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Personhood, Threshold and Equality

Benjamin Williamson

Introduction

Whether abortion and infanticide are permissible has been debated for a long time in philosophical literature and continues to this day. In this paper, I will assume without argument that one's view about the moral status of the fetus and newborn will determine what side he/she comes down on in this debate. I am also proceeding with the assumption that personhood is not a conventional or linguistically effective device that has little or no connection to reality. Persons exist and personhood itself is real. With that being said, I will defend a more controversial claim that will undoubtedly stir a hornet's nest. This will be stated succinctly but will be defended in greater detail throughout the paper: *If the fetus and newborn are not persons, then abortion and infanticide are permissible. If a 3-year-old child is a person but to a lesser degree than a 14-year-old, then the 3-year-old child's moral status is lower than the 14-year old's. If no adequate threshold exists conjoined with the fact of metaphysical disparity among human beings that are persons, then no two human persons are moral equals.*

Thus, if personhood-making properties come in degrees and one's personhood status (or lack thereof) supervenes on those properties, then it follows that one's personhood comes in degrees as well. If no adequate threshold of

personhood can be reached, given the general nature of personhood as understood and argued by pro-life critics, then there cannot be any two persons – that differ in their personhood making properties – that are of equal moral status. If there cannot be moral equality among human persons because of the metaphysical disparity among them given the absence of an adequate threshold and the intrinsically degreed properties that constitute their personhood, then some actions are, in principle, permissible to do to some human persons that may not be permissible to do to others. Lastly, if both the fetus and newborn have the active potential or root/natural capacity for rational thought in the same way that a 3-year-old child does because of an equally shared human nature¹ despite the fact none of them can actualize that potential, or exercise the capacity for rational thought but nonetheless are equally internally directed towards the realization of that potential, then whatever is true of the 3-year-old child for personhood is also true for the fetus and newborn. If critics of the pro-life view argue that the fetus and newborn lack the potential for personhood-related activities because of their developmental status and thus lack personhood, then the pro-life critic can equally argue that the 3-year-old child lacks the potential to see itself as a subject that values the kind of freedom that would make enslavement impermissible. If the

¹ Or if they all are members of a natural kind

child lacks that potential, then it is a person that it would be, in principle, permissible to enslave.

Now, one might wonder why anyone should spend that much time arguing about personhood. Perhaps debates about personhood are as practically “useful” as debates over universals as to whether they inherently have any serious moral implications for society and culture. It does seem, however, that debates about who counts as one of us are extremely important for at least two reasons. First, disastrous consequences are inevitable for failing to arrive at the truth concerning an arguably fundamental reality about human nature. The consequences for slaveowners in the Southern states during the Civil War as well as Nazi Germany in the concentration camps during WWII were quite deadly. Had the slaveowners or Nazi officers (at least a sizable number) realized that their subjects of harm and ownership were based on faulty anthropology and human value, they would have recognized their abominable actions and might have repented and thus slavery in the United States and the Holocaust could have been avoided. Second, it is reasonable to say that more human rights violations are inevitable when the class of human beings is divided into (1) Human non-persons and (2) Human persons. After all, even if one grants that some sharp line exists between (1) and (2), it does not follow that all in (2) are equal. One could argue that not all in (2) share personhood equally and consequently sharp lines, *in general*, began to disappear.

In this paper I have four questions for defenders for the permissibility of infanticide and abortion that must be answered in a logically coherent and non-ad hoc fashion without implicitly borrowing intuitions or beliefs about human value that do not fit with their framework:

- Is there a basis for the claim that all human persons are morally equal?
- Is any threshold placement nonarbitrary?
- Do critics of the pro-life position consistently handle the potentiality principle between fetuses & infants and older yet immature children?
- Is formulating an ethical framework, without reference to, or directly with, one that directly contradicts an indisputable set of metaphysical truths concerning philosophical anthropology, rationally justified?

My focus of this paper will be to analyze Jeff McMahan's three-tiered account of a threshold of personhood and Kate Greasley's range property view of personhood, briefly expound on them and offer some critique.

