

Health, Harm and Potential

David B. Hershenov
University at Buffalo
&
Rose J. Hershenov
Niagara University

Abstract

Both sides of the abortion debate have failed to appreciate that healthy development is the key to understanding how potential can be morally relevant. All living beings, mindless or not, necessarily have interests in their healthy functioning. Since healthy human beings have the potential for valuable minds, they're harmed when their interests in development are frustrated. Understanding potential as involving an interest in healthy development avoids the *reductios* of potentiality involving single cells or non-human animals being transformed into persons in bizarre scenarios. Since the failure to so develop wouldn't have been a malfunction of such organisms, no interests are thwarted when such potential isn't realized. Limiting the interests of the mindless and minimally minded to mostly development provides explanations (pace McMahan) of the harm of late abortion and infanticide while allowing (pace Marquis) that the death of fetuses and infants aren't as harmful as that of children and adults.

Introduction

We contend that both sides of the abortion debate misunderstand the morally relevant sense of potential. One mistake of pro-lifers is to maintain that it is the active or intrinsic potential of the fetus to become a person that is the source of its moral status. A second mistake is to believe that a fetus warrants as much moral protections as you and I because it's *identical* to a valuable creature in the future. Pro-choicers wrongly believe they can show that accounts that value potential can be reduced to absurdity in scenarios where a variety of human cells and even household pets can be induced to develop into persons. But not valuing potential seems to itself lead to the absurd conclusion that infanticide isn't harmful or wrong since infants have such unimpressive minds and can't conceive of the future that death deprives them.

We'll show that none of these problems remain once it's realized that the morally significant potential lies in the notion of healthy development. We argue that mindless and minimally minded creatures have a good and as a result interests in healthy development even if they don't have the mental sophistication required to desire such developments. It's this potential which makes abortion and infanticide *prima facie* wrong.¹

We'll end with a comparison of our view with both the well-known argument from potential of Marquis (1989) and the critique of that approach offered by McMahan (2002). Our view falls in-between theirs, making abortion not as bad as Marquis implies, but worse than McMahan maintains.

Health, Harm and the Potential that Matters

We're skeptical of Tooley/Singer/McMahan-like claims that newborns and the unborn lack the interests necessary for a right to life (Tooley, 1971; Singer, 1993; McMahan, 2002). We think that they fail to distinguish *something being in an individual's interest* from that *individual taking an interest in something*. It is in the embryo and neonate's interest to live on even though they have not taken an interest (i.e., desire) to live further into the future. Analogously, vegetables are in a child's interest but he is not interested in them. Living things have an interest in healthy development. We can ascribe interests to potential persons, even mindless ones. It is in their interest to live and develop in a healthy fashion by which they will flourish. Even blades of grass can be said to thrive and thus have an intrinsic well-being and a non-metaphorical interest in sun and nutrient rich soil. All living entities are capable of well-being and have an interest in their good.

Despite having interests, a blade of grass has a future that isn't very valuable, so its interests are given far less moral weight than those of human beings. Assuming that the degree of the harm of an entity's death depends upon the value and extent of the well-being that it loses out on, the grass is harmed very little. A healthy human fetus, on the other hand, has the potential to realize mental capacities that are of considerable value and will enable it to flourish to a considerable extent. We assume that any theory of value that's to be taken seriously will have to accommodate the datum that creatures with minds like ours have more valuable futures than living things that are not capable of such mental lives. Death thus deprives a human fetus or infant of benefits that it doesn't deprive organisms not designed to so develop as a matter of healthy function. The great benefits and harms that the young human can undergo are what bestow a greater moral status on it than creatures that appear intrinsically similar to the mindless or minimally minded human. This isn't to say that the degree of harm and benefit fully determines the wrongness of killing for *all* creatures. It may be that once individuals become

persons a threshold is reached where killing them is equally wrong regardless of the harm caused by their death as McMahan (2002, p. 309) maintains. He claims it is not less wrong to kill an unhealthy elderly person with fewer years of life left to lose than a thriving middle-age person. Whatever the merits of this egalitarian threshold, they don't matter for our thesis which is why it's a much greater harm and thus wrong to kill a very young human being than another minimally minded organism without the former's potential. It is the interests of non-persons that determined the wrongness of killing them.

