**The Potential of Potentiality Arguments**

David Hershenov and Rose Hershenov

If *Donum vitae*, in order to avoid a statement of an explicitly philosophical nature, did not define the embryo as a person, it nonetheless did indicate that there is an intrinsic connection between the ontological dimension and the specific value of every human life…[[1]](#footnote-1) Indeed the reality of the human being for the entire span of life, both before and after birth, does not allow us to posit either a change in nature or a gradation in moral value, since it possesses full *anthropological and ethical status.* The human embryo has, therefore, from the very beginning, the dignity proper to a person. (*Dignitas Personae,*4)

The Roman Catholic Church does not commit itself to the philosophical claim that that the embryo[[2]](#footnote-2) is a person but insists that the embryo be recognized as having the moral status of a person with “the right to life… from conception to natural death.” (*Dignitas Personae,*1) The young human being doesn’t acquire greater moral status as it develops. “The introduction of discrimination with regard to human dignity based on biological, psychological, or educational development, or based on health-related criteria, must be excluded.”(*Dignitas Personae*) While the human embryo’s development doesn’t bring greater value, nevertheless, the young human being is the kind of thing that does develop in a way unique amongst the members of known species. The human embryo has capacities or potential that no other kind of animal possesses. If we had been without the potential for such development, then our moral status would not exceed that of all other living creatures.

However, there are philosophers who claim that some non-human living creatures have the potential of our species even if it is not the normal course of their development. And they point out that there are impaired human beings who lack the potential to develop sophisticated minds, often inferring that such unhealthy humans do not possess a moral status greater than that of other non-human animals that have manifested equivalent (unsophisticated) mental traits. Catholic philosophers typically respond that human embryos alone have the right kind of potential in virtue of the kind of being they are. Our contention is that both defenders and critics of potentiality arguments in the abortion debate have failed to appreciate the morally relevant aspects of potential that bear upon the moral status of the embryo.

One mistaken belief of pro-lifers is to maintain that a sufficient condition for the wrongness of abortion is that the mindless embryo has an identity-preserving potential to become an entity that typically possesses a very valuable mental life. A second misunderstanding is that the embryo’s potential must be active or intrinsic to distinguish it from other kinds of hypothesized potential that don’t warrant moral protection. A third error is to believe that the harm death bestows upon the embryo is as great, if not greater than, the harm brought by death to those born years earlier because the latter typically lack the potential to live as far into the future as the much younger embryo. A fourth mistake is to think that it matters greatly whether embryos are persons or merely potential persons. A fifth mistake is to think that the pro-life position is defensible only if we are identical to the mindless embryonic organism and thus once existed in the womb with the potential to develop into the persons we now are.

Abortion’s defenders make errors about potential that have much graver consequences. One mistake is to maintain that potential is morally insignificant because it can’t bestow moral status on the embryo, but merely makes it possible that the fetus later obtains the moral status necessary for it to warrant protection. A second mistake is to assert that it is a type of consciousness, and not the potential for such a mental life, that is required for an entity to have interests in more life and be a subject that could be harmed. A third mistake is to maintain that if potential mattered morally then absurdities would follow such as a duty to protect various real or hypothesized living entities that have the capacity to become persons: totipotent cells, reprogramed cells, and sci-fi scenarios in which entities undergo high-tech interventions or are switched to environments that transform them into persons.

We argue that the morally relevant aspect of potential is tied to the fact that mindless organisms have interests, but only in their healthy development or proper functioning. Unlike most kinds of organisms that develop minds, the operations of a healthy human mind are of a sophistication and range that bestows them with great value. Thus the frustration of those interests in healthy mental development is a great harm. In the absence of such interests present in the mindless, mere identity to a future creature with an impressive mind would not suffice to warrant protecting that creature when mindless. Since the healthy development that is in in the fetus’s interest can require all sorts of extrinsic interventions, the morally relevant potential isn’t limited to that which is intrinsic or active. And given those real or hypothesized non-human beings, that are supposed to show the absurdity of protecting potential, aren’t unhealthy if their possible potential for personhood isn’t actualized, it follows that they don’t have any interests frustrated by that potential going untapped.

Moreover, our account can explain why the deaths of many adults are more harmful than the deaths of fetuses or frozen embryos and thus can make sense of the greater efforts many make to save their lives. The reason is that those who have already become self-conscious persons will have contingently acquired interests in addition to those that they necessarily always have in the healthy development of their cognitive and affective faculties. But our theory, unlike those that make harm dependent upon actualized mental capacities or psychological ties, can still account for why embryo destruction is a great and immoral harm. Furthermore, it can explain why the potential of human embryos for personhood requires our support, while the hypothesized potential personhood of all other known living creatures is morally irrelevant. However, this difference in harm that fetuses and the typical reader can suffer doesn’t mean that their deaths wouldn’t be equally wrong. We end by distinguishing the *wrongness* of killing from the *harm* of killing in a way that does justice to the egalitarian beliefs of many readers.

**I. The Potential that Matters**

We’re quite dubious of claims that newborns and the unborn lack the interests required for the moral standing that warrants protecting their lives at the costs of imposing considerable burdens upon others (Tooley, 1972; Singer, 1993; Devolder and Harris, 2007; McMahan, 2002; Giublini and Minerva, 2013). Those maintaining such a position typically fail to recognize that *something can be in an individual’s interest* even if *that individual doesn’t take an interest in it*. The former interest need not be conscious or even then accessible to consciousness. It is in the embryo and neonate’s interest to survive even though they have not taken an interest and consciously desire to live on into the future. Similarly, certain healthy foods are in children’s interests although they’re not interested in them. Our contention is that all living things have an interest in healthy development. And so human potential persons, even those who have never been conscious or are no longer conscious, have an interest to live and develop in a healthy fashion that will lay the foundation for their flourishing.

