

## **Morally Relevant Potential**

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**Abstract:** Fetuses and infants are said to warrant protecting because of their potential. But valuing potential supposedly leads to absurdities like protecting cells that could be technologically altered to develop into persons. This can be avoided by recognizing that morally relevant potential is determined by what is presently healthy development (proper functioning) for an organism. The only interests of mindless organisms are in the flourishing that necessarily depends upon their healthy functioning. They can be harmed when those interests are frustrated. We criticize McMahan for claiming that harm is instead a function of the degree of psychological ties to the future.

There are pro-lifers that admit that there isn't a morally significant stage of development that would bestow intrinsic moral status on the fetus - but they point out that is true of the newborn as well. Newborns don't even have the range of emotions or cognitive ability to learn, recall and form intentions etc. possessed by healthy adult dogs. So if newborns and fetuses are to be protected in a way that dogs aren't, such pro-lifers claim it must be because of their potential to develop the impressive minds characteristic of persons. If the potential to become a person and possess a mind like that of the reader doesn't bestow moral protections, then late abortion and even infanticide could be justified. But if potential to develop such a mind does matter morally, then that potential is there as soon as a human embryonic organism comes into existence. Opponents of such pro-lifers, some of whom are willing to accept infanticide, claim that valuing potential leads to absurdities such as protecting gametes, skin cells that can develop into persons through cloning technologies, kittens that can be injected with person-producing serums etc. We will argue that isn't the case once the morally relevant potential is recognized. It is this potential which makes abortion and infanticide *prima facie* wrong.<sup>1</sup>

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

We are skeptical of Tooley/Singer-like claims that newborns and the unborn lack the interests necessary for a right to life.[11,12] We think that they fail to distinguish *something being in an individual's interest* from that *individual taking an interest in something*. [10] It is in the fetus and infant's interest to live on even though they have not taken an interest (i.e., desires) to live further into the future. Analogously, broccoli is in a child's interest but he is not interested in it. Living things have an interest in healthy development. We can ascribe interests to potential persons, even mindless ones. It is in their interest to live on and develop in a healthy fashion by which they will flourish. Even plants can be said to thrive and thus have an intrinsic well-being and a non-metaphorical interest in sun and nutrient rich soil. Our contention is that only living entities are capable of well-being and have an intrinsic interest in their good. A car, on the other hand, doesn't have any intrinsic, non-metaphorical interest in oil. A well lubricated car is in the interest of its owner or driver. Cars, unlike plants and fetuses, are not entities that can flourish and undergo changes in well-being.

We don't think there are reasonable defenses of the views that artifacts have an intrinsic good and well-being and thus can be said to thrive and benefit from their proper functioning that is independent of their effects on the well-being and good of others. However, we believe that it can truly be said of a plant or tree that it was literally doing well regardless of its involvement in the lives of people. These differences can be seen if an artifact comes to be permanently used for something else that it was originally made to do - say an Indian arrowhead becomes a paper weight centuries later. Then the wound causing sharpness which was once "good for the artifact" as an arrowhead and "in its interest" ceases to be "good for it" and "in its interest" as a paperweight for its good and interests are really metaphorical and derivative, due to what is in the interest and good for the people making use of it. But if we come to use a living tree for protection from the elements, protection that even a dead tree could provide, that new use of the tree doesn't change what it is for a tree to properly function and flourish. So if its leaves and roots withered due to an infection or infestation that later results in its death, it would be contrary to the tree's interests and good regardless of its effect on our interests and

whether anyone knew it wasn't functioning properly. But the idea of an artifact malfunctioning in a manner no one could possibly know doesn't make sense given its functional dependence upon its makers and later users.

Despite things being in its interests, a plant's future isn't very valuable, so its interests are given far less moral weight than those of human beings. Assuming that the degree of the harm of an entity's death depends upon the value and extent of the well-being that it loses out on, the plant is harmed very little. A healthy human fetus, on the other hand, has the potential to realize mental capacities that are of considerable value and will enable it to flourish to a considerable extent.

Our contention is that the *morally relevant sense of potential is determined by what is healthy development or proper functioning for things of that kind in their design environment.*<sup>2</sup> The potential of a healthy human fetus is to develop a mind of great cognitive and affective abilities that will enable it to enter into various rewarding relationships with others and exercise a range of cognitive skills that enable it to think and act in valuable ways unlike any other kind of living being.<sup>3</sup> So its potential means that it will be greatly harmed if deprived of that valuable future.

Mindless organisms only have interests in healthy development or proper functioning and the flourishing that involves. So a fetus has an interest in growing a healthy properly functioning brain but no interest then in becoming a baseball player even if it will later be an adolescent dreaming of World Series fame.<sup>4</sup> It isn't enough for a mindless entity to be identical to a later being to presently have an

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<sup>2</sup>We mean by "design environment" the environment in which one's kind evolved, or in which later adaptations and exaptations occurred. By *kind* we just mean the reference class that is relevant to ascriptions of health. It may be that it is species or a qualification of species by sex and age or causal history.

