

A SYMETRICAL ARGUMENT FOR PERSONHOOD AND ABORTION

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This paper will be concerned with the moral status of abortion, defined in this instance as the voluntary termination, or allowing thereof, of a woman's pregnancy. In my opinion, to satisfactorily defend a woman's right to an abortion, one must display that a fetus is unworthy of moral consideration. In this paper, I will craft an argument to display that moral consideration is granted at the first moment conscious experience is possible. Further, I will suggest that fetuses before proper brain development are unworthy of moral consideration, morally justifying a woman's right to abortion.

To adequately assess my claim we will first need to distinguish between a human and a person. The traditional argument against abortion is a perfect example of the necessity to distinguish these terms. The traditional argument, as recounted by Warren is as follows:

It is morally wrong to kill an innocent human being, fetuses are innocent human beings, then it is morally wrong to kill a fetus.¹

¹ Warren, M. A. (1973). "ON THE MORAL AND LEGAL STATUS OF ABORTION". *The Monist*, 57(1), 43–61. <http://www.jstor.org/stable/27902294>, 12.

The sake of the traditional argument rests on the definition of human. “Human being”, in the philosophical sense, is a term with two definitions. The first is self-evident: an individual belonging to the species *Homo Sapien* and containing the human genome. This definition can be referred to as the genetic human.² The moral human, or *person* for the intent and purpose of this paper, is a completely developed member of the moral community and is thus granted full moral consideration. But as I will now attempt to display, the definitional use of “human” begs the question. Premise one is simply a restatement of one of our most basic moral truths, assuming it is specifying a “moral human.” If it is the case that a fetus is an “innocent human”, then by necessity, there must be a new definition of human, as it is illogical to assign moral judgment to an individual based solely on genetics. If premise two is operating on the genetic definition of human, then it begs the question, what makes a genetic being morally innocent? If that is the case, then a new definition of “human” must be used to avoid further logical fallacies. Therefore, either the argument utilizes one definition of “human”, and begs the question, or it uses two definitions of “human”, and the argument becomes unsound. The argument fails to prove that the presence of human genetics is necessary and sufficient for inclusion into the moral community and therefore fails due to the lack of adequate definitions. This paper will attempt to avoid the pitfalls of the traditional argument by further exploring the difference between a genetic human and a moral one.

It deserves emphasis that the elusive nature of the definition of a person is central to the debate over a fetus’ personhood status. Philosophers have notoriously struggled to create a definition of a person and none to this date has been generally accepted. That being said, one cannot act immorally to someone else on the grounds that “person” is not clearly defined, claiming they can mistreat a person for they do not know the definition of one. The lack of a definition does not entail the non-existence of the concept. One may ask, how can I assert a claim regarding personhood without ever defining the term? The answer seems to lie in the fact that one can attribute sufficient conditions for a person without such a definition. If I encounter an individual who fulfills some of the many conditions proposed in the real world, I can be confident I am interacting with a person.

First, to outline our understanding of personhood, we must

² Id., 15.

start with the moral community. While I will not attempt to lay out a complete analysis of moral community, I will develop it sufficiently enough to make my argument. The moral community, used descriptively in this context, is a group owing to a recognized moral philosophy that serves to govern their pursuits.³ It consists exclusively of people, with all people being included in the moral community. People are individuals who, alone, are granted full moral consideration from the moral community.⁴ It is the case that all persons are human, it is *not* the case that all humans are persons are human. To illustrate the point, I present an example: a man has his head surgically removed and discarded while his headless body is kept alive using medical equipment. The headless body is still living and still retains its *homo sapien* status, therefore, it is human. Can the same be said for his personhood? Our intuitions suggest that his lack of head, the part of the body that contributes to every attribute we hold to be like that of a person, is now severed and dead. This example, and others like it are intended to display our intuitive belief that “human” and “person” are not synonymous.

