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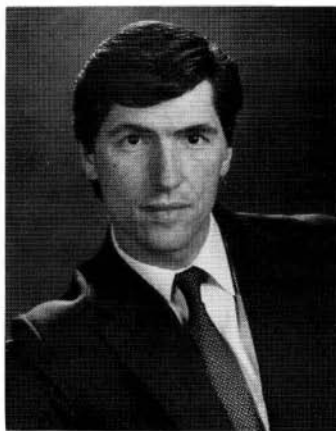
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Personhood, the Moral Standing of the Unborn, and Abortion

Patrick Lee

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One of the principal arguments in favor of abortion is that it is not wrong because what is killed in abortion is not a person, and killing nonpersons can be morally permissible. And the claim that what is killed in abortion is not a person is defended by two types of arguments. One type is basically a simple appeal to intuition. "How can a tiny being only a half inch long have the same rights as a grown woman, isn't that incredible?" The answer to such appeals to so-called intuition is to point out that prejudice may very well be mistaken for intuition. We have no reason to believe that size and appearance are morally relevant properties, and to discriminate between beings on the basis of non-morally relevant properties is undue discrimination.

The second type of argument is more than an appeal to intuition or prejudice. The structure of this type of argument is, first to argue that one must have some property or set of properties in order to be a person, and, then, to argue that human fetuses do not have that property or set of

properties. More formally:

One is a person only if one has property F.
Human fetuses do not have property F.
Therefore, human fetuses are not persons.

Various candidates are put forward for property F. In this article I consider what has recently become a popular position, namely, the position that sentience is the criterion of moral standing, but that there are degrees of moral standing in such a way that early abortions are permissible but late abortions are usually not. I will argue that this position is incorrect, and I will set out positive reasons to show that the human embryo or fetus, from conception onwards, does have complete moral standing and does have a right to life. First I would like to examine more closely the general requirements for a criterion of personhood.

What is sometimes put forward as the standard argument in favor of the position that human fetuses *are* persons in an argument based on the similarity between successive stages in the development of the fetus in the womb. Roger Wertheimer, in his 1971 article, "Understanding the Abortion Argument", is frequently quoted. Summing up the so-called conservative position, i.e., the position that human fetuses are persons and therefore abortion is immoral, Wertheimer writes:

But I am inclined to suppose that the conservative is right, that going back stage by stage from the infant to the zygote one will not find any differences between successive stages significant enough to bear the enormous moral burden of allowing wholesale slaughter at the earlier stage while categorically denying that permission at the next stage.¹

As a species of slippery slope argument, this argument has its difficulties. Opponents of the pro-life position have pointed out that the fact the differences between *successive* stages in the development of a being are not significant does not show that there are no significant changes at all, that there are none between *non-successive* stages in the development of that being. Thus, Donald VanDeVeer writes:

More concretely, what impresses many persons who are neither abortionists nor uncomfortably pregnant is that there are substantial differences between the early fetal stages . . . and the neonate. Early on, the embryo is quite indeterminately formed, comparatively speaking; in the early fetal stages there is no heart or brain function and no movement of limbs. The empirical differences between what we may loosely designate as S2 or S3 <stage 2 or stage 3> and the neonate are striking.²

Analogies clarify the point VanDeVeer is making. The difference between sanity and insanity is significant, and yet a person can gradually become insane in such a way that the differences between any two *successive* changes in that person's transformation will be slight, while the differences between non-successive stages *are* significant.

Issue is Sharpened

This point, however, only sharpens the issue. Granted, there are differences — even significant differences — between the zygote and the newborn. Are those differences morally relevant? That is, are they significant in the way the pro-abortionist needs them to be? That is, are these differences sufficient to ground the differential treatment accorded to newborn babies on the one hand, and embryos or fetuses on the other hand? When we compare an embryo in very early stages of development with a newborn infant, the differences are marked; yet, there are also important similarities. VanDeVeer focuses on the significant differences, but one could also focus on significant similarities, such as being of the same species, having the same genetic structure, having human parents, and so on. The real question is: what differences and what similarities are morally relevant? We need an argument which distinguishes morally relevant differences and similarities from morally irrelevant differences and similarities.