<sup>3</sup>The mental capacities are biologically based, since they are dependent on the brain. Because of this dependency, mental abilities are a part of a human being's biological flourishing and health, and, at the embryonic, fetal, and infant stage, are potentially present.

<sup>4</sup>The fetus, when in utero, doesn't have any interest in having success in a *particular* field such as baseball, even though it will be identical later to a being that does, as an adolescent, develop an interest in being a baseball player. As a fetus it only has

interest in that later being's welfare. The future good must be in the mindless being's interest when it is mindless. And the only basis we can see for ascribing interests to the mindless is by appealing to the good realized by their proper functioning, i.e., healthy development for entities of that kind. Health is a *necessary* condition for flourishing and *constitutive* of a good deal of valuable well-being in a healthy person. The living *always* have an interest in health-produced flourishing. All flourishing depends upon health being present (to some) degree and every living being has an interest in health at every stage of its life, including its fetal stages.<sup>5</sup> When mindless, there is probably nothing else to its good than its health, i.e. its proper functioning is constitutive of its flourishing. But when humans are mentally developed, they can be equally healthy but not flourishing equally due to differences in the environment, say they are both capable of relationships involving love, empathy, and self restraint etc., but only one finds a partner. Nevertheless, both possess great worth given the great value of their mental endowments.

Let us dispel some possible misunderstandings of our claim that there is an interest in the flourishing that accompanies healthy development. It is not a counterexample that some forms of illness or injury are good for people – perhaps being confined to a sick bed provided the opportunity to discover the joys of poetry or philosophy. These forms of flourishing still necessarily depend upon a modicum of health, e.g. proper mental functioning. So their flourishing still has health as a necessary constituent. There are some organisms that typically die when reproducing. This might actually be flourishing for members of such strange species. Or it might be that their interests are only in healthy survival, not reproductive proper function.

Our claim that healthy development or proper function provides the morally relevant potential will not be troubled by the standard objections to potential being significant. It is frequently claimed

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an interest in developing the bodily, cognitive and affective abilities that will enable it to thrive in *any* of a number of fields that it may later become interested in.

<sup>5</sup> Once it is accepted that mindless living things have a good, i.e. can thrive and flourish, then it is analytic that they have an interest in first of the above two senses of interest.

that appeals to potential are susceptible to refutation by reductio for far too many entities have the potential to become persons. For example, a twin of you could be produced by cloning any cell of your body so even your skin cells are potential persons, yet we are under no obligation to further such potential. But this isn't a problem for our account. We don't even have to rely upon the standard response which is to distinguish the *identity preserving potential* of an individual to reach a later stage of itself from the potential of one entity to bring into existence a distinct (i.e., non-identical) entity. It doesn't matter even if the skin cell in the cloning case is identity preserving. We can imagine that future cloning is more like parthenogenesis than the technique that produced Dolly. Assume that the skin cell can be induced to develop into an adult without the removal of the nucleus and its transplantation into a denucleated egg. Such development isn't the proper functioning of a skin cell. So even if cloning is identity preserving, it is not in the initial interest of the original cell to do anything other what healthy skin cells do and so its potential to become a person is morally irrelevant. We would say the same if direct nuclear reprogramming was identity preserving as Neaves and Magill conjecture.[9] The proper function of such cells was not to initially so develop. Thus it couldn't be claimed before they were reconfigured that it was in their interest to develop into persons. Similarly, if the first four cells of an early embryo were totipotent, there would be no pressure to split the embryo into four people to maximize their potential as Devolder and Harris speculate.[2] Since the morally relevant potential is determined by proper or healthy functioning, what is in the interest of the first four cells is that they make their contribution to the healthy development of the embryo of which they are proper parts. Furthermore, if there exist the weird Martian environments where Earth oysters could become persons that Kriegel and Hassoun imagine, since Earth oysters weren't designed (via adaptation or exaptation) to develop that way, it is not in the interests of the oysters to so develop and they thus are not harmed by it not occurring.[6]

Secondly, the appeal to healthy development as the morally relevant potential renders unnecessary any reliance upon the distinction between active and passive potential or the equally

problematic intrinsic and extrinsic potential. The appeal to active or intrinsic potential wouldn't anyway divide up cases as its proponents want. For example, there is no active or intrinsic potential in the anencephalic or congenitally retarded human fetuses, but they would have a priority over a healthy kitten to receive a *scarce* serum that made personhood possible for them. Furthermore, Lizza (2011) points out how epigenetic factors make it difficult to speak of development as due to just the intrinsic or active potential of the DNA. And as McMahan argues, our moral intuitions don't track whether the fetus's development is due to intrinsic or extrinsic features.[8] He imagines dogs that turn out to have the intrinsic potential to be persons if a previously unknown exhausting regimen of training is enacted. But it seems that we don't have a duty to so treat the dog. McMahan also observes that it isn't plausible that a human fetus's moral status would drop and then return if its earlier intrinsic potential for personhood was lost but then restored by a genetic therapy. But if we appeal to healthy development as the morally relevant potential then the intrinsic or extrinsic source of the development is irrelevant.