If one doesn’t accept that non-sentient beings can have welfare and interests then one wouldn’t be able to explain the harm of your lapsing into a coma or the benefit of your coming out of a coma. On the dominant comparative account of an event being a harm, the well-being of a creature’s actual state is compared with the state of well-being if the event in question had not occurred. That event is a harm if there is a drop in well-being from what would have been the case, a benefit if there is a rise in well-being in the actual world. If the mindless don’t have any level of well-being then we can’t explain why it is harmful to lapse into a coma.[[3]](#footnote-3) Nor can it explain why it would be good for someone to come out of coma or, better yet, to become conscious for the first time. In order for that change to be a benefit one must compare the life of mindlessness with a life containing consciousness. So, to make sense of harm and benefits, we must allow that the mindless have well-being.

We believe that mindless organisms have interests in survival and reproduction and that the onset of consciousness is often just another way to further those same interests. If one instead maintains that interests depend upon consciousness, then a minded being only has interests of which she is (or could be) aware. Thus the newborn that is unaware and can’t conceptualize that she needs some surgical procedure to avoid a painless death would not have an interest in that treatment. It seems very implausible to claim that the infant lacks an interest in her health being preserved because she isn’t consciously aware of that interest. But if consciously conceptualizing that interest isn’t required for that interest to belong to the neonate, then that interest should exist earlier in the embryo before there was any consciousness at all.

Our contention is that all living entities are capable of well-being and have an interest in their good. [[4]](#footnote-4) They thus differ from artifacts and non-living natural entities. Artifacts like a car don’t have an interest in, say oil, except in the derivative sense that their operator may want them lubricated. And inanimate living objects like rocks can’t undergo fluctuations in well-being like the living for only the latter can be said to become healthier or worse off. Such objects can’t be ascribed interests without well-being. And non-living mindless entities can’t maintain or undergo changes in their well-being and thus don’t have an intrinsic welfare. Mindless *living* beings, on the other hand, can undergo fluctuations in their well-being as their health improves or worsens. As living teleological systems they respond and make internally-driven adjustments to acquire and maintain health.

Even blades of grass can literally be said to thrive and thus have an intrinsic well-being and a genuine interest in sunlight, moisture, and nutrient-rich soil. Despite having interests, such grass has a future that isn’t very valuable, so its interests are given far less moral weight than those of sentient animals or human beings. Assuming that the degree of the harm of an entity’s death depends, in part, upon the value and extent of the well-being that it loses out on, the grass is harmed very little by its death.Healthy human fetuses, on the other hand, have the potential to realize mental capacities of the utmost value that will enable them to flourish to a considerable extent.[[5]](#footnote-5) Since a human being has an interest in developing into a creature of great value, the frustration of that interest allows humans at any stage of life to be harmed to a degree that nonhuman organisms cannot. The human capacity for great harms and benefits is why we have greater moral status than any other known kind of living creature.[[6]](#footnote-6)

Our contention is that the morally relevant sense of potential is determined by what constitutes *healthy development*. We are assuming that the correct account of health will be an objective one that invokes notions of function and dysfunction. It doesn’t affect the notion of morally relevant potential that we are defending whether the correct notion of health depends upon evolutionary accounts of function like that championed by Jerome Wakefield’s (2005) Harmful Dysfunction Account of Disorder or non-etiological accounts of function like that advocated by Christopher Boorse’s (1997) Biostatistical Theory of Disease. It is even roughly compatible with theistic accounts of healthy proper function such as Alvin Plantinga’s (1993). Perhaps as an adaptation or co-optation (exaptation) of existing forms, evolution (divinely designed or not) has bestowed upon healthy human fetuses the potential to develop minds of great cognitive and affective abilities. These abilities will enable them to enter into various rewarding relationships and exercise a range of cognitive skills that enable them to think and act in valuable ways unlike any other kind of living being. So their potential means that they’ll be greatly harmed if deprived of that valuable future. It might help readers appreciate the value and well-being resulting from the activities that healthy human mental development makes possible if you consider the absence of health in those mentally disordered individuals suffering impairments in love, empathy, conscience, desire, self-restraint, prudence, reason, learning, memory, or judgment.

For creatures like us, then, a healthy mind in our design environment is constitutive of a good deal of valuable well-being.[[7]](#footnote-7) But it’s not all there is to flourishing. (Hershenov and Hershenov, 2015) Two humans can be equally healthy without flourishing equally due to differences in their respective environments: say they’re both capable of relationships involving love, empathy, delayed gratification, etc., but only one finds a soul-mate. Nevertheless, both possess great worth given the great value of their mental endowments.[[8]](#footnote-8) Those endowments enable them to partake in more varied and complex affective and cognitive states than any other kind of known living creature.

