

Experience as Evidence: Pregnancy Loss, Pragmatism, and Fetal Status

Amanda Roth

Reproductive loss (RL) is common, occurring in the first trimester in 10 percent of clinically recognized pregnancies according to the American College of Obstetricians and Gynecologists.¹ When loss in later trimesters—which is comparatively rare—is included along with loss before clinical recognition of pregnancy—which occurs quite often—the rate of loss rises considerably, perhaps to as high as 89 percent.² Yet the ordinariness of RL provides little help sorting through its meaning. RL is befuddling; clearly it is often *a loss* and many experiencing it respond with sorrow and grief. And yet there is no settled cultural—or philosophical—understanding of *what* exactly is bad or grief-worthy about the death of an embryo/fetus or the failure of a pregnancy to produce a surviving child. Cultural, academic, and even feminist silence about RL adds to these difficulties, though thankfully the scholarly import of the topic is increasingly recognized, particularly within philosophy.³

One major philosophical concern regarding RL is what it reveals about fetal status and abortion ethics. Some put this point in terms of *the pregnancy loss objection* (PLO), which is aimed at defenses of abortion that deny fetal status. The objection is quite simple; it claims that philosophical denials of fetal value are contradicted by the lived experience of RL, especially women's often felt deep sorrow and grief.⁴

Despite its simplicity, PLO faces significant difficulties, including plausible rebuttals by those who deny fetal status. I aim in this article to defend PLO by diverging from going accounts of it, particularly Lindsey Porter's (2015) argument against "person-denying" defenses of abortion.⁵ In contrast to Porter, my PLO takes on a gradualist conception of fetal status—emphasizing fetal physicality as a ground of moral status—and is situated within a broadly pragmatist approach to ethical inquiry. In what follows, I aim to vindicate PLO as a general strategy, and to demonstrate the particular strengths of my moderate version of PLO in contrast to Porter's.

I. Fetal Status and Abortion in the Literature

A major strategy for defending abortion is denying that fetuses are of moral concern. Such denials show up when my students justify abortion by labeling fetuses "parasites," when some pro-choice rhetoric refers to even fetuses at the edge of viability as "clumps of cells," and in the refusal of some within the

abortion rights movement to talk about fetal value at all.⁶ Such “person-denying,” in Porter’s (2015) terminology, is also common philosophically, with the criteria of personhood (or full moral considerability) typically associated with mindedness and emphasizing capacities like having interests or desires, sentience, consciousness, self-awareness, and rationality, as Margaret Little describes.⁷ Harder line accounts of fetal moral status cast abortion as morally unproblematic throughout *all* of pregnancy and permit (some) infanticide as well.⁸ More moderate accounts allow that neonates and late fetuses have (at least some) moral status, and so take late abortion to be (somewhat) morally concerning; but killing earlier fetuses remains morally insignificant.⁹ I call these views, on which fetuses lack status for all or most of pregnancy, *no-fetal-status* accounts.

Take Elizabeth Harman’s (1999) “liberal view” as an example of a (moderate) no-fetal-status account. Harman holds that *no* justification is required for abortion through most of pregnancy, but her account is unique in holding that the moral status of fetuses of the same development can vary based on facts about the future of those fetuses—specifically, whether or not they will come to have “any intrinsic properties that themselves confer moral status.”¹⁰ Though technically noncommittal in the 1999 article as to what might count as such an intrinsic property, Harman does put forth having conscious experience as an attractive possibility and in a later (2007) article again identifies consciousness as particularly relevant to moral status.¹¹ Taken together, it seems that Harman’s overall view is that a fetus that dies before consciousness never had any moral status, whereas a conscious fetus does have moral status and *had that status prior to becoming conscious*. Combined with the going scientific knowledge about pain-capability, it turns out that abortion prior to about the third-trimester will not only be permissible on Harman’s account, but killing fetuses up to that point will not be a morally serious act.¹²

It is worth noting that no-fetal-status accounts are far from the only way of justifying abortion. Some well-known views accept fetal personhood, but ground abortion rights in bodily autonomy.¹³ Others take up a relational approach to fetal status, such that whether and how a fetus counts morally depends on the perspective of the gestator.¹⁴ These alternative approaches avoid PLO because they do not hang the defense of abortion on denying fetal value. Moreover, they are typically more explicitly feminist in nature than no-fetal-status accounts. Why then is there so much interest in the literature in no-fetal-status accounts and why is it worthwhile in this article to attempt to refute those accounts with PLO?

The point of denying fetal status, Porter notes, is that if fetuses do not count *at all*, but are rather the moral equivalent of a fern, then the feminist adage “abortion on demand and without apology” is vindicated.¹⁵ In this sense, no-fetal-status accounts have a significant advantage over alternative views, since everyone recognizes the moral permissibility of killing plants and their moral equivalents.¹⁶ In contrast, in admitting the moral considerability of (some) fetuses, alternative defenses of abortion wade into muddier ethical waters.

Yet this strength of no-fetal-status views is perhaps turned on its head when viewed in light of PLO. For many who have experienced RL, equating their loss

with the death of a plant is not only absurd, but also dismissive of their emotions and testimony. No-fetal-status accounts, then, seem to gain one advantage at the high cost of being unable to speak to women's common experiences. Like other proponents of PLO, I find an alternative account of abortion that allows for (some) fetuses to be morally considerable better able to account for women's common understandings of RL as well as a stronger basis for abortion ethics; I develop just such an account in what follows.

II. PLO

Recall again Harman's no-fetal-status account, on which fetuses dying prior to consciousness have *no* moral status. This claim immediately triggers PLO since this denial of moral status here applies to miscarriage, stillbirth, and (presumably) periviable neonatal death, as well as abortion. Below I lay out the objection in more detail, considering and evaluating two versions of PLO, both of which I find wanting.

a. Hursthouse

As Rosalind Hursthouse puts the objection, why, if abortion is morally equivalent to a haircut, is miscarriage so often experienced as a terrible, sorrowful event?¹⁷ What can a no-fetal-status proponent say of such sorrow? Hursthouse suggests that if fetuses do not matter morally, then the proper response is: "[w]hat a fuss about nothing!"¹⁸ But, whether said aloud or only thought, this is an absurd response to post-miscarriage sorrow; thus, we should reject no-fetal-status accounts.

Hursthouse's challenge, however, is underdeveloped. No-fetal-status proponents can easily reply that losing a pregnancy—particularly one that is wanted—can be sad independent of fetal status. Most basically, consider the physical unpleasantness of many kinds of pregnancy loss. Early miscarriage can involve extreme cramping, excessive bleeding, hormonal fluctuations, surgical intervention, and in some cases, serious health complications. Later RL might also involve all the burdens of labor, delivery, and post-partum recovery.

Beyond the physical, no-fetal-status accounts can also acknowledge much emotional/social/psychological badness in RL. Consider, that many women report distrusting their bodies and experiencing guilt after miscarriage.¹⁹ For some, RL also brings on a crisis regarding one's identity with regard to parenthood.²⁰ Finally, in wanted pregnancies, RL dashes hopes and plans for the future:

You feel so hopeful when you learn you're going to have a child. You start imagining who they'll become and dreaming of hopes for their future. You start making plans, and then they're gone.²¹

Even if the lost fetus has no moral status and one can quickly become pregnant again and carry to term successfully, one has still often lost a particular

future that had just come in to view—a future in which *this* pregnancy continues making one the parent of *this* child-to-be.