Second, to understand personhood as it is commonly understood, one must address the accepted sufficient conditions. Warren and Dennett both formulate almost identical conditions following the sophisticated cognitive capacity school of thought. In their respective works, entitled *On The Moral And Legal Status of Abortion* and *Conditions of Personhood*, they assert the following:

- 1) consciousness of the objects and events external and/or internal to the being;
- 2) reasoning: the developed capacity to problem-solve relatively complex issues;
- 3) self-motivated activity: activity independent of genetic or direct external control;
- 4) a capacity to communicate, by whatever means;
- 5) the presence of self-identity and self-awareness.⁵

3 Babst, G.A. (2011). “Moral Community”. In: Chatterjee, D.K. (eds) *Encyclopedia of Global Justice*. Springer, Dordrecht. https://doi.org/10.1007/978-1-4020-9160-5_328.

4 Dennett, Daniel. “CONDITIONS OF PERSONHOOD.” *Identities of Persons*, 1976, 175–96. <https://doi.org/10.1525/9780520353060-008>.

5 Id., 5; Warren, M. A. (1973). “ON THE MORAL AND LEGAL STATUS OF ABORTION”. *The Monist*, 57(1), 43–61. <http://www.jstor.org/stable/27902294>, 17.

Now that both the moral community and personhood have been crudely described, I suggest that only consciousness (1) and the presence of self-identity (5) are required for a being to be regarded as a person. Consciousness alone is not a sufficient description without the distinction of human self-identity. A phenomenon that seems to be unique to the human species is the idea of self-identity and how it feels to be a self. An emergent property occurs within humans that permits us to develop from a simple creature, a fetus, to a complex creature capable of advanced consciousness and the subjective experience of what it is like to be oneself. It is hard to dispute that a cat is conscious, but much harder to prove that the cat has the experience of feeling like a *self* and recognizing that same feeling in others in the way a human undoubtedly does. This conscious awareness and “feeling like a self” are the key factors to personhood and will be referred to as one term: *conscious experience*.

Conscious experience, in my view, is the first and most crucial deciding factor in distinguishing a being’s status in the moral community. That is to say, conscious experience serves as a precursor to all other conditions presented by Warren and Dennett. To display the value that modern society places on the conscious experience, I will deploy yet another example. Let us imagine a man who gets in an extremely traumatic accident and is rushed to the hospital. Let us also assume that before his accident, he was healthy and, by all accounts, deploying a conscious experience. Due to his injuries, his heart stops for a few moments and he goes unconscious. Anyone even remotely familiar with modern science would reject the notion that this man is no longer a person, but why? I would contend that his prior conscious experience coupled with the medical capabilities of restarting his heart would allow for possible future conscious experiences. Now let us imagine that, tragically, all attempts to restart the man’s heart failed, his brain has ceased to function, and restoring his original condition is beyond the assistance of medical care. Yet again, I would contend that anyone familiar with personhood could not argue, in good faith, that this man is a person any longer. His current conscious experience has ended and the future conscious experiences are no longer possible (it comes as a given that if future medical advancements allow for the full restoration of brain functions then the hypothetical would simply need to take one step further). Therefore, if death is the ending of brain function, and ostensibly, a conscious experience no longer exists nor is one possible, a human has lost its personhood. This assertion is also borne out in

modern scientific literature as well, as there exists consensus within the community that the cessation of brain functions constitutes death.⁶

The concept of death itself in the semantic sense separates the genetic human from the moral one. A human corpse by definition is still a genetic human, the species and genome don't change after one dies, but intuitively we treat corpses differently than living humans. A moral individual could never in good conscience bury a "moral human", but could certainly bury a genetic one, assuming it is not a person, with no qualms at all.

Asserting that death is the end of personhood is as innocuous a claim as "a fetus is a human". If we are to accept that a person no longer exists when a future conscious experience is impossible, i.e. the full and irreversible cessation of the brain's functions, then it logically follows that a person exists as long as a prior conscious experience exists and future experiences are possible.