Mindless organisms, though, have interests only in healthy development and the flourishing that involves. An embryo has an interest in growing a healthy proper functioning brain, but no interest in then becoming a basketball player or a physicist, even if it will later be an adolescent dreaming of fame and victory in the NBA finals or winning a Nobel Prize in physics. It isn’t enough for a mindless entity to be numerically identical to a later being to presently have an interest in that later being’s welfare. The future good must be in the mindless being’s interest when it is mindless. And the only basis we can see for ascribing interests to the mindless is by appealing to the good realized by their proper functioning, i.e., healthy development for entities of that kind. Health is a *necessary* condition for flourishing and constitutive of a good deal of valuable well-being in a healthy person. The living will *always* have an interest in health-produced flourishing. All flourishing depends upon health being present to some degree; thus every living being has an interest in health at every stage of its life, including its embryonic stages. When mindless, there’s probably no other good for it than its health, i.e., its proper functioning, that’s constitutive of its flourishing.[[9]](#footnote-9)

**II. Avoiding Standard Objections to Potential’s Moral Significance**

It’s frequently claimed that appeals to potential are susceptible to refutation by *reductio* for far too many entities have the potential to become persons. For example, a genetic twin of you could be produced by cloning any cell of your body so even your skin cells are potential persons, yet we’re under no obligation to further such potential. But this isn’t a problem for our account. Even if cloning is identity preserving, it’s not in the initial interest of the original cell to do anything other than what healthy skin cells do and so its potential to become a person is morally irrelevant. We can easily extend this treatment to the possibility of gametes being induced to develop parthenogenetically into persons—likewise for the possibility of removing totipotent cells from a few day-old embryo and implanting them in a womb to gestate. The potential of a totipotent cell, if removed, isn’t morally compelling because its proper function is to do whatever it was doing as one healthy cell amongst others,[[10]](#footnote-10) not what it would be doing if implanted in a zona pellucida by itself with its developmental trajectory reformed.

Michael Tooley (1972,60-1) famously argues that if potential mattered morally then a kitten injected with a serum that gave it the potential to become a person would have to be protected. Let’s first consider the possibility that the feline injected with a person-producing serum was a mindless embryonic feline *in utero*. Since it would not be malfunctioning (unhealthy) if it didn’t so develop, it wouldn’t be wronged if that potential was neutralized. But if we stick to Tooley’s actual example in which the kitten is conscious but constitutionally incapable of understanding anything about the serum with which it has been injected, we think it still follows that the kitten lacks an interest in becoming a person. We would argue that its interests are those due to its healthy development (proper functioning) *and* whatever it consciously desires or would desire under conditions free of distorting influences. It is not the proper function of the kitten to develop into a person so it has no interest in such development since it also does not consciously desire the change.[[11]](#footnote-11)

Once the serum has transformed the kitten into a person it certainly has an interest in remaining a person. If the serum was still dormant, however, no harm would be done in removing it. Ironically, the kitten might initially be made ill by the serum in the early stages and thus have an interest in its neutralization. This could be because some of the kitten’s organs and neurology might have to be destroyed to enable the physical realization of the person. It would initially be malfunctioning and thus harmed.

**III. Active and Passive Potential**

The *reductios* can’t be avoided by distinguishing active or intrinsic potential from passive or extrinsic potential, for these distinctions won’t divide up cases as desired by their pro-life proponents (Eberl, 2005). For example, there’s no active or intrinsic potential in anencephalic or congenitally cognitively disabled human fetuses, but they would surely have a priority over a healthy kitten to receive a *scarce* serum that made personhood possible for them.[[12]](#footnote-12) We also agree with John Lizza (2011) that epigenetic factors make it difficult to speak of development as due to just the intrinsic or active potential of the DNA. And we concur with Jeff McMahan when he claims that moral intuitions don’t track whether the fetus’s development is due to intrinsic or extrinsic features. McMahan (2002, p. 316) imagines that a breed of dogs may turn out to have the intrinsic potential to be persons if a previously unknown years-long daily regimen of training is undertaken. It seems quite plausible that we lack a duty to so treat those dogs despite their identity with a post-training canine person. McMahan (2002, p. 315) also observes that it’s counterintuitive to argue that a human fetus’s moral status would drop and then return if its earlier intrinsic potential for personhood was lost but then restored by genetic therapy. However, if we appeal to *healthy development* as the morally relevant potential then the intrinsic or extrinsic source of the development is irrelevant. It doesn’t matter whether the genes required for the development of a person are present and merely waiting for the right triggers from their environment or are missing or damaged.

We can see more clearly the irrelevance of active or intrinsic potential if we assume, for the sake of argument, the truth of *unrestricted composition*. Unrestricted composition is the mereological principle that accepts that any set of two or more objects form a larger composite regardless of the relationship between the parts. Consider a scattered object that consists of the sperm and egg that will later fuse. It has an active potential in its design environment (the woman’s fallopian tube), which is no different from that of the embryo *in utero*. But its active potential doesn’t give it moral standing. Our contention is that the only mindless beings with interests are *alive*. The scattered object is not alive and so it doesn’t have any interests; although its constituent parts (the sperm and ovum) have interests—at least if our thesis that all living things have an interest in the well-being that is produced by their healthy development is correct.

**IV. Identity with a Future Creature of Value isn’t Sufficient for Abortion’s Wrongness**

It is often maintained that being identical with a future entity that has a valuable future is sufficient for the bestowal of great moral status onto the creature. This is clear in Don Marquis’s (1989) famous *valuable future-like-ours* account and manifest in the title of Alex Pruss’s “Abortion is Wrong Because I was Once a Fetus” (2011). We can appeal to unrestricted composition and the earlier identity-preserving *reductio* cases to see why this isn’t so. Even if the identity claims made to debunk potentiality arguments are metaphysically impossible, they are still epistemically possible and they can help reveal conceptual ties and tease apart what matters, including what is sufficient for moral status.

Consider an entity that consists of you and some ancient Egyptian sandal. That gerrymandered object, call it a “sandalperson,” would not have been harmed if the sandal was destroyed. The sandalperson could only have had interests in the past that were interests of its earlier self, but its earlier self didn’t have interests for it wasn’t then alive. Yet, even if we imagine a living object that consists of an ancient Egyptian cat and you, that gerrymandered catperson’s interests in the past didn’t include yours, for the ancient creature didn’t then have any interests in your well-being. The earlier animal had interests and you have interests, but they aren’t the same interests; so the catperson—consisting either of both the catperson’s *cat* and *person* four-dimensional stages or one and the same three-dimensional object that is wholly a cat and then wholly a person—didn’t have any interests during the ancient Egyptian period in your later flourishing.[[13]](#footnote-13) Our view is that such entities only have the interests of their present selves (or four-dimensional stages). The present self must have an interest in its future self for any later well-being to affect its earlier well-being.