Harman takes up the dashing of hope narrative as her main rebuttal to PLO. On her (1999) view would-have-been parents experiencing miscarriage in a wanted pregnancy are “understandably upset.” They believed the fetus was going to become their child and so began to love it; then the fetus died, unable to become their child after all. Of course, Harman insists, it is appropriate for the would-have-been parents to be saddened at this “terrible” event—a being they loved has died and the couple now must “start again in their attempt to have a child.”²² Yet while sadness is appropriate on this view, mourning “the [early fetal] death, treating it as the same kind of thing as the death of a person, something that is bad because it is bad for the subject who died” is not appropriate; the early fetus is not “a morally significant being.”²³ So for Harman mourning the loss of a miscarried fetus as if it were a typical loved one—a person—is a mistake. But since miscarriage can be bad in other ways, particularly in dashing hopes, other forms of sorrow may be warranted. Thus, in my view Harman successfully defends no-fetal-status accounts against Hursthouse’s PLO. RL can indeed be a terrible thing—in many ways—even if fetuses are not morally considerable.

b. Porter

What is needed in light of Harman’s rebuttal is a focus on a more targeted kind of negative emotion in response to RL—not merely fuss or sorrow, but *grief*. Porter attempts to offer just this in “Miscarriage and Person-Denying,” in which she argues that “person-denying” accounts—or in my terminology, no-fetal-status accounts—must conclude that the common experience of grief after miscarriage is an error, since it does not make sense to grieve a nonmorally considerable being. Importantly, Porter uses the term “grief” to rule out the dashing of hope response to PLO.²⁴ Grief, she explains, is not mere sadness about “the scuppering of hopes and dreams.”²⁵ Consider other deaths of loved ones: when a romantic partner dies part of our sadness is about our own lost hopes, but our grief also recognizes that person as an individual of independent value. Indeed, Porter holds that my experiencing grief after RL implies both that the fetus is valuable *to me*, and that it is valuable full stop.²⁶ It is the latter judgment of fetal value that no-fetal-status accounts deem mistaken; if Porter is right that post-RL grief necessarily carries that implication, then no-fetal-status accounts must reject grief altogether as an appropriate response to RL.

Porter’s account improves on Hursthouse’s in shifting focus from mere sorrow, to offering an analysis of how grief involves an endorsement of fetal status. In this she demonstrates a genuine conflict between no-fetal-status accounts and some responses to RL. Of course, it is open to no-fetal-status proponents to bite the bullet here, and deem post-RL grief mistaken and inappropriate; but Porter

has at least backed them into an uncomfortable position, in which such bullet-biting *prima facie* “discount[s] the moral-emotional experiences of women.”²⁷

Yet, as solid as Porter’s case appears to be, there is room for a no-fetal-status proponent to blunt the sting of Porter’s PLO in various ways that I explore below.

III. Grief and the Grounds of Moral Status

Importantly, Porter does not suggest that *all* women experience grief in response to miscarriage, but she does take grief to be common and insists that philosophy ought to take this response to RL seriously.²⁸ Though I don’t dispute the commonness of grief after RL, I do want to expose two concerns about Porter’s appeal to grief in making her case for PLO that are likely to be pushed by a no-fetal-status proponent.

The first concern I have arises in relation to Porter’s discussion of an alternative “two-tiered” approach to PLO. As Porter recognizes, some empirical evidence points to grief being more common the further along the pregnancy at the point of loss.²⁹ Such evidence coheres as well with common intuitions about pregnancy loss that inform social practices within our culture, for example, other things equal, second or third-trimester loss is typically treated as a greater tragedy than first-trimester loss.³⁰ This line of thought might point toward a moderate version of PLO that claims moral status only for later fetuses. A moderate PLO could take a variety of shapes. “Two-tiered” implies two distinct phases of moral status—first no or minimal status and then significant status or full moral considerability. But another option is gradualism, according to which fetal status gradually increases throughout development with no clear bright line (Little, 2008). Either way, a moderate PLO might attractively split the difference between no-fetal-status accounts and Porter’s PLO along the lines of everyday intuitions about fetal status and pregnancy loss. Indeed, this is the type of account I develop later in the article.

But Porter quickly rejects the moderate approach. She makes little of the potential association of grief with length of gestation, insisting that grief is at least “reasonably common” in the earliest losses (prior to seven weeks).³¹ Further, she points out that a two-tiered (or gradualist) approach, in denying the moral considerability of earlier fetuses, will be unable to take grief after early RL seriously.³² This is all the more worrisome, Porter points out, because the majority of individuals experiencing RL-related grief are likely to be those who experienced early miscarriage, rather than later loss on which a moderate PLO would focus.³³

Still, one might think that it matters here how common such grief is in the first place (and I am not sure what “reasonably common” means). If grief turns out to be merely an occasional response to early miscarriage, then it is at least arguably less objectionable to fail to speak to that sort of grief. Other things equal, it is one thing to call a rare emotional response a mistake, and quite

another thing to call a dominant emotional response a mistake. Thus, exactly how often women grieve even the earliest miscarriages is relevant here—or so a no-fetal-status proponent might argue in response to Porter's PLO.³⁴

I have much more to say about moderate PLO in the rest of the article, but first, let me move to a second worry about the empirical literature, which will further motivate the move to moderate PLO.

As discussed above, PLO cannot rest on pointing to dashed hopes after RL; what is ruled out as mistaken by no-fetal-status accounts is not *any* negative emotion, but grief (or mourning) of a very specific kind. Harman characterizes mourning as having to do with the loss of a *person*, a *morally significant being*, a *subject for whom death is bad*.³⁵ Porter instead speaks of "grief," which she takes to be fundamentally about the loss of a loved one, expressing "the judgment that *someone very important to me is gone*" (emphasis hers); thus, the loss of a being of only instrumental value cannot warrant grief.³⁶ Porter and Harman get at a similar response to death—most importantly, both agree that the appropriateness of grief or mourning depends on the lost being having moral status.³⁷ For clarity's sake, call what Porter and Harman are getting at "grief in the philosophical sense," or *grief_p*.

I wish to call into question Porter's implicit assumption that the empirical literature on grief after miscarriage refers to *grief_p* specifically. Why doubt that it does? Consider first that in everyday life we do not restrict our use of the term "grief" only to cases involving the loss of *someone*. Sometimes we speak of grieving mere things or possibilities—a lost opportunity, one's lost innocence, a precious object. Call this the "everyday meaning of grief," or *grief_e*. The empirical literature does not necessarily distinguish between *grief_p* and *grief_e*. For instance, Norman Brier's review of this empirical literature points to a failure to consistently define the term "grief" and notes the use of different scales emphasizing disparate aspects of grief—for example, yearning for the deceased *baby* (perhaps implying moral status) versus the *lost pregnancy* (perhaps about dashed hopes).³⁸ A no-fetal-status proponent might jump on this point, challenging Porter to show that it is really *grief_p* that is common after RL, since no-fetal-status accounts have no trouble accounting for *grief_e*.

One takeaway here is that the empirical literature turns out to be relatively little help in defending PLO. As Porter lays out the case for PLO, everything hinges on *grief_p*, yet the literature does not tell us who experiences *grief_p* versus *grief_e*, nor how often. I am not suggesting here that we should conclude that *grief_p* is *uncommon* after RL—just that the case cannot be made one way or the other based on the existing literature. This is an important lesson for a moderate PLO aimed at improving on the weaknesses of Porter's PLO.

Putting aside these worries about whether the empirical evidence supports Porter's view, let me raise an independent difficulty for her version of PLO, which relates back to her rejection of two-tiered accounts. Porter seems to commit to taking *all* experiences of RL seriously and so to avoiding person-denying regardless of the stage of pregnancy/fetal development. Failing to validate some

women's post-RL grief, after all, is Porter's main reason for rejecting the two-tiered (or gradualist) account. Yet I will argue that her own account cannot easily deliver on this commitment.

Consider the array of RL experiences after which some women report grief, or describe their loss as the loss of a baby: anembryonic pregnancies that end in miscarriage, in vitro fertilization (IVF) losses (when an IVF embryo fails to attach to the uterus when transferred), unexplained infertility (in which conception fails to occur), false pregnancy, and discovering one's fetus is the "wrong" sex.³⁹ Any account upon which fetuses count as "persons" must engage in some line-drawing regarding at what point in pregnancy or embryological development status first arises (and on what grounds that particular stage is morally relevant). Where is Porter's line?

It turns out that Porter does not give any indication of either the ground of fetal moral status she has in mind, or whether any pregnancy or developing conceptus might fail to be morally considerable. Presumably though, on pain of absurdity, she will have to deny that the false pregnancy case, failure to conceive case, and "wrong" sex cases involve any loss of persons, but it is less clear what she might say of the anembryonic pregnancy or IVF loss. In any case, here is the rub: wherever Porter draws the line, some women's testimony about their own grief will, by her own lights, not be taken seriously. Yet dismissing woman's testimony is the main reason Porter rejects the two-tiered account (2015, 74). Thus, Porter's view looks inconsistent on the importance of taking grief seriously.