Thus, if a person exists as long as a prior conscious experience exists and future experiences are possible, then a person starts existing at the first moment these experiences are possible. For the sake of clarity, the argument is as follows:

- 1) If a person stops existing when a conscious experience ends and future experiences become impossible then, A person exists as long as a prior conscious experience exists and future experiences are possible;
- 2) If a person exists as long as a prior conscious experience exists and future experiences are possible, then a person starts existing at the first moment conscious experiences are possible;
- 3) A person stops existing when a conscious experience ends and future experiences become impossible;
- 4) Therefore, a person starts existing at the first moment conscious experiences are possible.

The possibility for a first conscious experience is symmetrical with the ending of a conscious experience. If the cessation of the brain ends such an experience, the formation of all of the brain's parts and the

6 Burkle, Christopher M., Richard R. Sharp, and Eelco F. Wijdicks. "Why Brain Death Is Considered Death and Why There Should Be No Confusion." *Neurology* 83, no. 16 (2014): 1464–69. <https://doi.org/10.1212/wnl.0000000000000883>.

harmonious interaction between them would seem to be the beginning. First, it is generally acknowledged that consciousness is only possible following the development of thalamocortical connections from the sensory organs. These connections are developed from 20-24 gestational weeks, after this period a newborn is aware of itself and minimally of its surroundings.⁷ Before this period, the fetus may react to pain and other basic external stimuli, although the fetus is likely unaware due to the lack of said connections. Following the developmental period, biological structures are now developed enough to deploy consciousness (assuming that the fetus is developing in a healthy manner with no traumatic defects) and the fetus has the possibility of future consciousness. From this time frame, a fetus should be regarded as a person and granted moral personhood. To accept the scientific community whilst rejecting a fetus' personhood after the emergence of its consciousness is akin to justifying the killing of an "innocent human" in the words of the traditional argument.

For there to be a person to speak of there must be an underlying conscious experience. To argue that the potentiality of *x* is equally as valued as *x* itself is to work against all ontological notions of existence. This argument is akin to claiming that a blueprint, wood beams, and concrete blocks are the same as a house, as the wood and concrete can potentially become a house, assuming the proper steps occur to realize the change. The same holds true for the potentiality of consciousness. Given the proper nutrients and environment, a fetus has the potential for consciousness and therefore, has the same value as one who has already realized such a development. In nearly all countries, children are restricted from a multitude of rights afforded to adults (they cannot legally consent, drive, or drink alcohol, for example). All children also have the potential to develop into fully grown adults, given proper nutrients and environment. By this logic, children should be afforded all rights granted to adults because they possess the potential to develop into adulthood. An acceptance of this argument would point out the incongruence between the proponents of potentiality and accepted ontological understandings. It cannot be the case that the potentiality for an attribute in the future constitutes the same as the actuality of that attribute.

Other objections commonly raised by critics tend to fall into

⁷ Lagercrantz, Hugo. "The Emergence of Consciousness: Science and Ethics." *Seminars in Fetal and Neonatal Medicine* 19, no. 5 (2014): 300–305. <https://doi.org/10.1016/j.siny.2014.08.003>.

two general tropes:

- 1) Claims that personhood valuing the stage of development in which the brain is capable of consciousness is arbitrary;
- 2) Claims that the levels of consciousness exerted by a fetus are incompatible with the general understanding of the term.

Objections of the first variety tend to fall into that of the slippery-slope argument. Critics hailing from the first camp are commonly proponents of personhood at the moment of conception. It appears to be evident that the development of a human being from conception through adolescence and onto adulthood is continuous; therefore the critic would contend that choosing any point on that continuum in which personhood begins is necessarily arbitrary. From this assertion, the conclusion follows that the fetus must be a person from conception as it is the only nonarbitrary position on the continuum. If it were the case that 20-24 gestational weeks were arbitrary, then so would the developmental period for puberty and similarly the growth of a seed into a tree. It certainly does not follow that a seed is a tree or a prepubescent child a fully developed adult. If one was tasked with execution and the sole parameter was to cut the condemned head clean off, taking none of his neck with it, the execution would never take place. The executioner could not go on to claim that the neck is arbitrary because there exists no perceptible line.

