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Philosophy and Theology: Reflections on a Future-like-ours and the Substance View

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PHILOSOPHY AND THEOLOGY

Scholarly defenses of abortion continue to be produced, and so defenders of the right to live of all human beings, born and unborn, are never in want of a subject. In his article “A Present Like Ours,” Michael Davis’s challenges are not only to Don Marquis’s future-like-ours critique of abortion but also to abortion critiques from the (new and classic) natural law perspective based on the person as an individual substance of rational nature.¹ Davis writes, “Marquis’s theory treats the rights of adult women as counting no more than those of a fetus no more complicated than an amoeba. Even many people who oppose abortion will recognize that as discriminating against women.”²

In fact, the pro-life view does not treat the rights of adult women as counting no more than those of a fetus no more complicated than an amoeba. Women (and men) have numerous rights, both legally and morally, that are not enjoyed by a prenatal human being. They can drive, vote, run for public office, and within the parameters of the law and sound ethics, govern their own lives in ways that no minor child may. The pro-life view is not that women and unborn human beings have equal rights in every respect, but that all human beings, born and unborn, male and female, mature and immature, share in the same basic rights, including the right to life. To treat all human beings as fundamentally equal in basic dignity is to avoid unjust discrimination by acknowledging that all women, all children, and all men are created equal and endowed with basic rights. Indeed, it is discrimination to treat some human beings—those who are not like us in terms of race, religion, or birth—as lacking basic rights. So it is not defenders of prenatal human beings but defenders of abortion who are acting to reinforce discrimination.

1. Michael Davis, “A Present Like Ours: A Refutation of Marquis’s Argument against Abortion and a Sketch of a General Theory of Personhood,” *International Journal of Applied Philosophy* 27.1 (Spring 2013): 88, doi: 10.5840/ijap20132718.

2. *Ibid.*

But the claim that all human beings have equal rights itself causes other problems on Davis's view:

There are few, if any, places in the world today, or at any other time, where the criminal law would treat as a murderer the woman who deliberately obtained an early abortion. Even where abortion has been prohibited, the law has generally treated the fetus, even a relatively mature fetus, as something less than "one of us." Marquis's theory proves more than it should. Marquis owes us an explanation of why abortion, even early in pregnancy, is not simple murder, deserving death or at least long imprisonment; or, if Marquis actually thinks it is murder, he should say so openly, accepting that as a conclusion against common sense.³

What Davis is saying is that if pro-life advocates really believe that a prenatal human being has a right to life, then they should advocate for laws that make abortion not just a crime but a crime equal to first-degree murder.

If all human beings share in equal basic rights, does it follow that abortion must be treated by criminal law as first-degree murder? Should women who get abortions get the death penalty, be imprisoned for life, or at least be subjected to the same punishment as other people who intentionally kill innocent human beings? Is Marquis, and are other defenders of the equal rights of prenatal human beings, fundamentally inconsistent in not making this demand? Or are pro-life people lacking in forthrightness because they think women who get abortions should be treated as murderers, but they lack the courage to state this publically?

Inconsistency or timidity are not the only alternatives. To defend the basic equal rights of all human beings does not necessarily mean that abortion should be punished as first-degree murder. Abortion and the murder of an adult are alike in that both involve the intentional killing of an innocent person. But there are important differences between an abortion and a typical case of murder. The first difference has to do with culpability in terms of knowledge and in terms of voluntariness. If I kill my auto mechanic, it is implausible in the extreme for me to try to excuse my act by claiming that I did not realize that he was an innocent human being. By contrast, in many (maybe even most) cases of abortion, the woman obtaining the abortion does not believe that her authorization is terminating the life of an innocent human being. It could be that this ignorance is culpable or that this ignorance is inculpable, but ignorance of the identity of the victim is almost never involved in typical cases of murder.