This morally significant potential is there in the earliest embryo. So our view differs from Harman's for she claims that the fetus doesn't matter morally until such a creature is conscious. We're skeptical that minimal fetal or neonatal consciousness could be important for immunity from being killed. Consider a newborn who isn't aware that she needs some surgical procedure to avoid a painless disease and death. It seems very plausible that the infant has an interest in her health being preserved even though she isn't aware of that interest. So 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. Moreover, it is very difficult to see why consciousness would make such a harm a *morally* significant harm if the conscious newborn isn't even conscious of its longstanding interest in its life being preserved. This is why we find it hard to believe Harman's (2003) claim that while mindless embryos have an interest in continued life and are greatly harmed by their death, such interests don't have any moral significance whatsoever since the embryos are not conscious.

Our contention is that the morally relevant sense of potential is determined by what is healthy development or proper functioning for things of that kind in their design environment.² The potential of a healthy human fetus is to develop a mind of great cognitive and affective abilities that will enable it to enter into various rewarding relationships with others and exercise a

range of cognitive skills that enable it 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.

Mindless organisms only have interests in healthy development or proper functioning and the flourishing that involves. So a fetus has an interest in growing a healthy proper functioning brain but no interest then in becoming a football player even if it will later be an adolescent dreaming of Super Bowl fame. It isn't enough for a mindless entity to be 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 interests in health-produced flourishing. All flourishing depends upon health being present (to some) degree and every living being has an interest in health at every stage of its life, including its fetal stages. When mindless, there's probably nothing else to its good than its health, i.e. its proper functioning is constitutive of its flourishing.

Let us dispel some possible misunderstandings of our claim that there's an interest in the flourishing that accompanies healthy development. Our response to *beneficial* malfunctions is to claim that health is not sufficient but it is still a necessary condition for flourishing. It'll be a necessary component for any flourishing and will often be constitutive of flourishing. Health is necessary for flourishing and something the mindless always have an interest in. But the minded may benefit from some diseases. Being bed ridden during a hopeless war may not only keep someone alive but enable them to find their true calling – hopefully philosophy. What is important to note is that any benefits from disease still necessarily depend upon a modicum of

health, e.g. proper *mental* functioning. So their flourishing still has health as a necessary constituent.

It may be that “Pneumonia is the old man’s friend” but there is still a greater benefit in the total absence of disease and the interest in it that thus removes the attractiveness of pneumonia ending the hardships and indignities due to a preexisting disease. Likewise, for becoming infected with cowpox during a smallpox epidemic. That it would be good for a very sick patient to get another disease and die from it is not a reason to say the person doesn’t have an interest in total health, freedom from pneumonia *and* the preexisting condition, as well as cowpox *and* smallpox.

So none of the supposed counterexamples show the mindless really do lack an interest in healthy development. That interest is always there, and it is a necessary condition for flourishing, and there is always an interest in flourishing. The interest in health may be overridden by interests (pain relief, dignity) that creatures develop only after they become conscious. And in cases where the malfunction or disease is life prolonging or enables the ill to find their calling, considerable health is still required for such living beings to flourish.

Avoiding Standard Objections to Potential’s Moral Significance

It is 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. We don’t even have to rely upon the standard response which is to distinguish the *identity preserving potential* of an individual to reach a later stage of itself from the potential of one entity to bring into existence a distinct (i.e., non-identical) entity. It doesn’t matter even if the skin cell in the cloning case is identity preserving. 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 original cell to do anything other 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 the removal of totipotent cells from a few day old embryo and their implantation in a womb to gestate.

Tooley (1972) famously argued 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 then 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 proper functioning *and* whatever it consciously desires or would desire under conditions free of distorting influences. It's not the proper function of the kitten to so develop into a person thus it has no interest in it since it also is not consciously desiring the change.