Similarly, their line of reasoning can also be utilized against the critic's argument. Past the point of conception, the sperm or the ovum alone certainly could have the potential to become a human life; therefore, their existence would place them further back on the continuum of development. The delineation from sperm and ovum to zygote is seemingly arbitrary as to when the potential for personhood starts and ends. From this realization, contraception and birth control would both constitute the killing of a potential person with moral consideration, reducing the abortion question to absurdity. The final defeater for the slippery slope argument is to assert that the change from sperm and ovum to zygote is that of form and not degree, that being that the change is so drastic that the resulting entity is entirely separate. To agree to this point would be to concede that there exists pivotal changes that occur along human development that permanently alter the previous entity. From this concession, it can be argued that the transition from a fetus without consciousness to one with consciousness is drastic

enough to constitute a change of form.

We have examined critiques of the first trope, whereby the critic utilizes a slippery slope argument, to demonstrate the arbitrary nature of valuing one stage of development over another. Critiques of the second form are far more challenging, as the proponents claim that the level at which a fetus is conscious is incompatible with the general understanding of the term consciousness. Proponents of this argument, such as Robert Larmer, assert a claim along the lines of the following:

The argument that it is not the potential to become conscious, but rather the potential to resume consciousness, that confers a right to life proves too strong, inasmuch as it threatens to justify not only abortion but infanticide since newborn infants are not yet conscious in the sense in which we normally use the term.⁸

Larmer suggests that consciousness, as we are familiar with the term, is only attributed to a human individual five to seven months after birth. He expands on this claim by asserting that even newborn fetuses have a level of consciousness lower than most newborn animals.⁹

Objections of this nature are certainly more stout, but for several reasons, I believe it fails. The argument logically entails that since the valued consciousness of a fetus is diminished by comparison to an adult human, it is necessary to grant personhood to all creatures that embody a level of consciousness akin to or greater than the fetus.

Firstly, Larmer's justification for consciousness developing at ages five to seven months is grounded in outdated studies and runs contrary to more modern assessments of the development of consciousness. That being said, the major contention lies in the suggested levels of consciousness embodied by different creatures. It is a fact that a fetus and even a newborn's level of consciousness is of a "lower mental level" than that of a plethora of other animals. To discredit the claim I believe a thought experiment is an order.

Imagine that conscious experience is like a bucket of water and with each new day in one's development a splash of water is added to the bucket. The level of water in each bucket suggests the level at which you are conscious, a developed adult human having the fullest bucket (human in the genetic human sense). For this thought experi-

8 Larmer, Robert. "Abortion, Personhood and the Potential for Consciousness." *Journal of Applied Philosophy* 12, no. 3 (1995): 241–51. <http://www.jstor.org/stable/24354127>, 7.

9 Ibid.

ment, a fetus at 20-24 gestational weeks is given a bucket with just a small splash of water in it. Next to the fetus' bucket lies a lizard, an adult dog, and an adult chimpanzee's bucket. The lizard has the same amount of water as the fetus, while the dog has a one-third-full bucket, and the chimp a half-full bucket. There is no debate that both the dog and the chimp are more conscious than the human fetus by orders of magnitude. As the fetus develops into an adolescent, its bucket is filled to two-thirds, now undoubtedly more full than the other animals. Is it the case that the fetus' development, started with a lizard's conscious experience, then the dog, and finally the chimp before assuming a human one? No, it is not the case that the fetus filled the lizard bucket, then the dog, and so forth. It is not the case, in my argument, that one's consciousness rises to a level deemed worthy of personhood, it is the animal in kind and its own genetically unique kind of experience which is valued. A fetus' conscious experience is diminished from that of a human adult, but that statement alone entails that each species has its continuum of conscious development that can be compared but is simply not analogous.