McMahan's Account

In his article "Challenges to Human Equality", McMahan outlines what he takes to be the central problem confronting certain accounts of personhood as they bear on an arguably fundamental principle known as the "equal wrongness thesis". Initially, he had stipulated and developed an account, according to which, there are people below and above the moral equality threshold. The individuals

below the threshold are fetuses, infants, and some animals and those above it are you and me. He explains, “For the individuals above the threshold have equal worth so that wrongful killings of these individuals are always equally wrong...”²

One of the motivating concerns for developing this account of personhood is that it would be disastrous to abandon the concept of egalitarian equality altogether in Western society. But one must have the right metaphysical grounding to justify these sorts of treatments because otherwise, they are vulnerable to the charge of ad hocness. The tension between McMahan’s – and others who defend similar views of personhood – metaphysical anthropology and his ethical framework for proper treatment of individuals is brought out by another critic who writes: McMahan wants to combine a naturalistic, broadly Humean, picture of a world where continuous properties come in degrees, with a set of Kantian intuitions that require sharp boundaries between persons and non-persons. This is an essentially unstable combination.”³

McMahan explores a further question that any honest inquirer would be uncomfortable in asking when he asks, “How can it be that variations in the degree to which those capacities are developed in those above the threshold do not matter at all to the degree to which it is wrong to kill them?”⁴ The crux of this

² Jeff McMahan, “Challenges To Human Equality,” *Journal of Ethics* 12, 94 (2008). <https://doi.org/10.1007/s10892-007-9020-9>.

³ *Ibid.*, 94.

⁴ *Ibid.*, 95.

question lies in the fact that there is only a difference in degree of developmental characteristics between those below the threshold, those above it, and even among those who are “moral equals”. Can developmental differences be highlighted enough to exclude some from the circle of moral equality, but suddenly ignored once a certain threshold is posited? Is this not a sort of turning a blind eye to the undeniably empirical facts, and clinging to a fundamental moral principle that is dramatically threatened by the position?

McMahan also believes that by proposing a three-tiered account of a threshold view of personhood, one can rescue the moral equality principle in a rationally responsible manner. According to this view, there are individuals in the lower threshold who are significantly removed from the higher threshold, individuals clearly above the higher threshold, and individuals between both thresholds. For the former, this would include embryos, early-term fetuses, and some animals. For those in the higher threshold, this would be, at the very least, adults, although he does not address which younger children would fall into this range. Lastly, those who are in the intermediate threshold would be developed fetuses, infants, and young children. The difference – he says – between those in the higher threshold and intermediate one is not great or significant, although it remains to be seen how early in human postnatal development those individuals enter the higher threshold, if at all.

One alternative to this view would be to embrace a sort of gradualist view of human development and value according to which human value supervenes on his or her level or degree of psychological capacities or powers. Those who have less psychological capacities have a lower level of moral respect than those who have significantly higher psychological capacities. But even those who are more psychologically developed themselves will not be equal, even in their own group. Even though McMahan dismisses this as “profoundly counterintuitive”, he does not explain why it does not logically follow from his metaphysical account of human nature. If, after all, the differences between all human beings are differences of degree, how can one posit a moral equality thesis that seems to directly contradict his philosophical anthropology? In the end, I do not find myself persuaded by McMahan’s attempt to ground human equality by positing a higher, intermediate, and lower threshold account of personhood. Nevertheless, it is a commendable and thought-provoking effort.

Greasley’s Range Property Account

Kate Greasley, in her book, “Arguments about Abortion: Personhood, Morality and Law” has presented an impressive, sophisticated case in defense of abortion rights. This book is quite dense in some places and requires careful attention to detail to follow the arguments. In this section, I will explain her account of personhood considered as a range property, interact with her claim that

there's an equal sorites problem with the conception criterion for ascribing full personhood to all human beings, and attempt to show why her argument fails.