One might argue in response that Porter's account is not actually dismissive of women's testimony in the above cases. Those who express grief over the fetus being "the wrong" sex obviously haven't lost a loved one and so surely cannot be experiencing grief_p. Person-denying here is not dismissive; it simply interprets the report of grief in the way it was likely intended—as a nonliteral expression of loss and sorrow (or grief_e).

But notice this response will not work for IVF loss and anembryonic pregnancy. Some women do claim that they lose a *someone* in those cases, and it is at least not *absurd* to think this is so, even if it strikes many (like myself) as extremely implausible. So the fundamental problem remains: does Porter deny the moral status of some (pre)embryos and empty sacs in these marginal cases and so fail to take some women's grief_p seriously? Or will she allow that IVF embryos and empty sacs are *someones*, and thus take on board a quite implausible view of moral status?⁴⁰

In addition to the dilemma Porter faces on this point, the discussion above also introduces the possibility that (re)interpreting the underlying meaning of expressions of grief is sometimes the best way of taking women's testimony about RL seriously—as in the case of the "wrong" fetal sex. Relatedly, consider a discussion by Kate Parsons (2–3), about her own post-miscarriage grief and her attraction to calling her lost fetuses "babies," despite the apparent contradiction between this terminology and her pro-choice politics.⁴¹ Parsons goes on to

explain that not every expression of having “lost a baby” is necessarily a claim about moral/metaphysical status; one might rather be making a demand for social recognition of the realness of one’s loss, particularly in the face of a culture that tends to trivialize RL.⁴² This points to a different sort of challenge for Porter’s PLO; even if Porter is right that women’s responses to RL must be taken seriously philosophically (which I think she is), it doesn’t follow—at least not without further argument—that taking seriously just means taking literally or at face value. It might well be that expressions of emotions like grief can at times be unclear in their meanings and warrant even to those experiencing them. In that case, we ought to be cautious about basing philosophical conclusions on them—or again, so the no-fetal-status proponent might reasonably argue.

Importantly, I don’t take these worries to be decisive against Porter’s account. Were our only options for thinking about RL and abortion ethics a no-fetal-status account versus Porter’s PLO, the choice between them would not be obvious (to me, at least). But fortunately, we do have other options.

IV. A Moderate PLO

In filling in the details of a moderate PLO, I take away two main lessons from the above evaluation of Porter’s view. First, to overcome worries about marginal cases of embryo loss and moral considerability, PLO must be combined with an independently plausible approach to moral status. Thus, I offer gradualism and emphasize the physicality of fetuses as *a* primary ground of moral status. I aim then to make the case for PLO against no-fetal-status accounts only with regard to *later* RLs—in (about) the second-trimester and beyond.⁴³ Second, given the difficulties discussed above, I move away not only from focusing on empirical evidence regarding grief, but also in a pragmatist spirit, focus on post-loss *practices of mourning*—rather than the *emotion* of grief—as evidence for fetal moral status.

a. The Fetus as Individual

The first lesson points to the need for proponents of PLO to deal explicitly with the complex question of the grounds of moral status. At base, PLO must be tied to the existence of—and death of—a fetal *individual*, since the PLO argument assumes that the fetus is a *someone*. No-fetal-status accounts, with their emphasis on psychological capacities, offer one common position on fetal individuality; an opposing, but similarly common, contrasting position is the physical individuality view, according to which conception creates a new and distinct human organism.⁴⁴ PLO challenges no-fetal-status accounts, and so it might seem that PLO is committed to something like the latter approach to fetal individuation. But I doubt that all proponents of PLO wish to make such an extreme commitment regarding the earliest (pre)embryos.

In fact, as Margaret Little (2008) points out, most lay intuitions about fetal status support neither of these approaches; Americans are drawn to a middle-

ground position regarding fetal status and abortion.⁴⁵ We see evidence of this in various forms: that the destruction of very early embryos in IVF and stem cell research does not generate nearly the outrage of abortion (often performed on embryos/fetuses many weeks more developed); that abortion opponents strategically (and misleadingly) utilize later fetal imagery as representative of typical abortion; and that even strong supporters of abortion rights tend to respond with more concern to the later fetus.⁴⁶ Whereas both no-fetal-status accounts and physical individuation accounts dismiss these intuitions, gradualism embraces them as getting something right.⁴⁷

On Little's (2008, 332) gradualist approach, embryos have some (minimal) value even at the earliest stages—being “worthy of respect”—and by very late in pregnancy fetuses are equivalent, in terms of intrinsic moral status, to neonates. Little fleshes out the idea of gradualism with Warren Quinn's developmental picture, which includes the stages of human organism, human being, self, and agent.⁴⁸ A human organism comes into existence at conception, a self at the point of some degree of mindedness, and an agent not until well after birth. What of the more mysterious stage—*human being*? This stage includes the points of pregnancy prior to mindedness, thus presumably extending until the end of the second trimester, though it is unclear how early it might begin.

Whenever the human being stage begins, gradualism holds that a fetus in that stage is of more value than a mere human organism. But what underlies this difference in status if neither psychological capacities nor physical individuation? I suggest that we understand the moral status of a fetal human being in terms of the physicality of the fetus. Late in the first trimester and even more so into the second trimester, the fetus becomes *like us* physically speaking, and by mid-pregnancy fetuses are distinctively baby-like in appearance.⁴⁹ Thus, Little (343) suggests that later abortion is more serious morally speaking than early abortion: “by twenty-two weeks, the fetus is far more developed as a human being along many dimensions” and so “the further one goes into a pregnancy, the more justification it takes to decently end it” even when the fetus is weeks away from mindedness.⁵⁰

Gradualism provides an alternative way to think about moral considerability that contrasts with both no-fetal-status accounts, and Porter's implied physical individuation account.⁵¹ How then can it underlie a moderate PLO?

b. Mid-Pregnancy Loss

My interest in PLO dates back to the ending of my first pregnancy, which began, an early ultrasound revealed, with two sacs, and then two embryos. As Mark Zuckerberg explains, when expecting, one “start[s] making plans”—for us, plans wrapped up in preparing for *two* babies. But then, “they're gone.” One fetus died as I entered the second trimester, and many of our hopes and plans along with it. We grieved the loss of the future we had prepared for—for example, the matching baby blankets we had purchased representing the twins we expected. But we had another baby still developing, and so this was a fetal loss, but not a

*pregnancy loss.*⁵² We were still well on our way to becoming parents and still to *this* child-to-be, if not also to *that* one—or so we hoped. With fears heightened after the first fetal demise, we breathed a small sigh of relief after a normal anatomy scan for the surviving fetus. Moreover, now with a singleton pregnancy, chances of serious complications were lower than in the original twin pregnancy. We chose a name, settled in, and waited anxiously for the first fetal movements.

But then at 18.5 weeks I felt an odd pain in my lower back. Having since given birth to my now five-year-old I would know in an instant that this particular pain can be nothing but a contraction, but it would take an entire day for me or my OB's office to become concerned about back pain at five months pregnant. Eventually the intensity increased and I realized that the pain was coming rhythmically. We knew something bad was happening. At the hospital, my body felt like it was spinning out of control, yet labor was still on no one's mind. The monitor could not pick up my back contractions, another ultrasound showed a healthy squirming baby girl and a normal seeming uterus, and the possibility that this was merely a gastrointestinal illness or kidney stones kept our hope alive for a bit. But eventually it became clear that I was losing the pregnancy, punctuated by the dramatic spontaneous breaking of my bag of water.

I struggled to categorize what was happening. Was this another miscarriage? More dashed hope? I tried to convince myself it was. I assumed my situation would be managed with a dilation and evacuation (D&E): remove the fetus, get it over with. But the standard of care was to allow my body to finish what it started. A nurse tried to prepare us for delivery, warning that live birth was a possibility. If anything made clear that this was *not* another dashing of hopes, it was the news that the fetus inside me might arrive *alive*. We asked what to expect the fetus to look like; the nurse answered sadly, "well, they look like very, very tiny babies."

Ariel Levy's *New Yorker* article, "Thanksgiving in Mongolia," detailing her loss at nineteen weeks, echoes similar themes:

I felt an unholy storm move through my body. . . . And then there was another person on the floor in front of me, moving his arms and legs, alive. I heard myself say out loud, "This can't be good." But it looked good. My baby was as pretty as a seashell.