Moreover, this argument to distinguish the morally relevant from the morally irrelevant cannot be based simply on an appeal to ordinary language or linguistic conventions. That is, one cannot argue that fetuses have no rights because they are not “persons”, if by that one means merely that they lack characteristics which, according to the conventions of our language, a thing must have in order to be called a person.³ For, whatever the linguistic conventions of our culture are — although I think, as a matter of fact, according to those linguistic conventions fetuses *do* qualify as “persons” — one could always doubt whether those conventions are morally correct. And so, whichever way one argues, ordinary language or the linguistic conventions of our culture cannot by themselves settle the issue.

One position, which seems to have gained some popularity lately in philosophical circles, is presented as a moderate position, taking the golden mean as it were between the so-called extremes of the conservative and the liberal positions. L. W. Sumner speaks of it as the “third way” in his book, *Abortion and Moral Theory*.⁴ Other representatives are S. I. Benn⁵ and Norman Gillespie.⁶ According to Sumner, what counts as a benefit or a harm for a person is either the fact that its desires are satisfied or frustrated, or the fact that it is brought to experience what it likes or what it dislikes. From this premise, Sumner concludes that benefits and harms for particular persons must be interpreted in terms of psychological states, and that morality, which concerns harms and benefits, “can concern itself only with beings who are conscious or sentient.”⁷ For Sumner, then, *sentience* is the criterion of moral standing. All sentient beings, i.e., all animals, have moral standing. By a criterion of “moral standing”, he means a criterion by which one determines whether a being has a right to life or not, although the strength of that right to life (according to Sumner) may vary.

According to Sumner there are degrees of moral standing, corresponding to the degrees of sentience among various animals. "The animal kingdom presents us with a hierarchy of sentience. Nonsentient beings have no moral standing; among sentient beings the more developed have greater standing than the less developed, the upper limit being occupied by the paradigm of a normal adult human being."⁸ Again, "As the duties may vary in strength, so may the corresponding rights. To have some moral standing is to have some right to life, whether or not it may be overridden by the rights of others. To have full moral standing is to have the strongest right to life possessed by anyone, the right to life of a paradigm person."⁹ According to Sumner it is a great merit of this theory that "it seems to accord reasonably well with most people's intuitions that in our moral reasoning paramecia and horseflies count for nothing, dogs and cats count for something, chimpanzees and dolphins count for more, and human beings count for most of all."¹⁰

Sumner's Conclusion

With this criterion, Sumner concludes that the fetus has no moral standing at all in the first trimester of gestation, since in that period he or she is presentient; that this organism begins to acquire moral standing in the second trimester; and that the moral standing of the fetus in the third trimester is roughly equal to the moral standing of the newborn infant. He thus holds that abortion in the early stages of pregnancy is no different than contraception, while abortion in the later stages of pregnancy may have a moral quality approaching that of infanticide. Sumner favorably describes this view of the status of the fetus as "gradual, differential, and developmental."¹⁰ He believes this approach accords much better with our so-called commonsense intuitions.

The rhetorical appeal of this approach should not be underestimated. Any position which can be presented as taking a virtuous mean, especially on an issue about which highly emotional confrontations occur, has tremendous appeal. People naturally fear outright confrontation and so a moderate position, which allows one to say that one partly agrees with each side without, of course, their alleged peculiar exaggerations, has an emotional appeal beyond whatever intellectual appeal it may have.

The first point to inquire about is the basis for the position that sentience is what confers inherent value on a thing. There can be little doubt that, at least in some sense, it is the same organism which exists in the very early stages of gestation, when the organism can be killed according to Sumner, and in the later stages of gestation after birth, when because of the organism's sentience, the organism ought not to be killed according to Sumner. That is, according to Sumner, with respect to the same organism, it is morally permissible to kill that organism at a certain time, but not morally right to kill this organism at a later time. Clearly, then, on this view it is not the organism itself which has inherent value, even during those

times when it is not permissible to kill it. That is, the reason why one ought not to kill the third trimester fetus and infants is not that the organism itself has inherent value, but because his or her life is a necessary means for realizing what does have inherent value. Thus, implicit in this view is the position that life does not really have inherent value — that inherent value is found in something else.