The appeal to healthy development as the morally relevant potential renders unnecessary any reliance upon the distinction between active and passive potential or the equally problematic intrinsic and extrinsic potential. Anyway, the appeal to active or intrinsic potential wouldn't divide up cases as its proponents want. For example, there's no active or intrinsic potential in the anencephalic or congenitally retarded human fetuses, but they would surely have a priority over a healthy kitten to receive a *scarce* serum that made personhood possible for them. We also believe it is true that epigenetic factors make it difficult to speak of development as due to just the

intrinsic or active potential of the DNA. And we agree with McMahan (2002, p. 316) when he claims that moral intuitions don't track whether the fetus's development is due to intrinsic or extrinsic features. He imagines dogs that turn out to have the intrinsic potential to be persons if a previously unknown extensive daily regimen of training is introduced. It seems quite plausible that we lack a duty to so treat the dog. McMahan (2002, p. 154) also observes that it's implausible to maintain 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 a 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.

Comparison of our Account of Potential with Marquis and McMahan's Accounts

We suspect that Marquis's (1989) future-like-ours account cannot avoid the reductions of the previous section if they are identity preserving. Our account of harm also differs from Marquis's because while we agree with him that identity is a necessary condition for an interest in a valuable future, it is not sufficient for giving an entity an interest in its valuable future. Marquis's account has a problem accounting for attitudes to the deaths of early fetuses and even stillborn infants that our account can avoid. This can be seen by attending to the critique that McMahan offers of Marquis.

McMahan's (2002, p. 165) *Time-Relative Interests Account of Harm* is contrasted 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 till they are 80, then the worse death would be that suffered by a fetus who misses out on 80 years and a few months of experiences. The death for the toddler who would have lived until she was 80 is not as bad for her as the fetus's death was for the fetus. Even less

harmful is the death of the teenager. And the death of the middle aged woman is nowhere close in harm as the death of the fetus.

But McMahan (2002, p. 179) observes that people often don't find it as tragic and harmful when a few weeks old embryo miscarries than when a baby arrives stillborn; and even the death of a newborn seems less tragic to many than the death of a thirteen year-old child. McMahan conjectures that the degree of harm 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 fetuses have no such psychology that death could interrupt.

We maintain that, unlike Marquis's (1989) 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 or minimally minded newborn's death is for him. The difference is that you have acquired interests that you didn't have earlier. Your environment gives you interests in say sports or interests to complete certain projects with friends and family. The fetus 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 loved ones in certain environments. So while the newborn or infant has more of a valuable future to lose, McMahan (2002, p. 192) is right that it matters how one is connected to that future. Identity isn't sufficient.

However, we contend that McMahan (2002, p. 172) is wrong to think the only connections that matter are conscious ones. That is why he has to accept we can sacrifice one infant by taking its organs to save five infants just as we could with one pig to save five other pigs. Since McMahan thinks potential to be a person doesn't matter, he claims infants should be treated as we do cognitively equivalent animals. McMahan's (2002, p. 323) restriction of interests to conscious ones leads him to admit it could be permissible for people to cause a

healthy embryo to become so extremely retarded that it won't develop to where it has the psychological capability to regret its condition. Thus the embryo would not be harmed. The only harms resulting from causing the embryo to be retarded would be extrinsic ones affecting those who wanted a healthy child or have to pay for the unhealthy child's care. Finally, McMahan (2002, p. 294) also 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 for they come to identify with the deaf community. McMahan has no account of interests where they are harmed by a deafness they don't regret.

Our theory avoids these counterintuitive consequences. Appealing to an interest in healthy development allows us to justify treating embryos and infants unlike the animals that they don't presently differ from in terms of manifested mentality.

References

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¹ We write *prima facie* wrong because we don't here provide an argument against a Thomson-like claim the burdens of maternal support are so great that they don't have to be provided.

² We mean by "design environment" the environment in which one's kind evolved, or in which later adaptations and exaptations occurred.