He was translucent and pink and very, very small, but he was flawless. His lovely lips were opening and closing . . . swallowing the new world. . . . I sat there, awestruck, transfixed. Every finger, every toenail, the golden shadow of his eyebrows coming in, the elegance of his shoulders—all of it was miraculous, astonishing. . . . I tried to think of something maternal I could do. . . . I kissed his forehead and his skin felt like a silky frog's on my mouth. . . .

[Afterward, w]ell-meaning women would tell me, "I had a miscarriage, too," and I would reply, with unnerving intensity, "He was alive." I had given birth . . . to another human being, and it seemed crucial that people understand this. Often, after I told them, I tried to get them to look at the picture of the baby on my phone. . . .

[T]he truth is, the ten or twenty minutes I was somebody's mother were black magic. There is no adventure I would trade them for; there is no place I would rather have seen.

Sometimes, when I think about it, I still feel a dark hurt from some primal part of myself, and . . . I will hear myself making sounds that I never made before. . . . I realize that I have turned back into a wounded witch, wailing in the forest, undone.⁵³

Alison Reiheld's (2015) analysis of miscarriage as a liminal event speaks to my and Levy's experiences.⁵⁴ For those losing wanted pregnancies, Reiheld suggests that RL is "betwixt and between" life and death and places one in a liminal space between parenthood and nonparenthood.⁵⁵ Indeed, one of the most difficult aspects of my loss was the in-between-ness, but in a different sense than Reiheld emphasizes. I *wanted* this loss to be like the loss of our first twin: a dashing of hope, a lost future. But it was not that at all, which became clear to me when "a very, very tiny baby" exited my body. My baby had no heartbeat, but we held her for a short time, examined her body, and swore we could see my cheekbones in her face. In the days after, we struggled with how to make sense of this loss, what to do with the memory box of photos and footprints, how to describe what had actually happened (did I *give birth*?) and how to refer to this being we had held (by name? as a baby? a fetus?).

I was doubly "in between"—having lost a pregnancy, but also having lost a baby at that stage and in that way. The loss felt especially like a nothing, with there existing no common term to refer to it—not a stillbirth, nor a premature birth technically. Yet "miscarriage" brought forth stories from other women of bleeding, empty sacs, and dilation and curettages (D&Cs), at six or eight or ten weeks, and (often) narratives of dashed hope. But these experiences did not speak to my situation. I felt like Levy with her phone, wanting to exclaim, but *look*—isn't this a baby? Having my daughter at full-term offered some moments of clarity, but in other ways further entrenched the liminality. How many children do I have? How many times have I given birth? Whose tiny footprints are tattooed on my body? What does it mean that we named the baby we lost and then gave my living daughter that same name as her middle name? *Betwixt and between* we remain.

For others though, the liminality is perhaps lessened. Levy, who has not gone on to have a(nother) child, refers to the time she was "somebody's mother" and press for her recent memoir refers unflinchingly to *her son*. Live birth perhaps makes a difference here. Consider also Rebecca Johnson's discussion of her baby's death after delivery at twenty-five weeks:

"I had a baby," I would sometimes say, "but he died." I preferred the truth to pretending that Luke had never been born or to resorting to the anodyne answer, "We lost him," as if he had wandered off at the mall. . . . When he was born, he weighed less than a pound and a half. . . . After struggling to live for four days, he died in a plastic incubator. . . . I never did get to hold him. . . . [i]n the days and weeks that immediately followed his death, he was my first thought upon waking and my last before going to sleep. I spent hours by his grave wondering how I was supposed to get on with the rest of my life. . . . [When] my . . . grandmother died . . . [and] a few months later my father. . . . I grieved for them both but the pain didn't compare with losing Luke. (121–26)⁵⁶

Some aspects of liminality, then, might be more or less present depending on the stage and nature of the loss. This is perhaps exactly what a gradualist account of moral status like Little's predicts.

c. Practices of Mourning

Within these responses to mid-pregnancy loss, there are many implied claims about the moral status of lost fetuses/babies. But these implications do not stem merely from the fact that Levy, Johnson, and I experience the emotion of grief. More important than grief, I believe, is how one confronts the physical being that the fetus is and the sorts of *practices* one takes up in response to the death (and sometimes short life) of that being. I suggest that the *practices of mourning* that often arise after mid-pregnancy and later RLs are akin to practices that mark more traditional deaths of loved ones who are unquestionably *someones*, and this is where we find implied moral status of the mid-pregnancy fetus.

Consider *standard hospital practices* for losses involving delivery. These include presenting the option of holding the fetus/baby, offering burial/cremation, providing mementos like handprints/footprints, photos, and weight/length measurements, and staff referring to the fetus/baby by name.⁵⁷ All of these aim at recognizing stillborn and periviable babies as *babies*. *Naming* too seems a practice of mourning in the case of fetal death or dying—because to be named is to be recognized as an individual in our social practices, while to be denied a name can be part of the denial of moral status.⁵⁸ Deeply related to naming is the sense in which the fetus/baby is *integrated into the family or community*, for example, through photos on the wall or mentioning that fetus/baby when asked how many children one has.

Consider other remarks about later RL, such as those featured in a *New York Times* (2015) piece on stillbirth:

My daughter matters. . . . Don't be afraid to talk about the baby . . . the baby is always on the bereaved parent's mind, saying his/her name is like a gift. (Alia Gervasi, third trimester)

We will continue to honor our baby girl celebrating her birthdays, signing her name as a member of our family and talking about her every time someone asks a question about having any kids. . . . (Anica Martinez, twenty-six weeks)

I got to bathe him, dress him, and hold him for 30 hours. . . . [Afterward] For days I would drive to the hospital and sit outside on the curb at the entrance because I wanted him to know he was never alone. (Michal Estrela, nineteen weeks)

My son Adam was born still at 40 weeks. He was 8 lbs. and 21 inches long, just beautiful. Adam had dark brown hair and my husband's facial features, but no one ever said congratulations to us. . . . It was hard, but I would do it all again just to hold my son for another moment. (Marie Lockwood)

Noah Gabriel came into the world, stillborn at 10.5 inches and three-quarters of a pound. His grandparents, aunts and uncles were there to see him. . . . We kept Noah for one day.

We took pictures. . . . I'll always wish I held him and kissed him one more time. (Paul Williams, 22 weeks).

I will work the rest of my life to make sure Luke is remembered. I say his name, I raise money for Forever Footprints and I will carry him in my heart for the rest of my life. He meant everything. (Jennifer Watanabe, thirty-nine weeks)

I carry her footprint on my arm, permanent in ink. It is the closest thing I can have to keep her with me everyday. (Laura Fangel, twenty-two weeks)⁵⁹

While it is important to acknowledge the diversity of responses to RL and the possibility of alternative narratives not represented here, I find striking the similarities of themes that emerge from these stories across over twenty weeks of pregnancy, particularly regarding naming, holding, and spending time with the deceased baby. This contrasts with many accounts of earlier miscarriage, in which the embryo/fetus might not be distinguishable from other tissue and pregnancy is sometimes ended surgically. Consider Johnson's very different account of a miscarriage at six weeks:

It surprised me how little I grieved over that pregnancy. In the months after Luke died, other women had tried to empathize with me by offering up their own experiences with miscarriage. They meant well, but once I had been through both, I knew there was no comparison. At six weeks, there had been no body or face, no head with hair or feet with toes. I had not lived with the child for six months, growing accustomed to his periods of wakefulness and sleep. I had not given him a name or planned his future. I had not watched him lose the fight to live.

Much of what Johnson appeals to in distinguishing Luke's death from her early miscarriage is the *physicality* of the lost fetus/baby. Indeed, the narratives above of mid-pregnancy and later loss also stress physicality—for example, detailing length and weight, resemblance to family members, and other features of appearance. Moreover, one particularly important aspect of physical development, emphasized by Johnson, Levy, and myself, is the possibility of *life outside of the womb* (even pre-viability).