Some abortion defenders might argue that consciousness paired with potential is what provides moral status and that makes late abortion and infanticide wrong, but not early abortion. Someone, perhaps influenced by Kagan's discussion of the *additive fallacy*, might argue that it is consciousness *and* potentially that together bestow moral significance, even though removing potential could eliminate moral significance.[5] Kagan diagnosed an additive fallacy where the reduction of value due to the removal of one feature wrongly led to a belief that the value of the whole was to be determined by adding the value of the components. But we can see the unimportance of multiplying consciousness to potential if we imagine a scarce life saving drug that we can either give to a five month old fetus that just became minimally conscious a day earlier or to a fetus that will become minimally conscious in a day. Consciousness seems to bring little value for it appears to be a coin toss to decide who gets the drug. Such reactions suggest that we are not guilty of an additive fallacy and overlooking how potentiality and its partner properties produce value via multiplication.

We should be skeptical that minimal fetal consciousness could be important for immunity from being killed. Consider a newborn who isn't aware that it needs some high tech life saving procedure to avoid a painless disease and death. Surely, it is in the infant's interest to have its health maintained even though it isn't conscious of that interest. So if consciously conceptualizing that interest isn't required for that interest to belong to the infant, why wouldn't that interest exist earlier in the embryo before there was any consciousness at all? This type of consideration is what makes it so hard to believe Liz Harman's claim that while it is in the interest of mindless embryos to continue to live and they are greatly harmed by their death, such interests don't have any moral significance whatsoever since the embryos are not conscious.[3] It is very difficult to see why consciousness would make such a harm a *morally* significant harm if the conscious newborn isn't even conscious of its longstanding interest in its life being preserved.

People often don't find it as tragic and harmful when a few weeks old embryo miscarries than when a baby arrives stillborn; and even the death of a newborn seems less tragic to many than the death of a ten year old child. McMahan conjectures that the degree of harm of a death depends upon the degree to which the deceased would have been psychologically tied to the future.[8] The adolescent already has a mental life consisting of desires, projects, relationships etc., while fetuses have no such psychology that death could interrupt. We suspect that the alleged difference in harm and tragedy is really based on the misfortunes of the deceased being confused with the greater harm and tragedy to their parents who are more emotionally involved with their older children. Alternatively, the harm may be as great if not greater for the younger fetus or newborn, but they have less intrinsic value and so their interests matter less than older children with more value. But it seems that even if bringing about a newborn's death is not as wrong as causing an older child's death, it still seems to be a morally significant harm and thus very wrong, and therefore by extension, so is abortion.

However, McMahan has another argument that can't be so explained away.[8] He provides a thought experiment called *The Cure* which is supposed to elicit the belief that the degree of harm of an

event depends in part upon how psychologically connected one is to the goods that the event prevents. He says to imagine that you are 20 years old and will die painlessly in five years unless you take a medicine that will cause total retrograde amnesia and a radical change of personality and values, but will add 60 happy years to your life. It is known that people who take the cure have a life that would be better, as a whole, than your life would be if you were to refuse the treatment. McMahan thinks most of us would be skeptical of the wisdom of taking the medicine and some deeply opposed to it. McMahan suggests that the reason such people would pass on the cure and a life with more good in it is that they would not be psychologically connected to that life.

We suspect the problem for McMahan's reader is that they can't really imagine the life after the cure would be valuable, enjoyable and, on the whole, even better than their present one that would end in five years. We have found that our students react differently to taking the cure if they are offered the following story. They are told to imagine dying in five years or living for sixty years over which they gradually lose just as much of their current memories, values, beliefs as they would by taking the cure. But the loss comes by gradually replacing goals that one has fulfilled or lost interest in, being argued out of many of their beliefs and values, and just being exposed to different ways of life and finding them more attractive. The alternative life is described without any contents so it doesn't appeal to the listener's existing desires for particular goals. Unlike *The Cure* scenario, the change is more or less autonomous. What the autonomy does is enable the listener to sincerely believe rather than just give *lip service* to the belief that the longer life will be one with more good in it. Then we ask them to imagine the same psychological change that was just obtained gradually and autonomously would instead come immediately upon taking the cure. The only difference is that there isn't the autonomous change of beliefs. The new cure is introduced as perfectly duplicating the contents of the more autonomous change which thus make the same changes easier to accept as something they would really find good and valuable than they could before. We have found our students are then much more willing to opt for the cure. Their interest in psychological continuity dissipates when the lack of autonomy in the Cure