In discussing the issue of human equality, Greasley finds herself, in a sense, agreeing with the pro-lifer that a gradualist account of personhood is *prima facie* at odds with a commitment to basic human equality. She concedes that “not even all born human beings bear out these capacities to exactly the same extent.”⁵ Furthermore, she also raises the question of how it could be denied that some born human beings are more fully realized persons than others given the metaphysical, developmental disparities between them.⁶

For this account and arguably all accounts of personhood that link full moral status to some psychologically immediately exercisable capacity, there arises a two-horned dilemma. The first horn is to grant full personhood to all human beings regardless of the stage of development and defects in the realization of certain capacities. This is likely to be rejected on the grounds that it is “specieist” and too generous to all members of the human family. The other horn of the dilemma is to embrace a full gradualist account of human personhood and value and treat every human being according to their developmental stage. This suggestion is also likely to be rejected because it contradicts the widely held

⁵ Kate Greasley. *Arguments about Abortion: Personhood Morality and Law* (Oxford: Oxford University Press, 2017), 181.

⁶ *Ibid.*, 182.

conviction that there is shared moral equality and the precise debate concerns who belongs in that category and how to rectify the differences among those who would be considered to be morally equal with each other. Greasley is likely to consider this to be a false dilemma and offers an alternative escape which I will examine shortly.

In alluding to the late political philosopher John Rawls, she states that “Rawls believed that grounding human equality on variable natural capacities could be consistent with a commitment to basic human equality.”⁷ Before getting into the criticisms of Greasley’s proposed threshold solution to the equality problem, this quote deserves some interaction. First, Greasley ascribes variation to “natural” capacities that would be shared by some members of the human family and would concur with Rawls that moral equality could build upon this fact. The problem with this suggestion is that it either strikes one as contradictory or uses “natural” in a different way than a pro-life philosopher would. If a capacity is present in a human being in virtue of having a human nature and having a nature is an all-or-nothing characteristic, then it is clearly false that capacity would come in variation since that human nature is shared by all human beings. However, it is true that there is variation in reference to how that capacity is realized or exercised because not all human beings are equally present along the

⁷ *Ibid.*, 183

human development continuum. The variation lies in the realization or exercise of those capacities or potentials, not in the humans' possession of them or the presence of those capacities in human beings.

Greasley believes that one can ground human equality based on considering personhood threshold as a range property. The idea behind this threshold view is that even though certain members within a range or set might differ from each other in certain respective ways, they do not differ insofar as they are within the range itself. If you drew a circle and located multiple dots within that circle, you would recognize that, while they are in different sections of the sphere, they are nonetheless equal in that they are in the range. Moreover, for the purposes of tax law, if Lynchburg and Richmond are cities in Virginia, then they both are treated as being equal cities in Virginia for the purposes of state taxes. The fine points of detail concerning their distances from each other and from the boundaries of the state do not affect the fact they are both equally in the range of being in Virginia and not any other state. Thus, if being a person means that once one crosses a threshold, he or she is in the range of personhood and is morally equal to everyone else in the range despite what she refers to as scalar differences.

How then is this proposal to be evaluated? It seems to me that Greasley fails to make her case for several reasons. First, she never actually proves or attempts to show that personhood is, in fact, a range property, but stipulates that

we have morally compelling reasons to postulate moral equality to all human persons. She says, “The beginning of a defence for the range property approach might be hinted at in Waldron’s suggestion that where range properties are at issue, there is an ‘interest’ which ‘drives us away from scalar differentiations’.”⁸ Even though she contends that pragmatic interests are not necessarily disconnected from moral considerations, this contention entirely misses the point. The issue is not whether one can articulate a moral basis for ascribing equal treatment to all human persons but rather whether one has a rational basis for doing so. It is not clear to me that we have an obligation to treat each other as moral equals if we are not, in fact, moral equals. Her conclusion is ultimately hypothetical: If personhood is arrived at by crossing a threshold and is a range property, then all who are persons are equally persons in that range above the threshold.

Second, she commits what I call the “threshold-equality of the gaps” fallacy by inserting equality into the set of a certain number of human beings in spite of their developmental inequalities. This is similar to an often charged but frankly unjustified “god of the gaps” fallacy aimed at theists by those skeptical of theistic arguments. In that charge, it is supposed that there is no known explanation from physical reality as to why a certain phenomenon occurs, and

⁸ Greasley, “Arguments about Abortion,” 183.

then suddenly God is plugged into the gaps of our explanatory knowledge. Essentially, there is no explanation and there is no meaningful change by inserting God into the equation no matter how well-motivated the reason was, as understood by an atheist or agnostic.