My contention is that the practices of mourning identified above have implications about the moral status of the deceased being and that these practices are more strongly associated with later versus earlier losses. In keeping with gradualism, I want to emphasize fetal physicality as a particularly important factor underlying the difference in practices between early and later RL.⁶⁰

"Physicality" implies a number of things—most obviously the appearance and feel of the mid-pregnancy fetus: its visual humanness and its similarity to (premature) neonates, thus the emphasis on holding one's baby in one's arms and the possibility of live birth. But physicality is also at issue regarding the nature of such a fetus exiting the pregnant body, with RL at this stage often mirroring full-term labor, delivery, and even post-partum recovery (e.g., lactation). Physicality might also function as a marker for the possibility of other morally

relevant features, as when the “baby-like”ness of a mid-pregnancy fetus reminds us that it might be only weeks away from developing mindedness. Finally, physicality also might undergird potentially *relational* aspects of fetal status; as a fetus develops physically, we have more varied ways of “calling [it] into personhood”—for example, by naming, planning for a child-to-be’s future, making room for the child-to-be in our lives, and experiencing fetal movement.⁶¹

The importance of fetal physicality is also bolstered from a surprising direction—considering induced abortion. We might expect most women terminating a pregnancy to think of the fetus as something other than a baby, and primarily feel relief after the procedure. But responses to abortion are more complex than this. Some women, particularly in the case of later procedures, engage in practices of mourning like baptism, apologizing to or saying goodbye to the fetus, identifying oneself as a mother, or even holding the fetus/baby.⁶² In fact, Jeannie Ludlow (40–41) suggests that one major reason for preferring the (now prohibited) dilation and extraction (D&X) procedure, in which the fetus is delivered intact, over D&E is (some) women’s desires to hold and say goodbye to their baby after terminating.⁶³

Abortion providers also speak to the physicality of the mid-pregnancy fetus and the moral/emotional consequences of abortion provision in that period. Lisa Harris describes performing a D&E on a patient at eighteen-week gestation, while she was eighteen weeks pregnant:

With a quick tug, I separated the leg. . . . [A]t that moment, I felt . . . a fluttery “thump, thump” in my own uterus. . . . Instantly, tears were streaming from my eyes—without me . . . even being aware of what was going on. . . . It was an overwhelming feeling—a brutally visceral response—heartfelt and unmediated by my training or my feminist pro-choice politics. It was one of the more raw moments in my life. Doing second trimester abortions did not get easier after my pregnancy; in fact, dealing with little infant parts of my born baby only made dealing with dismembered fetal parts sadder. (76)⁶⁴

She also notes another jarring experience—performing a D&E on a twenty-three-week fetus, only to find that a similarly aged neonate had just been delivered prematurely, and was being treated with heroic measures:

I thought to myself how bizarre it was that I could have legally dismembered this fetus-now-newborn if it were inside its mother’s uterus—but that the same kind of violence against it now would be illegal, and unspeakable.⁶⁵

Other abortion providers share Harris’s ambivalence. Shelly Sella, one of a handful of third-trimester providers in the country, indicates that she has “struggled” because

I think of them as babies. I don’t think of that as a fetus. To me I think of that as a way to distance myself from what I do. I mean it’s one thing when it’s a first-trimester abortion and what you see is a little bit of tissue. But if you go all the way to the other extreme. . . . That’s not tissue. It’s a baby.⁶⁶

Meanwhile, Susan Wicklund describes her choice to offer abortion services only through the first fourteen weeks this way:

Seeing an arm being pulled through the vaginal canal was shocking. . . . Confronting a 21-week fetus is very different. It . . . cannot feel pain or think or have any sense of being, but the reality is, this cannot be called “tissue.” . . .⁶⁷

Political scientist Jon Shields (2011) finds many similar stories in narratives of abortion clinic workers: being “horrified” at second-trimester abortions, sympathizing with later fetuses, and emphasizing encounters with developed body parts, like feet and faces.⁶⁸ Others even question the morality of their work:

I never in a million years thought I’d feel like that because I believe in abortion rights so strongly.⁶⁹

As Shields (2011) stresses, these struggles as well as other psychological/emotional difficulties appear completely absent from abortion provision in the first trimester. Thus, there is something about the later fetus—its physicality—that makes all the difference.

What is described here by providers is not grief of course—these fetuses are not their loved ones.⁷⁰ Yet surely these responses ought to be taken as relevant evidence about fetal status. And this is exactly how some providers interpret their own struggles: that it is emotionally difficult to confront the later fetus physically just because such fetuses have moral value that earlier fetuses do not have.⁷¹

My moderate PLO, then, claims the following. No-fetal-status accounts must deem common practices of mourning after later RL—as well as abortion providers’ conceptions of what they are doing—mistaken, because these practices and responses imply moral status. But a gradualist approach to fetal status can vindicate these responses to mid-pregnancy loss while still capturing much of what is attractive about no-fetal-status views, yet also avoiding the difficulties we saw in Porter’s account.

d. Pragmatism and Experience as Evidence

The basic strategy of PLO involves taking responses to RL to be a kind of moral evidence. But this might seem like a mistake because emotions can be confused or unwarranted, and our practices can be incoherent or vicious. More, then, needs to be said about what it means to take such responses as evidence, and about the role of evidence in moral philosophy generally.

Pragmatism about the nature of ethical inquiry and how we learn about values can answer these concerns.⁷² This approach stresses the importance of experience in “trying out” one’s beliefs and values. Further, pragmatism predicts that

in attempting to live with our beliefs and values within the natural and social world we will come upon conflicts, many of which could not have been predicted prior to the experience of living. We might find that we cannot make the world conform in the ways that our belief-value-emotion system indicates it will or should be. Or we might discover that previously unproblematic values or ethical conceptions are no longer compelling as we go about living with them. We have options in responding to such conflicts. We might find a way to change the world after all, but often we will need to alter our system of beliefs, values, and emotions to come to resolution in response to new experiences. Thus, the world forces us to engage in reflection and deliberation—processes that can lead to our reconceiving our assumed ends and values.⁷³ Experience can be evidence on a pragmatist view in the sense that it forces reflection and deliberation and motivates a change in one's belief-value-emotion system.

Of note here are three points about this pragmatist account. Most importantly, it is not the case that we may read directly off of emotions or practices what is or is not the case morally. Again, emotions and practices can be mistaken. Second, this account largely dispenses with Porter's focus on grief as an emotion, and emphasizes practices instead. What is of interest for a pragmatist is not merely the emotional state one happens to experience in response to a particular event, but rather how that experience and response play a role in one's deliberative process—that is, one's attempt to make *sense* of their experiences and responses over time through reflection. Moreover, practices of mourning are a more appropriate type of response to look to than emotions in that practices of mourning are regularly engaged in to mark the value of deceased individuals by nonloved ones. When we attend a funeral for a friend's loved one, we might have never met the deceased, and so we do not grieve in Porter's sense. But we do many other things in engaging in the practice of funeral attendance, one of which is to mark the death as the loss of a morally significant being, and of a person particularly important to our friend. In other words, unlike grief as an emotion, practices of mourning like holding a funeral, referring to one's lost baby by name, or displaying photos of one's lost baby make claims on *other* members of the moral community to engage with the loss on the terms of the parent-who-would-have-been.

Finally, the pragmatist approach fits the case of RL particularly well inasmuch as pragmatism pays particular attention to unexpectedness, and for many, the lived experience of RL could not be understood or anticipated beforehand. For myself and Parsons (2010) prior philosophical conceptions of fetal status seemed to rule out the very post-RL responses we found in ourselves. Unexpectedness is also glaring in the case of abortion providers; such reactions are likely unwanted, and even threatening to the world-view and self-identity of providers. The moral understandings not only of women who have experienced RL, but also of providers then are of utmost philosophical interest. These individuals are undertaking a kind of experiment in living in which they test their moral conceptions by living according to them to discover whether they are satisfying.⁷⁴

V. Taking Stock

What do we gain by moving from Porter's PLO to mine? First, I explicitly combine PLO with an intuitively plausible account of fetal moral status, which is supported by various examples of lived experience. Second, gradualism that emphasizes physicality allows PLO to avoid difficulties regarding marginal cases of pregnancy/embryo loss. Third, in focusing on practices of mourning rather than reports of grief, my view avoids difficulties with the empirical literature on post-RL grief. Finally, in situating PLO within a broader pragmatist framework, I shed light on how experience can be evidence without assuming the infallibility of post-loss emotions and practices.

What of the objection I raised against Porter's PLO, that taking post-RL grief seriously needn't mean taking it literally? Could practices of mourning similarly be (re)interpreted to downplay the apparent implications of fetal status? While this a real challenge to any account of PLO, I think my account is on firmer ground here than Porter's. It is one thing to reinterpret a self-report of grief or the use of terminology like "babies" as not implying that the fetus is an individual. But it is more difficult to do this plausibly regarding holding a funeral, naming a baby, or counting the lost baby among one's children in everyday discussion.