Secondly, the voluntariness of the act is often mitigated by great fear or anxiety on the part of the woman. When mothers kill their own newborns, as sometimes happens, it is not unusual for the punishment due for killing an innocent person to be mitigated in light of subjective factors that led to the killing, such as postpartum depression. By similar reasoning, mothers who authorize an abortion are often motivated by intense fear, which reduces the voluntariness of the act. In many cases of abortion, again unlike typical cases of murder, duress is involved, in which the father

3. Ibid.

of the child, and sometimes others, pressure the woman into getting an abortion that she would have never gotten had the news of the pregnancy been greeted with joy.

Third, the victim of abortion—although fundamentally equal—is not equal in all respects to the victim in a typical murder. In a typical murder, the victim's death negatively affects the victim's relatives and friends. The victim can no longer carry out his or her responsibilities at work or at home. The killing involved in murder may also make other people fear for their lives. The typical murder also brings a loss for all those who contributed to the life of the one who is killed—such as the parents, caregivers, and teachers who helped the victim gain maturity. Finally, the typical murder thwarts the life-plans of the victim, whose dreams, ambitions, and plans are demolished by death.

These characteristics, typical of a case of murder, are not present in an abortion. A prenatal human being does not have friends, and relatives may not even know of his or her existence. Human beings who find out about someone else's abortion do not fear for their own lives, since abortions kill only prenatal human beings. An unborn child does not have responsibilities at work or home on which others depend. Only one person—the pregnant woman—has contributed to the maturation of the fetus, and this is the person who is authorizing the abortion. Moreover, the prenatal human being does not yet have plans, ambitions, and dreams that are thwarted by getting killed. So although the killing involved in abortion and the killing involved in a typical murder are the same in the most important fundamental sense—an innocent person's life is extinguished—in many other ways, they are not the same. It makes sense, therefore, for the law to take these many differences into account when determining the punishment appropriate for abortion and appropriate for typical murder. These differences also answer the question of why it makes sense to rescue one five-year-old girl rather than ten frozen human embryos.

By similar reasoning, the assassination of the president of the United States should be treated more severely by law than the murder of a regular citizen, in virtue of the president's role in society and the fact that the president's death adversely affects not just immediate family members and friends but potentially the entire world. So, too, the murder of a regular person should be treated more severely by law than the intentional killing of a human being prior to birth. Yet making such differentiations is consistent with holding that, in terms of basic human dignity, the president, the regular citizen, and the human fetus have equal basic rights. It is not inconsistent for a defender of prenatal human beings to advocate lesser penalties for abortion than for the murder of postnatal human beings.

Moreover, prudential considerations of the enforceability of the law suggest that the penalties for violating laws forbidding abortion should fall on abortionists rather than on women getting abortions. Mitigating factors typically reduce the culpability of women seeking abortions. Abortionists ending the lives of prenatal human beings typically perform their tasks as part of a regular routine, without mitigating factors. If women were also subject to criminal penalties, it would make the prosecution of abortions much more difficult, since women would be implicating themselves in criminal activity by testifying against the abortionists. Moreover, abortionists typically kill many prenatal human beings, whereas an individual woman rarely has as

many abortions. With laws against illegal drugs, the law should focus on the drug dealers who profit from endangering others rather than on the drug users who often suffer from their use. Similarly, laws against abortion should focus on abortionists who profit from killing rather than women who often suffer from abortions.

In another critique, Robert Lovering's "The Substance View: A Critique (Part 2)" casts the pro-life view as resting on "the basic potential for rational moral agency" of the prenatal human being.⁴ But the pro-life view in its standard articulations by Robert George, Francis Beckwith, Patrick Lee, and many others including myself does not rest on the claim that every human being prior to birth has the basic potential for rational moral agency, but rather that every human being (born and unborn) actually (not just potentially) possesses a rational nature.⁵ What is the difference? A basic potential for rational agency may not be present in some human beings, such as those who have a serious mental handicap. Yet such human beings deserve fundamental protection against exploitation and against being intentionally killed.

Having misrepresented the pro-life position, Lovering then points out that "it's very difficult to see how this unactualizable potential could confer moral standing. For all practical purposes, there is no difference between possessing this unactualizable potential and not possessing it at all. Given this, it's very difficult to see how there could be a *moral* difference between possessing this unactualizable potential and not possessing it at all."⁶ The difficulty only arises because the rational nature of a being is confused with its potential for rational agency.