Similarly, the same can be said here with respect to Greasley's case and arguably any other case that attempts to posit a threshold account in order to secure full human equality. This also strikes me as a double standard and inconsistent. How is it that degreed characteristics that constitute personhood are either absent entirely or minimally present (as we have been told) in embryos and fetuses are reasons for excluding them from full moral status but that newborns, toddlers, and even younger children are automatically included despite the disproportionate manifestation of those degreed characteristics among them? Differences of development that are degreed inherently and essentially apply to the embryo, fetus, newborn, toddler, 7-year-old child, 14-year-old child, and so on. The denial of personhood status to the embryo and fetus because of their developmental stages, but giving of full personhood status to the newborn onward strikes me as a leap of faith. Metaphysical and biological reasons will be the main focus for denying personhood to the embryo and fetus but will become secondary reasons when considering newborns onward.

In other words, we are morally motivated to extend human equality to all human persons (who, in fact, are not developmentally equal among themselves) for pragmatic and social interests when metaphysical and biological facts don't provide support for that task. Metaphysics and biology must be consulted to evaluate the moral status of the embryo and fetus but are no longer necessary when considering the moral status of a newborn or toddler as to whether they are persons at all or whether they are equal persons with others?

I am inclined to think that something other than logical consistency is at work in accounts that attempt to ground human equality within a threshold that is posited in order to secure full human rights that ignores significant differences after a certain point. Does the thought that it might be morally permissible to kill a toddler with justification frighten you? It should disturb anyone with a decent moral conscience. But we are not in our rational rights to insert an ad hoc explanation to establish something we morally desire, but which reality does not permit us to do. If reality says that the fetus is not a person and yet we treat him or her as if they were, we are not entirely acting without merit, but are not being entirely consistent either. The same applies to postnatal human beings. Our moral theories must align with metaphysical facts about ourselves and the world we live in. We are capable of embracing a contradiction for the purpose of social wellness because we have the freedom to do so.

Certain Implications

I have only had space to interact in some length with Jeff McMahan's and Kate Greasley's accounts of threshold views of personhood and thus can only speculate within reason about the implications that follow that could apply to any proposed threshold account of personhood that is committed to the view that personhood-making characteristics or properties are degreed in nature.

First, it is my view that any attempts to protect postnatal human beings that are on the lower level of development can only be justified by appealing to their potentials to acquire the relevant property that would make certain actions immoral. A symmetrical relationship could be established between the two following claims: "A person is an individual that is capable of attributing value to or valuing his or her existence" and "A free or autonomous person is an individual that is capable of attributing value to, or valuing his or her freedom." The only difference between these two individuals is that one is a person that lacks the potential to exercise enough autonomy to be wronged by enslavement, but the other one can exercise their autonomy. If there is no rational basis for a threshold, then only their relevant potentials can do the justificatory work in protection from certain harms. But the existence of potentials is downplayed or given inadequate attention for the embryo and fetus.

The fetus has the same active potential as a toddler does. This potential is rooted in its nature/essence to exercise rational reflection and personal autonomy even though it cannot actualize that potential because of developmental constraints. That potential is not rooted in any particular organ like the brain, but is based on the beings' essential nature that it had from the beginning. Moreover, the fetus and the toddler are directed towards the same end because they belong to the same natural kind. Thus, their potentials will not be different in terms of possession, but they will be different based on their realization. Thus, it seems to me that those who would defend both abortion and infanticide or one of them will have to appeal to that individual's potential to develop in such a way that either killing them or enslaving them would be seriously wrong, in the absence of any threshold.

This paper is scarcely a full-blown analysis of the debates about personhood, thresholds, and human equality for the important advocates on all sides of the debate. Such an undertaking would require a great deal more research into the matter. Nevertheless, I have attempted to provide an honest, fair representation of each proponent's arguments, as well as to give a legitimate criticism of their arguments. This debate is unlikely to go away any time soon.

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