Still, Porter's view seems to retain one major strength over mine: the ability to vindicate common grief/mourning responses for the *earliest* RLs. It is true that the gradualist account makes no room for the fetal individuality of extremely early embryos or empty sacs, and perhaps not for later embryos and first-trimester fetuses either. This is a bullet I must bite, and yet I offer three points that help blunt the sting of bullet-biting. First, recall that Porter admits that post-RL grief is possibly more common after later losses. I argue that there is an even greater disparity between typical responses to early and later loss regarding practices of mourning. Thus, it might turn out that practices of mourning are rarely taken up with regard to the earliest losses, and thus few women's experiences are actually left out of my account.⁷⁵ Second, as pointed out earlier, Porter herself also runs the risk of dismissing some women's testimony when it comes to anembryonic pregnancies, false pregnancies, and infertility; thus, no (plausible) version of PLO can speak to *all* responses to RL.

Finally, and most fundamentally, note that Porter counsels against taking the denial of fetal status *lightly*, though she (79 n52) recognizes that "strong theoretical reason" might sometimes rightly lead us to philosophical positions that cannot vindicate some aspects of testimony. Porter is right to caution in this way, but I suggest that my moderate PLO does not make the move of denying fetal individuality for the earliest embryos lightly at all. In fact, I have tried to show in this article that theoretical reasons favor my version of PLO over Porter's.

VI. A Final Worry: Experience as Evidence

Suppose then that my account does improve upon Porter's account in the ways outlined to provide a more plausible version of PLO. But in trying to flesh

out a story of how experience can function as moral evidence, my appeal to pragmatism raises new questions as well. I conclude the article by offering some thoughts on some ongoing worries about my pragmatic approach to PLO.

The first is about our culture's silence on RL generally; in contrast to deaths of born family members, health problems, and even the death of pets, we have no established customs to mark or express sympathy for RL.⁷⁶ But if our society does not know what to do with pregnancy loss,⁷⁷ how can we look to responses to RL as evidence about how fetuses count morally? What if part of what is needed is *more varied* ways of acknowledging RL? Perhaps some experiencing mid-pregnancy loss would embrace alternative practices for marking this kind of loss that do not imply fetal moral status, if only such options were available and socially meaningful.⁷⁸

Second, one might question whether the above narratives are sufficiently representative of diversity in time, place, and culture. If the practices described above are really evidence of mid-pregnancy fetal moral status, shouldn't we find those practices (or something similar) in most cultures and at most times? And what of those women even here and now that react differently to later RL than the narratives detailed above?⁷⁹

Finally, as Joan Scott (1991) has argued, taking experience to be evidence has a tendency to naturalize phenomena, rather than allowing the systems that create those phenomena to be recognized and interrogated.⁸⁰ In the case of RL and the narratives above, we might say that the experiences in question are theory-laden in a way that undermines their ability to function as evidence. Rather than serving as innocent, pre-theoretic evidence of some real way that the world is when it comes to fetal status, the relevant emotional responses and practices are informed by social structures and norms that construct the very "experience" in question. Indeed, some experience the practices of mourning discussed above as *imposing* unwelcome politicized values on them rather than as innocently acknowledging the sadness of RL.⁸¹ If the experiences PLO appeals to as evidence of fetal status are actually the result of going ideologies, they tell us nothing relevant about fetal status.

These are quite important concerns, and the best response to them lies in the nature of pragmatism and what moral status is on a pragmatist perspective. One theme at work in the above that worries is the assumption that in appealing to experience the pragmatist must thereby be aiming to claim something really *real* about the world and thus to be assuming that experience can be innocent. But this is not what the pragmatist is up to. Pragmatists typically eschew meta-physically heavy ways of making sense of value (Anderson 1993; Putnam 2004)⁸²; and the conception of ethical inquiry I describe in section IV.d in no way views the task of ethical inquiry as getting at the moral really *real*. On my view moral deliberation arises when we are faced with conflicts, and what we aim to do is overcome those conflicts, restore coherence in our system of beliefs/emotions/values, and find new more satisfying ways of living and valuing. Acknowledging the theory-ladenness of the experience of RL is not only

compatible with, but actually required by, the pragmatic conception of moral inquiry and deliberation.

I have tried to paint a picture above regarding mid-pregnancy loss of a conflict that we face here and now. It ought not be surprising if responses to the death of mid-pregnancy fetuses and related practices have differed greatly culturally and historically. Our context, of course, determines the contours of the conflict we face, and our current situation is one in which fetuses even just twenty-three weeks into gestation sometimes survive and (eventually) thrive; this no doubt shapes our most basic understandings of what a baby is and how to think about infant and fetal moral status. And yet historically even full-term infants were viewed quite differently given high infant, child, and maternal mortality. In that context it is no surprise that conflict over mid-pregnancy fetuses was not very pressing. More relevant were questions of how to make meaning of and live with losses about which we in the West today have been long settled.⁸³

Still, the knowledge that understandings of and responses to infant and child death have varied with time and place does not make us any less certain of our own judgments about infant's and children's moral status or the appropriateness of practices of mourning upon their deaths. Similarly, that responses to mid-pregnancy loss have varied historically and culturally needn't undermine our judgments here and now. We should of course reflect on alternative explanations of our emotions and question whether we have good reason to engage in our practices. But at least in the case of infants and toddlers, our current approach is the only one we reflectively self-endorse and that is apparently the end of the story.⁸⁴ The question is settled *for us*. The question of mid-pregnancy fetal death and status is obviously not similarly settled for us, though I suspect reflective self-endorsement must play a similar role in our thinking on the topic. This article just is one attempt to help us become clearer on what we can and cannot reflectively self-endorse regarding mid-pregnancy loss.

Can PLO succeed, then? I have here tried to offer the strongest version of the objection possible by targeting it only to later fetuses and undergirding it with a pragmatist account of moral inquiry. On such a view, the heart of the matter comes down to how the responses and practices discussed might be alternatively accounted for and whether any of those alternatives can make sufficient sense to those who have had the (admittedly noninnocent) experiences in question.

How would we know if such a satisfactory alternative were possible? Presumably we need to hear more about these experiences from individuals with varied outlooks who have undertaken experiments in living with the relevant values in the face of various sorts of RL. In particular, we need to know what people do and do not reflectively self-endorse. Speaking for myself as one such person, my views on this issue have ebbed and flowed over time, yet one constant has remained: I have not figured out a way to make sense of the baby I delivered and held except as a being of significant moral value. And thus, this issue seems settled for me.

I thank Gina Shouten, Helga Varden, Johanna Luttrell, and Anna Mudde for significant feedback as part of the Mentoring Program for Pre-Tenure Women in Philosophy. A number of anonymous reviewers have also offered criticisms that have greatly improved the article over time. I thank audiences at the 2014 Lehigh University Philosophy Unbound Conference and within the SUNY Geneseo Women's and Gender Studies Program for helpful feedback as well. Thanks finally to Vanessa Carbonell and Marie Jayasekera for feedback and encouragement over the six years I have been thinking about and writing this article.