But perhaps this response only pushes the dispute to a different level. Why should we say that a particular being has a rational nature, if in fact this being has no potential to perform rational activities? This question might be clarified in the course of considering another objection to the substance view.

Lovering notes that if we hold that human beings prior to birth have a basic potential for rational moral agency because most or many of them will develop to the point where they possess either proximate or immediately exercisable rational agency, then a problem arises. Because an estimated 60 percent of pregnancies end in spontaneous miscarriage, only 40 percent of prenatal human beings will ever exercise rational agency. If we hold that 40 percent or even a much lower percentage of successful development of rational agency is sufficient for granting moral status to the entire group, then we are acting arbitrarily and moving closer to the view that rational agency is relevant.⁷

4. Rob Lovering, "The Substance View: A Critique (Part 2)," *Bioethics* 28.7 (September 2014): 378.

5. See, for example, Christopher Kaczor, *The Ethics of Abortion: Human Life, Women's Rights, and the Question of Justice*, 2nd ed. (New York: Routledge, 2015); Francis Beckwith, *Defending Life: A Moral and Legal Case against Abortion Choice* (New York: Cambridge University Press, 2007); Robert P. George and Christopher Tollefsen, *Embryo: A Defense of Human Life*, 2nd ed. (Princeton: Witherspoon Institute, 2011); and Patrick Lee, *Abortion and Unborn Human Life* (Washington, DC: Catholic University of America Press, 2010).

6. Lovering, "Substance View (2)," 381, original emphasis.

7. *Ibid.*

Even assuming the highly debatable claim that 60 percent of pregnancies spontaneously miscarry, this argument is problematic. To examine this objection, let's consider what it is to be a mammal. Part of what distinguishes mammals is their ability to nurse their young. So human beings, dogs, and zebras are mammals; iguanas, tapeworms, and wasps are not mammals. Not so fast, replies the critic. Do you not realize that some human beings, dogs, and zebras do not nurse their young, even cannot nurse their young? Male mammals of all these species cannot nurse their young, females before puberty cannot nurse their young, and elderly females cannot nurse their young. There are even cases of females of reproductive age who cannot nurse their young. The percentage of human beings, dogs, and zebras who are capable of nursing their young is, therefore, well below 40 percent. So are we mistaken in claiming that all human beings are mammals?

Of course not. In fact, all human beings, dogs, and zebras are mammals, not just females of those species and not just females of reproductive age, because all these creatures belongs to the kind of species that nurses its young. So, too, there is nothing arbitrary about including prenatal human beings in the category of rational animals.

In his *Scholastic Metaphysics* (required reading for anyone interested in the intersection of classic Thomistic metaphysics and analytic philosophy), Edward Feser clarifies what is at issue: "The distinction between essence and properties makes sense of the distinction between normal and defective instances. . . . Given its essence, a cat has four legs, but this property might not manifest itself in a particular cat if the cat is genetically or otherwise damaged. . . . Its lack of four legs just makes it a defective cat, and precisely because four-leggedness is one of its properties."⁸ Feser goes on to point out that all human beings are rational animals, even if some human beings because of genetic malfunction, brain injury, or immaturity do not engage in rational activity. Indeed, we identify this human being as immature, or brain damaged, or genetically malformed because we have already properly categorized them as a rational animal. The defect points to the non-defective; immaturity is understood by reference to maturity.

Now consider another objection to the substance view offered by Lovering. Imagine that scientists discover a rational agency serum that can boost the intelligence of chimpanzees so they are like the apes in *Planet of the Apes*. These chimps would clearly be persons with rights to live. "Now, clearly, the ultimate potential for rational moral agency in their case would be an accidental property," writes Lovering, who concludes that therefore, "it's not the case, then, that an entity's moral standing *must* be a function of its essential properties."⁹ An entity's moral standing, as in the case of these apes, can rest on accidental properties.