This is true even for less gerrymandered and temporally extended creatures. Assume a compositional principle that allows that a gamete, such as a sperm, can grow in an identity-preserving manner and become a zygote and then later a newborn and eventually a person. If this gamete at time T doesn’t have an interest in its post-gamete well-being at Time T+, then its later self didn’t have an earlier interest at Time T in its future at Time T+. That gamete only has an interest in its healthy function. To see that the sperm doesn’t have an interest in the three-dimensional future person with whom it is identical (or later four-dimensional person) consider that the sperm is healthy and functioning properly even if it combines with an egg and the resulting embryo doesn’t survive long due to the egg’s faulty genetics. The sperm’s interest is in its fertilizing an egg, not in the resulting organism developing and flourishing. (It may help to keep in mind that the sperm could have united with any egg.) If the resulting embryo doesn’t so develop and the reason lies in the egg’s contribution, the sperm is not unhealthy. So, if healthy proper functioning of the sperm just involves fertilizing the egg, then its interests don’t extend any further. Thus, even though there is an object in a metaphysic of unrestricted composition that consists of the gamete and a later person, it didn’t have an interest at T in its welfare later at T+ because the sperm didn’t have an interest at T in the later person’s health at T+.

We can extend this lesson to a world of *restricted composition* that has a very sparse ontology, perhaps containing only organisms amongst its composites. It doesn’t matter even if the change to the skin cell in the cloning case is identity-preserving. We can imagine that future cloning is more like parthenogenesis than the technique that produced Dolly, the first mammal cloned from an adult somatic cell. Assume that the skin cell can be induced to develop into an adult without the removal of the nucleus and its transplantation into a denucleated egg. Such development isn’t the proper functioning of a skin cell. So even if cloning is identity-preserving, it is not in the initial interest of the skin cell to do anything other than what healthy skin cells do and so its potential to become a person is morally irrelevant. We could extend that response to cases of direct nuclear reprogramming that are identity-preserving, as (Gerard Magill and William Neaves (2009) argue. The proper function of such cells was not initially to develop in such a way. So it would be wrong to insist *before* they were reconfigured that it was in their interest to develop into persons. Likewise, if the earliest cells of a few day-old embryo were totipotent, there would be no pressure to split the embryo into four people to maximize their potential, as (Katrien Devolder and John Harris, 2007) suggest in their proffered *reductio*.Sincethe morally relevant potential is determined by proper or healthy functioning, what is in the interest of each of, say, the first four cells is that they make their contribution to the healthy development of the multicellular embryo of which they are proper parts. We offer the same response to thought-experiments where non-persons can become persons if they are moved to exotic environments on far-off planets (Kriegel and Hassoun, 2008). Such mindless, or minimally-minded, organisms aren’t unhealthy if not transformed and so no interests are frustrated by their remaining ordinary members of their species.

**V. Potential Persons or Persons with Potential?**

Hud Huson (2001, p. 153) rightly notes, “an overwhelming amount of the literature on abortion and infanticide (as well as much of the public debate on these topics) seems to turn on the question of whether or not the human fetus is a person.”[[14]](#footnote-14) A fairly common pro-life response to the claim that potential persons lack the rights of actual persons is to deny that the fetus is a potential person and instead insist that it is a *person with potential* (Lee, 2004). We don’t think this tactic is promising or even needed. We suspect both sides in the abortion debate often talk past each other in meaning different things by “person.” The word is loaded with moral connotations and so it is understandable that abortion opponents seek to establish that the fetus is a person, while abortion defenders argue otherwise. Many philosophers follow John Locke and use the term “person” to apply to self-conscious beings able to reflect that they had existed in the past and could exist in the future. Since such an interpretation suggests a mindless fetus isn’t a person, some pro-lifers will offer alternative accounts: perhaps claiming that it is the fetus’s *capacity* to acquire thought or its membership in a *rational kind* that renders it a person. Such pro-lifers will claim that fetuses are persons with potential, rather than potential persons. Thus, fetuses are persons even before they manifest rationality and self-consciousness, just as reproductive organs are *actual* reproductive organs rather than *potential* reproductive organs before they sexually mature (Kaczor, Chris.2011. Therefore neither the mental immaturity of an infant and embryo, nor the reversible coma of an adult, would be a reason to deny humans personhood.

We doubt that this is a productive strategy, for it will likely just lead to a stalemate about how to understand the word ‘person.’ There will be rival conceptions. However, wethink it less important than most pro-lifers to establish that the fetus is a person. A newborn is also not a person in the Lockean sense of being self-conscious, and yet most readers would be reluctant to deny it the protections offered persons. It is surely terribly wrong to kill an infant even though it is not a person, living instead rather unreflectively in the present. It is enough that it has the potential, and an interest in that potential, to develop into a person that warrants protecting it. And that potential is there from the first moment of its life. So, if potential matters morally, then the fetus has it just as does the infant. If it is *prima facie* wrong to kill the infant that is a potential person, then it is *prima facie* wrong to kill the fetus that is potential person.