Notes

- ¹American College of Obstetricians and Gynecologists Committee on Practice Bulletins—Gynecology, “Early Pregnancy Loss,” *Practice Bulletin* 150 (2015): 1–10. Retrieved from <https://www.acog.org/-/media/Practice-Bulletins/Committee-on-Practice-Bulletins—Gynecology/Public/pb150.pdf?dmc=1&ts=20170810T1410054513>. I use the term “reproductive loss” (RL) in order to be inclusive of many different sorts of losses, but also as a way to avoid confusions brought about by common terms like “miscarriage” and “pregnancy loss.” For example, these terms technically refer only to embryo/fetal death *after* implantation, but the vast majority of embryo deaths occur prior to implantation. Similarly, “miscarriage” does not apply to losses after twenty weeks gestation, and some kinds of pregnancy loss that involve live birth in the pre/perivable period might be better described as neo-natal losses. RL is meant to avoid difficulties of terminology and to encompass *all* of these cases.
- ²For some discussion of these estimates, see Amy Berg, “Abortion and Miscarriage,” *Philosophical Studies* 174 (2017): 1217–26 at 1218.
- ³On silence, see Linda Layne, “Breaking the Silence: An Agenda for a Feminist Discourse of Pregnancy Loss,” *Feminist Studies* 23 (1997): 289–315. On the recent philosophical attention to RL, see the 2015 special issue of *The Journal of Social Philosophy* on pregnancy loss.
- ⁴I reluctantly use the term “women” throughout the article to keep salient the gendered nature of issues of lived experience and testimony regarding RL. However, not all gestators are women, and nongestators of all genders share many aspects of the experience of RL with their gestating partners.
- ⁵Lindsey Porter, “Miscarriage and Person-Denying,” *Journal of Social Philosophy* 46 (2015): 59–79.
- ⁶On the latter, see Jeannie Ludlow, “Sometimes It’s a Child and a Choice,” *NWSA Journal* 20 (2008): 26–50 at 29–31.
- ⁷Margaret Little, “Abortion and the Margins of Personhood,” *Rutgers Law Journal* 39 (2008): 331–48 at 333–38.
- ⁸Michael Tooley, “Abortion and Infanticide,” *Philosophy and Public Affairs* 12 (1972): 37–65. Mary Anne Warren, “On the Moral and Legal Status of Abortion,” *Monist* 57 (1973): 43–61. Alberto Giubilini and Francesca Minerva, “After-Birth Abortion: Why Should the Baby Live?” *Journal of Medical Ethics* 39 (2013): 261–63.
- ⁹Elizabeth Harman, “Creation Ethics,” *Philosophy and Public Affairs* 28 (1999): 310–24 and “Sacred Mountains and Beloved Fetuses,” *Philosophical Studies* 133 (2007): 55–81. Jeff McMahan, *The Ethics of Killing: Problems at the Margins of Life* (Oxford: Oxford University Press, 2002).
- ¹⁰Harman, “Creation Ethics,” 310–14.
- ¹¹Harman, “Creation Ethics,” 310, but see note 1. Harman, “Sacred Mountains,” 59.
- ¹²See Susan Lee, et al., “Fetal Pain: A Systematic Multidisciplinary Review of the Evidence,” *JAMA* 294 (2005): 947–54. Here I assume that pain-capability is a minimal requirement of consciousness;

thus, I take the going scientific view on the development of pain-capability as a proxy. See, however, in contrast, McMahon's *Ethics of Killing* for a more conservative approach.

- ¹³ Most famously, Judith Jarvis Thomson, "A Defense of Abortion," *Philosophy and Public Affairs* 1 (1971): 47–66.
- ¹⁴ For example, Susan Sherwin, "Abortion through a Feminist Ethics Lens," *Dialogue* 30 (1991): 327–42.
- ¹⁵ Porter, "Person-Denying," 61.
- ¹⁶ Porter, "Person-Denying," 61.
- ¹⁷ Rosalind Hursthouse, "Virtue Theory and Abortion," *Philosophy and Public Affairs* 20 (1991): 223–46.
- ¹⁸ Hursthouse, "Virtue Theory," 238.
- ¹⁹ Sarah Clark Miller, "The Moral Meanings of Miscarriage," *Journal of Social Philosophy* 46 (2015): 141–57.
- ²⁰ See Hilde Lindemann, "The Stories We Live By," *Journal of Social Philosophy* 46 (2015): 80–90 at 85, and Alison Reiheld, "'The Event that Was Nothing': Miscarriage as a Liminal Event," *Journal of Social Philosophy* 46 (2015): 9–26.
- ²¹ Mark Zuckerberg's Facebook 7/31/15.
- ²² Harman, "Creation Ethics," 315–16. Here Harman perhaps indicates a problematic assumption about RL: that all of those experiencing it will "start again." But this fails to capture the complexity of what can be bad about RL and to acknowledge the diversity of responses to RL. Those experiencing RL vary in terms of the wantedness of the pregnancy, emotional recovery after loss, how easily they can conceive, whether miscarriage is recurrent, the prognosis for ever carrying to term, and so on. Such background information surely often impacts choices regarding trying again. Thanks to an anonymous referee for raising this point and see also Byron Stoyles, "The Value of Pregnancy and the Meaning of Pregnancy Loss," *Journal of Social Philosophy* 46 (2015): 91–105 at 96.
- ²³ Harman, "Creation Ethics," 315–16.
- ²⁴ Porter, "Person-Denying," 65.
- ²⁵ Porter, "Person-Denying," 68.
- ²⁶ Porter, "Person-Denying," 68.
- ²⁷ Porter, "Person-Denying," 75.
- ²⁸ Porter, "Person-Denying," 59. One might wonder: If women's responses to RL vary, then why so much attention to grief specifically? Porter's answer is that claims about fetal status are asymmetric in what they imply about the appropriateness of grief; the fetus's having moral status is compatible with grief (obviously), but with non-grief as well, since, after all, we don't grieve for *all* of those who have moral status, but only those who are important *to us*. Thus, lack of grief can be an appropriate response to the death of a being with moral status, but grief cannot be a proper response to the death of a being of no moral concern at all. Porter, "Person-Denying," 68.
- ²⁹ Porter, "Person-Denying," 74.
- ³⁰ Importantly, though, such a claim is contentious within some feminist philosophical work on fetal status and pregnancy loss, as well as among some who have experienced RL.
- ³¹ Porter, "Person-Denying," 74. Porter simply asserts that grief is "reasonably common" in very early losses and then points out that statistically the majority of people who experience RL-related grief are likely those who have experienced very early miscarriage, since very early miscarriage occurs much more often than later losses.
- ³² Porter, "Person-Denying," 74.
- ³³ *Ibid.* This is a statistical point, I take it. Since early miscarriage is much, much more common than loss in the second or third trimester, it follows that many—perhaps most—of RL griever will be those who experienced early pregnancy loss. This could turn out to be so even if likelihood of grief is strongly tied to the gestational point at which loss occurs.
- ³⁴ I suspect some readers will find this argument problematic. Shouldn't philosophical accounts of pregnancy, abortion, and fetal status be able to speak to the diversity of women's experiences

without assuming that more common responses are more legitimate or deserving of consideration in theorizing?

³⁵ Harman, "Creation Ethics," 316.

³⁶ Porter, "Person-Denying," 65–66.

³⁷ One main difference is that Porter's "grief" does not obviously imply anything about whether death is bad for the subject, as Harman's "mourning" does.

³⁸ Norman Brier, "Grief Following Miscarriage: A Comprehensive Review of the Literature," *Journal of Women's Health* 17 (2008): 451–64.

³⁹ Pregnancy message boards routinely involve posts by expectant mothers who report feeling as though they are grieving for a baby they lost after finding out through ultrasound that the baby is not of their preferred or expected biological sex. Lasker and Borg discuss a similar feeling among those experiencing (what we usually deem) infertility in the form of an unsuccessful IVF cycle: "I couldn't go to work and I couldn't stop crying. Again, I felt like I had lost a baby. . . ." Judith N. Lasker and Susan Borg, *In Search of Parenthood* (Boston: Beacon Press, 1987), 59.

⁴⁰ See Berg, "Abortion and Miscarriage," on some of the worrisome implications of viewing early embryos as having significant moral status. More worrisome still is the case of anembryonic pregnancies, since it is extremely hard to see how an empty sac could be a *someone*. And yet interestingly, for women who experience very early pregnancy loss with no confirmation of a fetal pole and/or heartbeat through ultrasound or Doppler, there is no way to know for a given miscarriage whether an embryo ever came into existence or not. What to say about grief after early miscarriage is thus even more complex. Some women who report grief_p are mistaken in their belief that an embryo ever existed. What ought we make of such a situation? (Here Layne's "Breaking the Silence" embraces the idea that even an empty sac can be a "protoperperson" if the expectant mother had begun the process of bringing that developing conceptus into personhood. On this point, I demur as Layne's suggestion stretches the concept of personhood too far in my view.)

⁴¹ Kate Parsons, "Feminist Reflections on Miscarriage, in Light of Abortion," *International Journal of Feminist Approaches to Bioethics* 3 (2010): 1–22.

⁴² *Ibid.*, 7–10.

⁴³ My strategy is to remain agnostic on the question of whether early fetuses might have significant moral status. If they do have such status, it certainly cannot be in virtue of physicality (as will become clear as I say more about physicality below). But I leave as an open question whether any other ground might be identified that could offer a plausible account of embryonic/early fetal status, while avoiding the sorts of worries I raise regarding Porter's account.