Thus, when Sumner argues that sentience is what confers moral standing on a being, the position he takes, in effect, is that sentience, in its various degrees, counting rationality as a type of developed sentience, *is* the inherent value, in effect, the only inherent value.

As far as I can see, the only bases for this position are either hedonism or dualism. Sumner himself explicitly appeals to a type of hedonism. He argues that, properly speaking, benefits consist in the satisfaction of conscious desires or the experience of what one likes. One also could hold his position, or at least a position very close to it, on the basis of dualism. Michael Tooley, for example, in his book *Abortion and Infanticide*, argues in this manner.¹² The first step, then, in replying to the gradualist position is to provide arguments, albeit brief, against hedonism and dualism. The results of these arguments, however, will be more than negative.

Refuting Hedonism

First, hedonism. Hedonism is the view that, not only are all inherent goods pleasures and inherent bads pains, but what makes good things inherently good is pleasure and what makes inherently bad things bad is pain, that pleasure is the formality of good. Thus to refute hedonism one need only show that there is a good that is not a pleasure. From that it will follow that pleasure is not the formality of good. When we say that something is good, we are saying that it is desirable, so if we can show that there is a desirable which is not a pleasure and so not desired only because it is a pleasure, then we will have shown that a good exists which is not a pleasure or a means to a pleasure.

There are two types of pleasure. Some pleasures are simply sensations of a certain type. Thus, someone can take a drug simply for the sake of the sensation he gets from it. Another type of pleasure consists in the satisfaction of a desire. Thus, solving a mathematical problem produces pleasure, not as a type of sensation, but as a fulfillment of the desire for the solution. Thus, I can work a mathematical problem for the sake of the pleasure, the pleasure being the delight which comes with the solution. By extension, the hedonist will say that I desire knowledge, not for its own sake, but for the sake of the pleasure or joy which knowledge produces in me.

Now, to refute hedonism, all one needs to show is that there is an object which is desired which is not a pleasure in either of these senses, and it is not means to a pleasure in either of these senses. It will then follow that

something is *desirable* which is not a pleasure or a means to pleasure, and therefore that pleasure is not what makes good things good (what makes desirable things desirable).

The example of the desire to solve a mathematical problem is, I think, sufficient for our purposes. Clearly, this desire is not a desire for the sake of a pleasure as a certain type of sensation. The hedonist, then, will have to say that it is a desire for the pleasure or delight that consists in the satisfaction of the desire. In many cases, the hedonist analysis of this desire is partially correct; that is, in many cases we desire knowledge simply for the sake of the satisfaction which comes from satisfying our desire. But the problem is that this second-order desire, the desire to satisfy a desire, must be parasitic on some first-order desire. And in the example we are considering, the first-order desire cannot consist in a desire for a pleasure in either of the senses explained above, since this first-order desire cannot be for a particular type of sensation nor be itself a desire for the satisfaction of still another desire.

Therefore, while the desire for knowledge can *in some cases* be the desire for the pleasure which consists in the satisfaction of a desire, not every desire for knowledge can be that. And so some instances of a desire for knowledge are desires for knowledge for its own sake, desires for knowledge for the sake of knowledge. Hence there is something desired which is neither a pleasure nor a means to a pleasure. Therefore there is a desirable object which is not a pleasure nor a means to a pleasure. Therefore not every good is a pleasure or a means to a pleasure. Therefore pleasure is not what makes good things good; pleasure is not the formality of good.

Analyzing Desire for Knowledge

If we analyze the example of desire for knowledge for its own sake, I think we will find it most plausible that we desire things simply because they are fulfilling, because they are perfective or build us up. Of course, we desire fulfillment not only for ourselves but for others as well — this is not an egoistic principle. In any case, fulfillment, or perfection is what makes good things good, i.e., is the formality of good.