If the potential to become a person and possess a mind like that of the reader doesn’t bestow moral protections, then late-term abortion and even infanticide could be justified. But if potential to develop such a mind does matter morally, then that potential is there as soon as the embryonic organism comes into existence. That is the pro-choicer’s dilemma. We have never seen a good pro-choice argument that distinguishes abortion from infanticide. Appeals to differences between newborns and fetuses due to their interactions with environments are too insignificant to morally matter. For instance, Bermudez (1996) appeals to a minimal sense of self that a newborn acquires through imitation. The newborn’s sense of self is far less than that possessed by a dog that misses its departed owner and anxiously awaits his return, and so it is surely too rudimentary to matter morally.[[15]](#footnote-15)

**VI. Abortion is Immoral even if we weren’t Fetuses with the Potential to become Persons**

We want to consider an argument by someone who agrees with us that identity-preserving potential is morally relevant (at least as a necessary condition) but insists that none of us were ever mindless embryonic organisms, since we didn’t come into existence until some sort of mind was present. While we actually believe that we were early embryos, aborting early embryos could still be very wrong even if we didn’t come into existence until much later, when our organism has matured enough for the requisite mental capacities to manifest. It is often overlooked by pro-lifers, as well as by pro-choice philosophers (McMahan, 2002; Baker, 2005), that even if we were never early embryos, there would be an organism distinct from us that has interests in healthy development and flourishing as we have argued. Baker even maintains that thinking organisms were capable of thought before they came to constitute persons (Baker, 2005, p. 47). Moreover, she claims that, when they do constitute persons, they are as a result derivatively persons. McMahan (2002), and lately Derek Parfit (2012), argue that an organism derivatively thinks in virtue of having a person as a thinking part. So, an early abortion may wrong an entity with the potential to be (derivatively) a person even if we couldn’t have been its victim.

McMahan and Parfit’s best strategy is to claim the organism doesn’t really think, only a part of it truly produces thought; just as a car is not really noisy, only its horn or engine is. But we have already established that the mindless have interests in their health, so we’re not inclined to believe that they don’t later become conscious of some of those interests. It may even be that consciousness evolved to promote the well-being that organisms had previously furthered without awareness of doing so.

We also suspect that the cerebrum that allegedly produces thought doesn’t meet the traditional *independence criterion* for being a “substance.” A cerebrum can’t think on its own independently of the body or a substitute for the life-processes, like the philosophers’ famous brain-supporting vat. We maintain that a cerebrum doesn’t think while in the vat; rather the thinker is the composite of the cerebrum and the vat. Unable to think on its own, an (undetached) cerebrum needs a good part of the organism for thought to be produced; although it might not need all of it (hair, nails, toes etc.) However, whatever parts of the organism are irrelevant to thought production, their complement is probably large enough that the organism could survive a reduction in size to that large proper part. It would then be thinking derivatively if the person is thinking non-derivatively. And we don’t see why it would cease to think derivatively if the amputated parts were restored. Moreover, it isn’t clear that derivative thought isn’t really thought. It is typically believed that an organism digests in virtue of its digestive system non-derivatively digesting, but we don’t then claim that the organism doesn’t really engage in digestion. So why deny that derivatively thinking is really thinking?

**VII. Comparison of Our Account of Potential with McMahan and Marquis’s Accounts**

We suspect that Marquis’s valuable future-like-ours account cannot avoid the *reductios* of the previous section, assuming they involve identity-preserving development. We also believe that Marquis’s approach doesn’t deal as well as ours with the possibility that unrestricted composition is true. We’ll mostly focus our discussion of Marquis’s account on showing that he can’t account for differences in harm between our deaths and those of embryos and newborns.

Marquis famously argues that killing is wrong because it deprives an individual of a valuable future like ours. This is meant as a *prima facie* and sufficient condition. After establishing why it is wrong to kill you or me, Marquis applies the same reasoning to the controversial issue of abortion. Since the fetus has such a valuable future, it is *prima facie* wrong to kill it just as it’s wrong to kill us. This is a kind of argument from potential. Marquis believes it isn’t susceptible to a *reductio* that would entail that contraception is wrong because there is not yet a subject of harm, i.e., none of us ever were ever gametes. However, unrestricted composition would mean that there exist scattered composites of gametes and that such a scattered object is identical to the post-fertilization embryo.

Some of Marquis’s critics have tried to annex his abortion position to contraception, claiming that the fetus’s deprivation is similar to that which prevents someone from coming into existence. The thrust of their argument is that there’s an absence of psychology in any of the entities thwarted by contraception or early abortion. The most sophisticated version is McMahan’s *Time-Relative-Interests Account of Harm*, which deserves a more extended discussion than offered below.

Our position of what an aborted fetus is deprived of is somewhere between those of Marquis and McMahan, though closer to the former. We’re very sympathetic to Marquis’s account, but we harbor some doubts that it’s enough to be identical to a being with a valuable future to be thereby entitled to protection. We’re suspicious that *all* of the mindless entity’s future valuable states provide interests and reasons to protect that entity earlier. We believe there’s a grain of truth in the protests of Marquis’s critics that the mindless are not appropriately linked to their future to be harmed by the loss of *every* future thing of value of which death deprives them. Of course, we don’t think that it’s true that the mindless lack *all* interests in their future; but we believe that, when they’re mindless, they don’t have *certain* interests that they’ll have later. We’ve already mentioned the fact that it’s not initially good for the mindless that they will later enjoy basketball or physics and so not a harm if, when mindless, they’re prevented from acquiring a later interest in basketball—say, by the groundwork being laid to keep them from developing such an interest (e.g., removing opportunities for exposure to the sport). The reason they’re not harmed by such actions is due to the contingent nature of their interest in basketball. Not only may they never have acquired the psychological makeup that makes one inclined to enjoy basketball; but, even in a deterministic world where basketball is in their future, the mindless don’t *yet* have an interest in it because they haven’t yet developed the psychology that makes them susceptible to enjoying the sport. But they have, when mindless, an interest in health and will flourish when that interest is satisfied and will continue to flourish (to some degree) when conscious and healthy. It’ll be impossible for them to flourish when conscious without some degree of mental health. An interest in health is something they’ll always have. It’s a necessary constituent of flourishing and not an interest they’ll acquire only later in development.