imposed change is seen to produce the exact same contents that would have autonomously chosen. We think their reactions are akin to our willingness to waive our rights to informed consent if our doctors would always recommend treatments that were good for us and which we would have agreed to after deliberation. Also assume that our doctors had no contempt for our decision making abilities. So autonomy isn't that significant when we still get what we would have chosen and this is achieved without paternalistic contempt. Thus our alternative explanation of the resistance in *The Cure* is the heteronomous nature of the change keeping readers from really, deep down, believing the alternative sixty years of life would be good for them.

We think refusing to take the cure is imprudent. It isn't that different from the refusal of our four and six year olds to consider any other professions than being, respectively, a "fix-it man" (a handyman) and a waitress. But surely there are jobs as good for them, as much in their interests now as their chosen careers. But they don't desire them due to lack of imagination. We think they are irrational and believe those who react to *The Cure* as McMahan's expects are likewise imprudent. Our students also react differently to *The Cure* when they are asked to choose not for themselves but whether they would want their own children to take the cure for their own sake.

It is sometimes easier to see the imprudence of others than our own, thus the ease in which we judge our kids shortsighted and irrational. But there are still conceivable futures for us that can reveal the unimportance of psychological continuity and thus counter McMahan's theory of harm. Imagine the prospect of your being tortured and killed after suffering a stroke that reduces you to infant-like mental states(13). We suspect you wouldn't find that any less dreadful than being tortured and killed when your psychology is unchanged. The fact that you are not psychologically continuous with the being later tortured and killed is little consolation. So it appears that you can have an interest now in not being harmed by future events even though there won't be any psychological ties between yourself now and yourself in that future. Harm doesn't appear to be determined by the degree of psychological connections. What matters is that it will be *you* that is harmed. In other words, identity matters.

We want to end by responding to someone who agrees with us that potential is morally relevant but insists that none of us were ever mindless fetal organisms since we didn't come into existence until some sort of mind was present. While we actually believe that we were early embryos, aborting early embryos could still be very wrong even if we didn't come into existence until much later when our organism has matured enough for the requisite mental capacities to manifest. It is often overlooked by pro-lifers, as well as by pro-choice philosophers like McMahan[8] and Baker[1], that even if we were never early embryos, there would be an organism distinct from us that has interests in healthy development and flourishing as we argued. Baker even maintains that the thinking organisms that constitute persons are as a result derivatively persons. And McMahan argues that an organism derivatively thinks in virtue of having a person as a thinking part. So an early abortion may wrong an entity with the potential to be (derivatively) a person even if we couldn't have been its victim.

## References

1. Baker, Lynne. 2005. "When Does a Person Begin?" *Social Philosophy and Policy*. 22:2, 25–48.
2. Devolder, Katrien and Harris, John. 2007. "The Ambiguity of the Embryo: Ethical Inconsistency in the Human Embryonic Stem Cell Debate" *Metaphilosophy*. 38: 2-3, 153-169.
3. Harman, Elizabeth. 2003. "The Potentiality Problem." *Philosophical Studies*. 114:1-2, 173-198.
4. Harris, John and Devolder, Katrien, 2007. "The Ambiguity of the Embryo: Ethical Inconsistency in the Human Embryonic Stem Cell Debate, *Metaphilosophy*. 88:2-3 153-169
5. Kagan, Shelly 1998 "The Additive Fallacy." *Ethics*. 99, 15-31.
6. Kriegel, Uriah and Hassoun, Nicole 2008. "Consciousness and the Moral Permissibility of Infanticide." *Journal of Applied Philosophy*. 25:1 45-55.
7. Lizza, John. 2011. "On the Ethical Irrelevance of Active versus Passive Potentiality" *APA Newsletter*
8. McMahan, Jeff. 2002. *The Ethics of Killing: Problems at the Margins of Life*. Oxford University Press.
9. Magill, Gerard and Neaves, William. 2009. "Ontological and Ethical Implications of Direct Nuclear Reprogramming. *Kennedy Institute of Ethics Journal* 19: 1, 23-32
10. Regan, Tom. 1982. "What Sort of Beings Have Rights." *All That Dwell Therein: Animal Rights and Environmental Ethics*. University of California Press.
11. Singer, Peter. 1993 *Practical Ethics*. 2<sup>nd</sup> ed. Cambridge University Press.
12. Tooley, Michael. 1972. "Abortion and Infanticide" *Philosophy and Public Affairs*. 2:1, 37-65.
13. Williams, Bernard. 1970. "The Self and the Future". *Philosophical Review* 79:2, 161-180.