This objection rests on the assertion that the apes in the sci-fi example have acquired their standing as rational agents because of an accidental quality. There is an alternative explanation of the case. That some apes were injected with the rationality

8. Edward Feser, *Scholastic Metaphysics: A Contemporary Introduction* (Neunkirchen-Seelscheid, Germany: Editiones Scholasticae, 2015), 233.

9. Lovering, "Substance View (2)," 383, original emphasis.

serum may be accidental in some senses. For example, maybe, much like penicillin, the rational agency serum was found by accident rather than a deliberate plan to create rational agents. The property in question could also be accidental in that these apes rather than other apes were injected. Perhaps the scientists injected whichever apes happened to be on one side of the cage, or perhaps they injected a particular ape if a flipped quarter landed heads but not if it landed tails. The apes may have an accidental property in these senses, but in another sense the property in question cannot be accidental. The rationality serum causes not an accidental but rather a substantial change in the ape. The ape, in virtue of gaining radically new abilities, becomes a radically different kind of creature with a radically different moral status. Just as an injection that kills an ape brings about substantial change in the ape from living to deceased, so too the rational agency serum brings about a substantial change in the ape from being a nonrational agent to a rational agent.

Lovering also raises a dilemma against the substance view. Do dolphins, apes, and whales have intrinsic value or extrinsic value? He writes, “By ‘intrinsic’ value I mean value it’s logically possible for something to have even if it were the only thing that existed.”¹⁰ So intrinsic value is a value that it’s logically possible for something to have even if it is the only thing that exists. If there were only one person, that person would have intrinsic value. But if there were only one toothbrush, that toothbrush would not have intrinsic value, and it would only gain extrinsic value because people like to have clean teeth. Intrinsic value does not come in degree: a being either has it or does not have it. Extrinsic value, again by contrast, may come in degrees (the toothbrush is more or less useful). If intrinsic value does not come in degrees, then dolphins, apes, whales, and other intelligent animals either have moral status just like us (which advocates of the substance view reject) or have no intrinsic value at all (which is counter-intuitive, “given their similarities to beings with the ultimate potential for rational moral agency”).¹¹ On the other hand, if such creatures are to have only extrinsic value, then they have the same moral status as tools, which also seems counter-intuitive because almost everyone condemns animal cruelty.

If nonrational animals do not have equal moral status with human beings, does it follow that they are mere tools with which human agents can do anything they please? This conclusion does not follow. Let’s say that someone legally obtained Michelangelo’s *Pieta* and decided to destroy it for no good reason. Is this action ethically problematic? Yes, you might say, because it deprives innumerable people of the chance to see this beautiful sculpture. So let’s say the owner of the *Pieta* was the last man in the world: could he destroy it then for no good reason? The *Pieta* is, after all, a mere piece of marble and so lacks intrinsic value. True, but the man who destroyed it would be acting badly in as much as it is against reason to destroy something of spectacular beauty without sufficient reason. A reasonable response to a thing of beauty is to contemplate and cherish it, not destroy it. Acting against reason, as St. Thomas Aquinas argues, is ethically wrong.¹²

10. Ibid., 378 note 2.

11. Ibid., 384.

12. Thomas Aquinas, *Summa theologiae* I-II.94.3 ad 2.

On the other hand, if the man had to break apart the *Pieta* to make a barricade so that wild animals wouldn't eat him, he would be justified in destroying the statue. In a similar way, a reasonable response to suffering is to alleviate it. Just as beauty is something in general to be contemplated, suffering is something in general to be avoided. It is unreasonable to inflict pain on a sentient being without sufficient justification. To delight in inflicting pain is irrational. So unless a person has a sufficient justification for inflicting pain on an animal, an agent is unjustified in doing so. Animal cruelty is therefore wrong, but we don't need to assume that animals have rights (any more than statues have rights) in order to come to this judgment.¹³

These recent attempts to justify abortion provide no sound reason to abandon the principle that all human beings, including those waiting to be born, should be welcomed in life and protected by law.

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13. Germain Grisez offers other reasons against animal cruelty that do not presuppose that animals have moral status; see *The Way of the Lord Jesus*, vol. 2, *Living a Christian Life*, ch. 10, question C, <http://www.twotlj.org/G-2-10-C.html>.