Our account of harm differs from Marquis’s, in part, because while we agree with him that identity is a necessary condition for an interest in a valuable future, we reject his claim that it’s sufficient for giving an entity an interest in its valuable future. The basketball case just showed an interest that an embryo was lacking, but didn’t yet distinguish the practical implications of our account from Marquis’s, for we would agree that there was a valuable future awaiting the embryo lacking an interest in basketball. Our differences with Marquis will materialize in the *reductio* cases discussed above if cloning and parthenogenesis are *identity-preserving* or kittens could be enhanced and made person-like. These would seem to be problems for Marquis’s unreconstructed account of a valuable future-like-ours, but not for our account that stresses that the mindless have interests only in healthy development/proper function. Given that earlier discussion, we won’t say anything more about this difference, but concentrate on Marquis’s problem accounting for attitudes to the deaths of early embryos and even stillborn infants that our account can avoid. This can be seen by attending to McMahan’s critique of Marquis.

McMahan’s *Time-Relative Interests Account* *of Harm* is contrasted with what he calls the *Life Comparative Account of Harm* that he claims Marquis assumes. To find out if death is bad for someone according to the latter account, we compare the entire life that person lived with the life he would have lived if he hadn’t died then. So, if we assume that people typically live until they’re eighty, then the worse death would be that suffered by an embryo who misses out on eighty years and few months of experiences. The death of a toddler who would have lived until she was eighty isn’t as bad for her as the embryo’s death is for the embryo. Even less harmful is the death of a teenager. And the death of a pregnant thirty-five year old woman is far less harmful than the death of her embryo.

But McMahan observes that people often don’t find it as tragic and harmful when an embryo a few weeks old is miscarried than when a baby arrives stillborn; and many find even the death of a newborn less harmful and tragic than the death of a thirteen year-old boy or his mother. According to McMahan’s *Time-Relative-Interests Account of Harm*, the degree of harm and tragedy of a death depends upon the degree to which the deceased would have been psychologically tied to the future. The adolescent already has a mental life consisting of desires, projects, relationships, etc., while embryos have no such psychology that death could interrupt.

We suspect that part of the explanation of the alleged difference in harm and tragedy is really based on the misfortunes of the deceased being confused with the greater harm and tragedy to their parents, who are more emotionally involved with their older children. Likewise, we don’t get as upset when we hear about an adult stranger in a far-off land who dies prematurely than we do when someone we know dies. But we’re not at all tempted to think that death isn’t as great a harm for the stranger as it is our friend or loved one. We don’t think, however, that is the whole story. There is something to McMahan’s claim about ties to the future that are frustrated constituting the “badness” of death; he misses, though, that those ties can also not yet be consciously manifested, but present nevertheless in the form of an interest in healthy development. Without recognizing such ties, we’d have to claim that people are wildly wrong in believing late-term fetuses and newborns are harmed considerably by their deaths.

We maintain that, unlike Marquis’s future-like-ours account, our theory of the interests of the mindless can explain why your death is worse for you than the mindless embryo’s or minimally minded newborn’s death is for them. The difference is that you have acquired interests that you didn’t have earlier. Your environmental interactions give you interests in, say, football or interests to engage in *particular* projects with friends and lovers. The embryo just has an interest in healthy relationships, but they’re without the detailed and contingent interests that will arise from doing things with families and friends in certain environments. So, while an embryo or infant has more of a valuable future to lose, McMahan is right that it matters how one is connected to that future. Identity isn’t sufficient.

However, we contend that McMahan is wrong to think the only connections that matter are *conscious* ones. That’s why he has to accept that one human infant can be killed by taking his vital organs to save five other infants, just as one pig could be sacrificed to save five additional pigs.(McMahan, 2002, pp. 359-60) McMahan maintains that only *persons*—understood in a Lockean sense—have the moral status that prevents their lives from being sacrificed for the interests of others. He distinguishes a *morality of respect* owed persons from a *morality of interests* that governs the treatment of non-persons. Since McMahan doesn’t recognize that the potential to be a person involves an interest in becoming a person, which makes great harms possible and warrants protections approaching those of actual persons, he relegates infants to being treated like cognitively equivalent animals. Only their minimal *conscious* interests are weighed against those of others. Secondly, McMahan’s restriction of interests to conscious ones leads him to admit it could be permissible for people to cause healthy embryos to become *so* extremely cognitively disabled that they won’t develop to where they have the psychological capability to regret their condition (McMahan, 2002, pp. 323-24). The only harms of doing so would be extrinsic ones to those who wanted healthy children or are burdened with the medical. bills (McMahan, 2002, pp. 328-29) Finally, McMahan can’t account for the harm of what he calls “adaptation,” where those who acquire handicaps such as deafness due to events after they originate don’t regret it if, for instance, they come to identify with the Deaf community (McMahan, 2002, p. 301). McMahan’s theory of interests can’t explain how the handicapped can be earlier harmed by a deafness they don’t later want remedied.

Our theory avoids these counterintuitive consequences. Appealing to an interest in healthy development allows us to justify treating human embryos and infants far better than the non-human animals during the period in which they don’t differ in terms of their manifested mentality.