The critic would retort, "Is it not the case that dogs can learn complex tricks and chimps can solve rudimentary puzzles, but a fetus cannot?". Although this is true, these animals are not exerting a *sapiens'* conscious experience of how all conscious *homo sapiens* intrinsically understand. The definition or explanation of how it feels to experience a *sapiens'* conscious experience is in fact impossible, there is no other conscious experience we can analytically compare it to. However, just like in the case of the definition of a *person*, the lack of a definition does not mean we are unable to identify and recognize the existence in others. It seems to be the case that a dog does not have the same sense of self, if it has one at all, that a human does. If that is the case, then the value I assign to both consciousness and sense of self separates a *human* conscious experience from that of any non-human animal. Therefore, a fetus' conscious experience is by a degree less than an adult's but, by kind, greater than that of a dog.

Larmer proposes a thought experiment to challenge the assertion that the resumption of consciousness is superseded by the potential to become conscious (his central anti-abortion claim) as follows:

Suppose someone is in a serious car accident and lapses into a coma as a result of her injuries. Upon arriving at the hospital, doctors ascertain that her injuries will heal, but that she will be in a coma for nine months, after which time she will become conscious. Unfortunate-

ly, she will have suffered total amnesia and there is no chance that she will regain any previous memories or knowledge of past plans. Indeed, the amnesia is so complete that she, like a newborn child, will have to learn how to use language and develop motor skills. Her relatives and friends, for whatever reason, express the desire that her existence be terminated and that she not be allowed to become conscious.¹⁰

Larmer utilizes this hypothetical to assert that there is a clear obligation to protect the life of the individual that is not accounted for unless the potential to become conscious is the valued condition of personhood.

Although the thought experiment is challenging, it fails to exclude my argument from protecting the injured. It is the case that the injured woman deserves protection as her right to life has not been forfeited by the nature of her personhood. That being said, it is not the potential for her to become conscious that grounds this belief. The prior conscious experience of the woman before her accident is what grants her personhood for the duration of her coma, as it is the case that her future experiences remain possible. The total amnesia as a result of her accident does not create a lack of prior experience, it only serves to remove them from her retrievable memory. It is not debatable that she was not conscious beforehand, the suggestion that she cannot recall the experiences does not refute their existence. This claim is akin to stating that a particularly zealous partygoer is not deploying a conscious experience for the duration of their blacked-out drunkenness. The partygoer in this case experiences total amnesia during the period of their drunkenness but the conscious experience exists nonetheless.

My goal throughout this paper has been to outline my position on the beginning of personhood and to defend the claim that since a fetus, before the development of the thalamocortical connections, does not have the capabilities to deploy a conscious experience, it is not granted personhood. Therefore, abortion is morally permissible for any reason before the 20-24 gestational week period. Thus the limit to acquire a legal abortion should be the twentieth gestational week to prevent the undue killing of persons.

Second, to avoid any dispute over abortions in which the child was consummated through rape or incest or in cases in which the mother's health is in danger, I find it necessary to clarify the position.

¹⁰ Id., 8.

Personhood and the right to life that is granted with it entails that it is not by any means the right not to be killed, rather it only serves to protect against the unjustified killing of a person. In cases in which the mother's life is in serious and imminent peril, the rights of the unborn may be surpassed by those of the living. Similarly to cases in which a prisoner is sentenced to capital punishment, the right to life of an individual can only be usurped when accompanied by a just reason. For cases of rape and incest, the fetus may be aborted prior to 20-24 weeks, the same being the case for any other reason as the fetus is not yet a person. Following this period, the fetus is granted full moral personhood, and abortion for any reason other than the mother's health is not permissible, in the same way, that killing a 1-year-old child conceived by incest is not permissible.

Lastly, as technology advances at an ever-increasing rate it is also worth clarifying the position with regards to non-human beings with equal, if not greater, forms of conscious experience than our own. Due to the necessity for the human conscious experience to my argument for personhood, artificially intelligent computers would not be granted personhood, and therefore, would have diminished moral consideration. The only caveat is if the creators of these machines were capable of perfectly replicating the human consciousness.

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