Now, if value or inherent goodness consists in real fulfillment, then, if the fulfillment of X is an inherent good, then the being of X must also be an inherent good. That is, once we see that real fulfillment or perfection is the formality of good, then whatever the entities are in whom inherent value or good can inhere, they themselves, as well as their full flourishing, will be of inherent value. It seems incoherent to hold that the fulfillment of X is inherently valuable, but that X itself is not.

Now dualism. The dualist claims that the subject of understanding is a non-bodily substance. This claim, however, seems inconsistent with the unity of self of which one is immediately aware. I am immediately aware that it is the same I that senses and understands.¹³ Now, sensation is a

bodily act. More specifically, sensation is a bodily affection, a bodily alteration brought about in me by the physical action of the thing on my sense organ. Since what a thing does and undergoes reveals what sort of thing it is, and since it is the same I that senses and understands, it follows that the I which understands is not simply a spiritual thing, not a consciousness using a body, but a bodily thing itself, an organism.

To the objection that sensation may be a spiritual action performed by my consciousness, at the initiation of a bodily stimulus, à la Descartes' analysis of sensation, one can reply that conscious sensation is different only in degree from quasi-conscious and unconscious (i.e., non-reflexive) sensation. Unconscious sensation is certainly bodily in nature (and not just stimulated by a bodily change), and so, it seems most reasonable to hold, so is quasi-conscious and conscious sensation. The conclusion is that a human being is an organism, and is so essentially. Human beings are special types of organisms.

Together, these points show that the gradualist position is incoherent. For since real fulfillment is the formality of good, then whatever the beings are which have inherent value, they themselves and not just their experiences have inherent value. It is incoherent to hold that the flourishing of X is inherently good, but not X itself. Thus, if we consider a healthy human adult, the paradigm case, as they say, of someone who has a right to life, then that human being himself or herself is inherently valuable and not just that person's experiences. But, secondly, as I also argued above, the human being is essentially an organism. Therefore, the time at which the human organism comes to be is the same time at which the human being comes to be. So, if X is a human being, then X came to be when the human organism which X is came to be.

Add a Proposition

Now let us add the following moral proposition, which is, at the very least, very plausible. If X is inherently valuable, and it is wrong directly to kill X at a certain time, then, other things being equal, it is also wrong directly to kill X at some previous time. So, to take myself as an example, if it is wrong directly to kill me today, then, other things being equal, it would have been wrong directly to kill me at any previous time. In particular, since I am an organism, and the organism comes to be at conception, the being that existed in my mother's womb 37 years ago is the same being that I am today. Therefore it would have been wrong directly to kill that being in my mother's womb 37 years ago.¹⁴

Let us now return to the question regarding which similarities between different beings are morally relevant, and which are morally irrelevant for whether a being has moral standing. I have not yet provided a *general* criterion for distinguishing between those. Rather, I have argued that being the same thing at an earlier time must certainly be a morally relevant similarity. It would take a great deal more time to defend a general

criterion of moral standing, but I would like to set out, at least, what I think is the criterion, and try to explain it very briefly.

Let me also add that my argument against the gradualist position does not *logically* depend on this part of the paper. For, regardless of what the correct moral standard is, if the argument up to this point is correct, it establishes that human embryos or fetuses have the same basic rights as normal adult human beings. Nevertheless, *psychologically*, if one holds that sentience is the criterion of moral standing (and hence that all animals have moral standing) there is considerable pressure to admit degrees into moral standing, in the way Sumner does.

Being a member of the human species is not the criterion of moral standing. Being a member of the human species is a *sufficient* condition, but it is not a *necessary* condition for having moral standing. If intelligent life from another planet landed on earth, we would owe it moral respect also.