**VIII. The Harm and Wrongness of Killing**

The difference in harm to humans at different ages doesn’t mean that there is a difference in the wrongness of killing them. Just as the law separates the *wrongness* of a killing from the *harm* of a killing, so can we. The law doesn’t claim it is less wrong to kill the geriatric than the adolescent. Although McMahan doesn’t extend the equality to fetuses, he claims all *persons* are protected equally against being killed regardless of the degree of harm that death brings. He doesn’t extend this equality to non-persons, but believes their treatment should be determined by weighing their interests. We have argued that he is wrong about our interests. Moreover Roman Catholics have grounds for insisting upon the equal wrongness of killing *any* human being. Catholics needn’t make an awkward appeal to species membership, a trait that secularists may insist is just determined by morally irrelevant features like reproductive community or lineage. Instead, it could be the existence of a *soul* in the fetus or the elderly that makes their killing equally wrong. The presence of a human soul is a precise “all or nothing” state in the way personhood is not. Ensoulment doesn’t admit of degrees; but, as McMahan (2002) recognizes, a sharp personhood threshold is not plausible. Not only doesn’t it seem that one suddenly becomes a person, but there is not much difference between someone who is indeterminately a person and someone who just crossed the threshold.[[16]](#footnote-16) So there must either be a scale of increasing wrongness of killing as individuals approach the personhood threshold or a rather arbitrary cutoff. The Catholic soul-theorist has more a more principled line of demarcation, one that includes all human beings. But even if the Catholic instead opts to correlate harm and wrongness, the wrongness of killing a mindless fetus is quite great, as great or nearly as great as the death of a minimally sentient newborn; and so the wrongness of abortion is roughly the same as that of infanticide, and the latter is very wrong.

**References**

Baker, Lynne. 2005. When Does a Person Begin? *Social Philosophy and Policy* 22:2, 25-48.

Bermudez, Jose. 1996. The Moral Significance of Birth. *Ethics* 106:2, 378-403.

Boorse, Christopher. 1997. A Rebuttal on Health. In *What is Disease?* ed. James Humber and Robert Almeder. 1-134. Humana Press.

CONGREGATION FOR THE DOCTRINE OF THE FAITH. Instruction *Donum vitae*. 1987.

CONGREGATION FOR THE DOCTRINE OF THE FAITH: Instruction *Dignitas personae*. 2008.

Devolder, Katrien and Harris, John, 2007. The Ambiguity of the Embryo: Ethical Inconsistency in the Human Embryonic Stem Cell Debate. *Metaphilosophy* 88:2-3, 153-169.

Eberl, Jason. 2005. Aquinas’s Account of Human Embryogenesis and Recent Interpretations. *Journal of Medicine and Philosophy* 30:4, 379-94.

Feit, Neil. 2015. Plural Harm. *Philosophy and Phenomenological Research* 90:2, 361-388.

Giublini, A and Minerva, F. 2013. After-Birth Abortion: Why Should the Baby Live? *Journal of Medical Ethics* 39: 261-63.

Hershenov, David. 2001.Abortions and Distortions: An Analysis of the Morally Irrelevant Factors in Thomson’s Violinist Thought Experiment. *Social Theory and Practice* 27:1 129-148.

Hershenov, David and Hershenov, Rose. 2015. Morally Relevant Potential. *Journal of Medical Ethics* 41:3 268-271.

Hershenov, David and Hershenov, Rose. 2016. “Health, Harm and Potential.” *Southwest Philosophy Review* 32:1

Hudson, Hud. 2001. *A Materialist Metaphysics of the Human Person.* Ithaca: Cornell University Press.

Kaczor, Chris.2011. *The Ethics of Abortion: Woman’s Rights, Human Life, and the Question of Justice.* Routledge.

Kriegel, Uriah and Hassoun, Nicole. 2008. Consciousness and the Moral Permissibility of Infanticide. *Journal of Applied Philosophy.* 25:1 45-55.

Lee, Patrick. 2004. The Pro-Life Argument from Substantial Identity: A Defense. *Bioethics.* 18: 249-63.

Lizza, John. 2011. On the Ethical Irrelevance of Active versus Passive Potentiality. *APA Newsletter* 11:122-28.

Locke, John. *An Essay Concerning Human Understanding.* 1979.Ed.Peter Nidditch, Ch. XXVII. Oxford. Clarendon Press.

McMahan, Jeff. 2002. *The Ethics of Killing: Problems at the Margins of Life*. Oxford: Oxford University Press.

Magill, Gerard and Neaves, William. 2009. Ontological and Ethical Implications of Direct Nuclear Reprogramming.  *Kennedy Institute of Ethics Journal*  19: 1, 23-32

Marquis. Don. 1989. Why Abortion is Immoral. *Journal of Philosophy* 86:4 183-203.

Parfit, Derek. 2012. We are not Human Beings. *Philosophy* 87:1, 5-28.

Plantinga, Alvin. 1993. *Warrant and Proper Function*. Oxford University Press

Pruss, Alex, 2011. I was once a Fetus: That is Why Abortion is Wrong. In *Persons, Moral Worth and Embryos: A Critical Analysis of Pro-Choice Arguments.* Ed. Steve Napier. 19-42. Springer Press.

Sider, Ted, 2001. *Four Dimensionalism: An Ontology of Persistence and Time*. Oxford: Oxford University Press.

Singer, Peter. 1993 *Practical Ethics.* 2nd ed. Cambridge University Press.

Tollefsen, Chris and George, Robert. 2008, *Embryo: A Defense of Human Life.* New York: Doubleday Press

Tooley, Michael. 1972. Abortion and Infanticide. *Philosophy and Public Affairs* 2:1, 37-65.

Wakefield, Jerome C. 2005. Biological Function and Dysfunction. In *The Handbook of Evolutionary Psychology,* ed. Buss, David. Wiley Press, 878-902.

