human right protection. Uniqueness may well be, and should be, and actually is a powerful ground to justify the whole idea of human rights, but a right to be unique has no justification for itself.

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