I would say that every rational agent, or every free agent, has moral standing. When one begins to deliberate about what one ought to do, one spontaneously recognizes that some objects are worth pursuing for their own sake, such objects as life, knowledge, friendship, and so on. These are the objects of our natural inclinations, the objects that are fulfilling or perfective, and recognized as intrinsically, not just instrumentally, good. Such objects or basic goods are not just goods for me, but for others as well. But the objects in question are objects of practical reason and choice, i.e., they are possibilities for a rational, free agent. This is not to say that they are good only when pursued by reason and choice, for my life is good even while I am sleeping and knowledge is good even when reached spontaneously and not by choice. But in these beginnings of practical or moral reasoning, I apprehend not that life in general is good, but that the sort of life which can be an object of rational pursuit is an intrinsic good.¹⁵

Defending Criterion

This criterion can be defended in the following way. Nonrational animals, inasmuch as the principle of their actions is exterior, are more similar to other sorts of beings, than they are to persons. Since they lack free choice, what actions they perform are completely determined by the kind of stimulus put before them, and so what goals their actions will be directed to are determined by others. In this sense they are like natural slaves: someone else, necessarily, selects their goals for them. They are, as it were, by nature instruments. Free agents, on the other hand, have the capacity to select their own goals, and so it makes sense to say that their concerns should be taken into account.¹⁶

When I say that it is the goods of free agents that generate moral responsibilities, what I mean is free agents as concrete things or substances. Moreover, the goods which I must pursue and respect are fundamentally aspects of what persons *can be*, i.e., they are various

potentialities or possibilities to which persons are naturally oriented. Therefore, whenever the thing, or substance, comes to be which has these basic potentialities, then it is that a being exists which demands moral respect.

And so, by "free agent" I mean a thing which has the potentiality to pursue the various personal goods rationally or freely. Since human persons are organisms, they come to be at conception, and from that moment onward they have the active potentiality to realize all of the fulfillments of a human being, although it may take them some time to actualize those potentialities. The important point of morality is that life, knowledge, friendship, and so on, are possibilities or potentialities for *this very being* even though it may take this being even many years to actualize those potentialities. (It also is worth noting that they are even now *actively developing* themselves to the point at which they will realize these perfections.)

Finally, the argument is not that they *potentially* have those characteristics which confer personhood. To have such characteristics only potentially would mean that they have personhood only potentially. Nor is the point that they are potential persons and therefore have rights. Rather, being a thing which has the potentiality to rationally pursue these various goods is what confers *actual* personhood, and human embryos and fetuses have that characteristic actually not just potentially.

Why, someone might object, should having the same potentiality as adult humans give embryos, fetuses and infants the same moral status as adults? Shouldn't what a thing *does* actually, count more than what it has the potentiality for? Why should we be concerned so much with potentiality? The answer — and I think it is a very important point for this whole controversy — is that our actions, our choices, primarily bear upon potentialities, on what can or could be. If I kill someone I do not, strictly speaking, take away from them their actuality. It is too late to deprive them of what they have been or what they are. My action, rather, deprives them of what they could have been, it brings it about that they will never actualize their possibilities. In other words, it is too late to deprive them of their past or present; if I kill them, what I deprive them of is their future. And so our actions and our choices bear primarily upon potentialities. Therefore, killing an unborn child is, in this respect, worse than killing an adult, because it robs from him or her more of his or her life.

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 5. Feinberg, 135-144.
 6. *Ibid.*, 94-101.
 7. *Ibid.*, 79.
 8. *Ibid.*, 83.
 9. *Ibid.*, 74; cf. Sumner's book cited in note 4, pp. 124-160.
 10. Feinberg, 84.
 11. *Ibid.*, 73.
 12. Tooley, Michael, *Abortion and Infanticide* (Oxford: Clarendon, 1983).
 13. This argument is proposed by Thomas Aquinas, *Summa Theologiae*, Pt. I, Question 76, Article 1.
 14. The reason I have the "other things equal" clause added in the proposition above is only because my argument in this paper has not established what the correct normative ethical principles are. So, the argument by itself does not rule out, say, consequentialism or situationism, although I think both those theories are false. But what the argument establishes, if it is correct, is that the human embryo or fetus is something whose life must be respected, in whatever way the correct normative ethical principles indicate that personal life must be respected.
 15. Cf. Germain Grisez and Russell Shaw, *Beyond the New Morality*, 3rd ed. (Notre Dame: University of Notre Dame, 1988), chapters 7-9.
 16. St. Thomas, *Summa Contra Gentiles*, Book III, Chapter 112.
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