1. “The Magisterium has not expressly committed itself to an affirmation of a philosophical nature, but constantly reaffirms the moral condemnation of any kind of procured abortion…Thus the fruit of human generation, from the first moment of its existence, that is to say from the moment the zygote has formed, demands the unconditional respect that is morally due to the human being in his bodily and spiritual totality. (*Donum vitae,* I:1) [↑](#footnote-ref-1)
2. We are using “embryo” and “fetus” interchangeably. [↑](#footnote-ref-2)
3. There is a difference between the *absence* of well-being on the one hand, and zero-level or low-level well-being on the other. We were all devoid of any level of well-being, even zero, before we existed and that explains why coming into existence isn’t a benefit. The comatose have zero or low well-being, unlike the non-existent and artifacts, mountains, etc., which have no well-being. [↑](#footnote-ref-3)
4. We are not denying that there could be non-living but conscious entities which have interests and well-being. [↑](#footnote-ref-4)
5. Even unhealthy fetuses and demented adults have a potential that accounts for their moral status. It may be that the harm is preempted or overdetermined by disease, but then the harm should be considered the combination of the disease and death, what McMahan (2002, 127-36) calls “Total Losses” and Neil Feit (2013) labels “Plural Harm.” Killing the incapacitated contributes to the total or plural harm that the patient suffers. [↑](#footnote-ref-5)
6. We think it is safe to assume that for any theory of value to be taken seriously it must acknowledge that creatures with minds like ours have greater moral status than living things that are not capable of such a range of thoughts and emotions. The only controversy should be over whether there is considerable moral status in human beings before they actualize such traits. [↑](#footnote-ref-6)
7. The design environment is the environment for which humans beings were made or selected. For example, humans are not unhealthy if they can't breathe at high altitudes or underwater because they weren't designed to breathe in such environments. [↑](#footnote-ref-7)
8. If the healthy manifestation of the mental capacities that make human beings so valuable comes in degrees - not all mentally healthy humans possessing identical levels of intellectual and  emotional qualities - it won't matter for practical purposes. We are assuming a deontological framework where the great value of human beings protects them from being sacrificed to promote the interests of others. The deontological threshold is certainly met by any human being's capacity and interest in healthy development. [↑](#footnote-ref-8)
9. Let us dispel some possible misunderstandings of our claim that all organisms have an interest in the flourishing that accompanies healthy development. Some cases of disease are *beneficial* malfunctions, but this doesn’t undermine our thesis. Becoming infected with cowpox during a smallpox epidemic still serves our overall interest in health. Likewise, even if it would be good for a very sick patient in great distress to get another, less painful disease like pneumonia and die sooner from it, that isn’t a reason to say the person lacks an interest in *total* health, freedom from pneumonia *and* whatever other disease they’re suffering or freedom from coxpow *and* smallpox. However, conscious beings may benefit from some diseases and not just because these later increase their overall health. Doctor-prescribed bed-rest during an illness that perhaps prevents a worse pathology may not only keep someone alive, but it may enable them to find their true vocation and love. The conscious can come to acquire interests that *override* their *prima facie* interest in health, such as when being bedridden enables them to discover the joys of philosophy or meet and marry a doctor or nurse. Supporting the view that a persisting interest is being overridden, rather than absent, is that any benefits from disease still necessarily depend upon the presence of some health, e.g., proper *mental* functioning. So their flourishing still has health as a necessary constituent. We have provided a more detailed account about scenarios where it appears diseases are beneficial in our 2016 paper. [↑](#footnote-ref-9)
10. Even if the totipotency of early embryonic cells was selected to provide backup in case the others cells fail, that wouldn’t give us a duty to develop such potential in the absence of such cellular failure. [↑](#footnote-ref-10)
11. While philosophers may differ about which conception of proper function is correct, they tend to agree about which creatures are healthy.  All we need to run our argument is a near consensus about health, in particular, mental health. Different theories of proper function could converge upon what sort of mental operations are healthy and it is in these mental features that our great value is to be found. [↑](#footnote-ref-11)
12. We are assuming that the rare serum goes to the unhealthy human being regardless of whether there are other morally relevant factors like its standing in a special relationship to other valuable beings desiring its treatment. So the friendless orphan with no living relatives should have priority for treatment over a kitten adored by its human owners. [↑](#footnote-ref-12)
13. The four-dimensionalist believes persons are extended in time as well as space. This makes persons roughly akin to a play with earlier and later acts. The play is not wholly present at any moment. The three-dimensionalist denies the existence of such temporal parts or stages and insists that we are wholly present at each moment we exist. [↑](#footnote-ref-13)
14. For instance, Chris Tollefsen and Robert George (2008, p. 61) write “…embryos clearly cannot yet think, choose and speak. Nor are they (yet) self-conscious or even sentient. Were this to mean that embryos were not the same *kind* of beings as the readers and authors of this book, that they were not *persons*, then it would be difficult to see why they should be accorded the same moral respect that we authors and readers believe we are entitled to. There would be no obvious reason why they should not be destroyed for the sake of beings who really are persons. [↑](#footnote-ref-14)
15. If fetuses are to be morally distinguished from newborns then it will be on the extrinsic grounds that the newborn is a burden in the way the fetus is not. But we can imagine cases of isolated new mothers who have no earlier abortion options and presently have no adoption option or alternative to breast-feeding. So their choice is between killing or letting their newborn die, or allowing the newborn to use their body to nurse and care for it around the clock. It would be wrong for them to kill or allow the child to die who is as burdensome as a fetus. Hershenov (2001) offers further arguments that one must take on burdens equivalent to supporting Thomson’s famous violinist. [↑](#footnote-ref-15)
16. We mean the indeterminacy to be noticed. [↑](#footnote-ref-16)