⁴⁴ Some physical individuality views might locate individuation not at conception, but at the point at which an early embryo's twinning is no longer possible.

⁴⁵ Little, "Margins of Personhood."

⁴⁶ Jon Shields, "Almost Human: Ambivalence in the Pro-Choice and Pro-Life Movements," *Critical Review* 23 (2011): 495–515. Lisa Harris, "Second Trimester Abortion Provision: Breaking the Silence and Changing the Discourse," *Reproductive Health Matters* 16 Suppl. (2008): 74–81.

⁴⁷ On dismissing intuitions about fetal status, see Shields, "Almost Human," 511–12.

⁴⁸ Little, "Margins of Personhood," 341–42.

⁴⁹ Consider comments by one abortion clinic worker: "At 9 weeks you start seeing fetal parts. And by the second semester it's, you know, it's a baby, and by eighteen weeks it's definitely a baby." Shields, "Almost Human," 500–01.

⁵⁰ Little, "Margins of Personhood," 343.

⁵¹ One might wonder here if Little's view, in allowing some minimal status of the early fetus, actually complements Porter's PLO. Little (342) does, after all, claim that abortion and miscarriage always involve loss, allows that love is a reasonable response to the early human organism, and seems to hold all embryos/fetuses respect-worthy. Yet at the same time, she deems the moral status of the early fetus "modest" (344) in comparison to mid-pregnancy fetuses and suggests that very little justification is needed to pursue early abortion decently. My interpretation of Little

then is that being respect-worthy is not the same as being a *someone*, and thus this minimal form of respect for a human organism cannot do the work Porter needs. (In support of this interpretation, consider that if every zygote is a new *someone*, IVF embryo disposal and embryonic stem cell research will immediately be morally suspect; yet nothing in Little's work seems to indicate she would embrace such a view.)

- ⁵² Again, this complexity regarding different sorts of losses motivates my use of "reproductive loss" as an umbrella term.
- ⁵³ Ariel Levy, "Thanksgiving in Mongolia," *The New Yorker*, November 18, 2013. Retrieved from http://www.newyorker.com/reporting/2013/11/18/131118fa_fact_levy?currentPage=all.
- ⁵⁴ Reiheld, "Miscarriage as a Liminal Event."
- ⁵⁵ Reiheld, "Miscarriage as a Liminal Event," 10–13. See also Stoyles, "Value of Pregnancy."
- ⁵⁶ Rebecca Johnson, "Risky Business," in *About What Was Lost*, ed. Jessica Gross (New York: Plume Books, 2007), 120–30.
- ⁵⁷ MISS Foundation, "Caring for Families Experiencing Stillbirth: A Unified Position Statement on Contact with the Baby." Retrieved from http://missfoundation.org/news/StillbirthContactw-Baby_position_statement.pdf.
- ⁵⁸ Our naming practices regarding animals are of interest here: we name our pets, but not our dinner.
- ⁵⁹ "Stillbirth: Your Stories," *New York Times*. Retrieved from http://www.nytimes.com/interactive/2015/health/stillbirth-reader-stories.html?_r=0> 7/28/15.
- ⁶⁰ See, for instance, Jessica Gross's collection on miscarriage, where emphasis on the physicality of the fetus and discussion of the above sort of practices seems wholly missing from the accounts of first-trimester miscarriage, but present in the accounts of mid-pregnancy loss (of which there are many fewer). Jessica Gross ed., *About What Was Lost* (New York: Plume Books, 2007).
- ⁶¹ See Lindemann, "Stories," on "calling into personhood." Of the four above-listed ways in which fetal physicality is at stake in mid-pregnancy loss, this relational aspect is the most complex. For the sake of space and because I have taken up relationality in depth in other work, I limit discussion of relationality in this article. (See Amanda Roth, "(Feminist) Abortion Ethics and Fetal Moral Status," in *The Bloomsbury Companion to Analytic Feminism*, ed. Pieranna Garavasco (Forthcoming.) However, I intend my account to be congenial to *some* aspects of relationality. In fact, Little herself combines gradualism with (some aspects of) relationality, for example, see her on "proleptic engagement" (2008, 342) as well as her view on the relational nature of the gestational relationship and women's potential duty to gestate in "Abortion, Intimacy and the Duty to Gestate," *Ethical Theory and Moral Practice* 2 (1999): 295–312.
- ⁶² Ludlow, "Child and a Choice," 43–46. Bobbie Jeanne Kennedy, "Dilemmas in Practice: I'm Sorry, Baby," *American Journal of Nursing* 88 (1988): 1067–69.
- ⁶³ Ludlow, "Child and a Choice," 40–41.
- ⁶⁴ Harris, "Second-Trimester Abortion," 76.
- ⁶⁵ *Ibid.*
- ⁶⁶ *After Tiller* (2013). Dir. Martha Shane and Lana Wilson. Roco Films.
- ⁶⁷ Harris, "Second-Trimester Abortion," 76.
- ⁶⁸ Shields, "Almost Human," 501–02.
- ⁶⁹ *Ibid.*
- ⁷⁰ This seems yet another reason not to hang PLO on claims about grief.
- ⁷¹ Harris, "Second-Trimester Abortion."
- ⁷² Amanda Roth, "Ethical Progress as Problem-Resolving," *Journal of Political Philosophy* 20 (2012): 384–406.
- ⁷³ *Ibid.*
- ⁷⁴ Elizabeth Anderson, "John Stuart Mill and Experiments in Living," *Ethics* 102 (1991): 4–26.
- ⁷⁵ This at least has been my own experience in online and in-person discussions of pregnancy loss.
- ⁷⁶ Layne, "Breaking the Silence," 292. Compare posting on Facebook about one's dog dying, versus one's mid-pregnancy loss. I found the former is completely socially expected and normalized, and the latter terribly awkward, and even almost like a social faux pau.

⁷⁷ I thank an anonymous referee for this wording.

⁷⁸ Layne, "Breaking the Silence." See also Amy Mullin, "Early Pregnancy Losses: Multiple Meanings and Moral Considerations," *Journal of Social Philosophy* 46 (2015): 27–43 for concern about institutionalized practices problematically imposing a "right" way of responding to RL.

⁷⁹ See Carina Corbet-Owen and Lou-Marie Kruger, "The Health System and Emotional Care: Validating the Many Meanings of Spontaneous Pregnancy Loss," *Families, Systems, and Health* 19 (2001): 411–27 (on how the wanted/unwantedness of a pregnancy might affect response to even late loss) and Chavi Karkowsky, "Second Trimester Tragedy," *Slate*, January 8, 2014. Retrieved from http://www.slate.com/articles/health_and_science/medical_examiner/2014/01/second_trimester_miscarriage_a_doctor_on_grief_over_lost_pregnancies.html. (for a description of a seemingly matter-of-factly handled fifteen-week loss). Still, while there is a very real need to acknowledge diversity in responses to (later) RL, Porter's point about the asymmetry of the implications of claims of fetal status for the appropriateness of grief remains and applies to practices of mourning as well (see footnote 28).

⁸⁰ Joan Scott, "The Evidence of Experience," *Critical Inquiry* 17 (1991): 773–97. Again, I thank an anonymous referee for raising this worry.

⁸¹ See especially Leslie Reagan, "From Hazard to Blessing to Tragedy: Representations of Miscarriage in Twentieth-Century America," *Feminist Studies* 29 (2003): 356–78 for the notion that "emotional responses [to miscarriage] are culturally, socially, and historically produced" (373). Reagan (356–58) rails against the representation of her lost fetus as a baby through the use of the term "baby" by doctors, the discussion of grief in hospital materials about miscarriage, and the symbol of baby footprints on those materials: "Those footprints for an eleven-week pregnancy still make my stomach turn." (Of interest from a gradualist perspective is the fact that Reagan specifically emphasizes how early in her pregnancy she was; does she imply that these practices are more appropriate for a later pregnancy loss?)

⁸² Hilary Putnam, *Ethics without Ontology* (Cambridge, MA: Harvard University Press, 2004). Anderson, *Value in Ethics and Economics* (Cambridge, MA: Harvard University Press, 1993).

⁸³ Consider historical practices of refraining from naming infants for a weeks or months after birth in times of high infant mortality.

⁸⁴ See Anderson, *Value in Ethics and Economics* on reflective self-endorsement.