



## PHILOSOPHY AND THEOLOGY

Don Marquis's future-like-ours argument holds that killing you or me is wrong because it deprives us of a future-like-ours, all that we would have enjoyed had we not been killed. Since the human fetus also has a future-like-ours, abortion is wrong.<sup>1</sup> Jeff McMahan challenges this argument because it leads to the conclusion that the death of a human fetus is worse than the death of a twenty-year-old, since the human fetus has twenty extra years of a future-like-ours to lose. Yet most people, even many who oppose abortion, hold that the death of the twenty-year-old is worse than the death of the fetus.

To explain this common intuition, McMahan introduces the time-relative interest account (TRIA). The TRIA is used as an argument to justify killing human beings prior to birth and is the subject of this reflection.<sup>2</sup> In the typical case, the human fetus has more years of a valuable future than the twenty-year-old does. However, according to the TRIA, we must discount this overall value in virtue of the weak psychological relationship between the fetal human being now and the future human being who will enjoy these goods. The idea is that one's present self and one's future self stand in a psychological relationship to each other that varies over time. To have strong time-relative interests is to have powerful ties between current and future selves (such as most adults enjoy). By contrast, to have weak time-relative interests means that the current self and future self do not hold much (if anything) in common (as is the case with the human fetus and the human adult). The TRIA view suggests that death is worse for the twenty-year-old than for the human fetus

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<sup>1</sup> Don Marquis, "Why Abortion Is Immoral," in *Bioethics: An Anthology*, ed. Helga Kuhse and Peter Singer (Malden, MA: Blackwell Publishing, 1999). See, too, Don Marquis, "Abortion and Death," in *The Oxford Handbook of Philosophy of Death* ed. Ben Bradley, Fred Feldman, and Jens Johansson (New York: Oxford University Press, 2013), 409–431.

<sup>2</sup> David DeGrazia, "The Harm of Death, Time-Relative Interests, and Abortion," *The Philosophical Forum* 38.1 (2007): 57–80.

because the twenty-year-old is strongly invested in her future self, in continuing to realize various life plans, whereas the prenatal human being is unaware that he exists, that he has a future, and so is not invested in this future. Because there are no psychological links between the prenatal human and the twenty-year-old, the interest in a future-like-ours is radically discounted, making this interest virtually zero, thus justifying abortion. In the words of David DeGrazia, “the utter lack of psychological unity between the presentient fetus and the later minded being it could become justifies a very substantial discounting of the harm of the fetus’ death.”<sup>3</sup>

How should we assess the time-relative interest account? In the TRIA, the human being’s interest in living could be understood objectively (a good for the individual regardless of that individual’s consciousness) or subjectively (what an individual takes an interest in, wants, or desires). It seems that interests in the TRIA should be understood objectively. The future goods of a whole life matter for the TRIA, but sentient fetuses and newborns lack subjective interests in a future-like-ours. But if fetal interests are taken objectively, one then wonders why subjective considerations (like the degree of psychological unity between present and future selves) are relevant for discounting this objective interest. Objective interests are, by definition, interests an individual has regardless of the individual’s subjectivity. In other words, regardless of particular psychological states such as what the individual may subjectively be interested in, or care about, or desire, the individual has an objective interest in the matter under consideration. So if prenatal human beings or newborn human beings have an objective interest in life (a future-like-ours), then regardless of the time-relative psychological strength or weakness of the present self to the future self, the objective interest remains unaltered and, in this case, extremely strong. On the other hand, if the interest is merely subjective, then it is hard to see what work the time-relative aspect plays in the discussion. According to this view, no presentient fetus has any subjective interest at all, and no newborn has a subjective interest in remaining alive since the newborn lacks a concept of self and therefore lacks the desire to remain alive.<sup>4</sup>

Furthermore, in assessing the TRIA, it is important to consider the harm of death. A harm can be considered in two ways: in itself (*per se*) and accidentally. In itself, stealing \$35,000 is equal to stealing \$35,000. But considered circumstantially, in terms of accidental characteristics, stealing \$35,000 from a poor widow is worse than stealing \$35,000 from Bill Gates. The harm of blindness deprives individuals of sight equally. However, for a photographer, more is lost when sight is lost. The harm of deafness deprives individuals of hearing equally. But circumstantially, for a musician in an orchestra, the loss of hearing accidentally brings other harms, like the loss of income, meaningful work, and the social goods of orchestra membership.

With respect to the harm of death considered in itself, the infant, the twenty-year-old, and the eighty-year-old are *equally* harmed, since they all lose the same

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<sup>3</sup> *Ibid.*, 72.

<sup>4</sup> See Alberto Giubilini and Francesca Minerva, “After-Birth Abortion: Why Should the Baby Live?,” *Journal of Medical Ethics* 39.5 (May 2013): 261–263. See, too, Christopher Kaczor, Philosophy and Theology Notes on After-Birth Abortion, *National Catholic Bioethics Quarterly* 12.4 (Winter 2012): 739–745.

thing—their life, the bodily integration they enjoyed as living organisms. Death destroys each one equally. However, when considering the harm of death not per se but accidentally, many factors are relevant in terms of assessing the harm considered in its circumstantial specificity, including but not limited to the loss of future goods, the loss of currently enjoyed goods, and the loss of social goods. With respect to the loss of *future* goods (a future-like-ours), the infant's death is worse than the twenty-year-old's death, and the twenty-year-old's death is worse than the eighty-year-old's death. The greater the amount of future good that is lost, the greater the loss for the deceased in that respect.<sup>5</sup> With respect to *currently enjoyed* goods, the twenty-year-old (and presumably the eighty-year-old) loses more than the infant or prenatal human being, since adults can enjoy certain goods like friendship, knowledge, and freely chosen meaningful activity that the infant and prenatal human being cannot enjoy. Other currently enjoyed goods are also relevant. An individual with a happy life loses more in dying than an individual with a miserable life. An intelligent, friendly, and healthy person loses more in dying than does an unintelligent, misanthropic, and sickly person.

The badness of death can also be considered in terms of social goods. Other things being equal, the death of a president or pope is worse than the death of a plain person in view of the place of the deceased in the political or religious community. The death of a good father or mother with young children is worse than the death of a person with no children. The roles, responsibilities, and benefits provided by the deceased are all relevant in considering how bad a particular person's death is, all things considered. Yet in terms of fundamental worth and value, all human persons—the young and the old, the beautiful and the ugly, the well connected and the isolated—are equal in dignity.<sup>6</sup> Thus, all human persons, regardless of accidental differences in future goods, current goods, or social goods, have equal rights to live. All human deaths are per se alike in that each destroys a person of inestimable worth and value. Every human death is circumstantially different from all others in the loss of future goods, the loss of current goods, and the loss of social goods. In short, we do not need the TRIA to account for accidental differences in the badness of deaths.

In addition, the TRIA supposes that death is bad because death deprives the one who dies of benefits in the future. In “Killing and the Time-Relative Interest Account,” Nils Holtug points out, “The Deprivation Account of the Badness of Death states that an individual's death is bad for her to the extent that, had she not died, she would have enjoyed benefits (welfare units) in the future.”<sup>7</sup> Thus, the TRIA makes an individual's value contingent on current or potential future welfare units enjoyed, rather than on an intrinsic property. As Holtug puts it, the Deprivation Account of

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<sup>5</sup> In answer to some objections to this claim, see Don Marquis, “Abortion and Death,” in *The Oxford Handbook of Philosophy of Death*, ed. Ben Bradley, Fred Feldman, and Jens Johansson (New York: Oxford University Press, 2013), 409–431.

<sup>6</sup> See Christopher Kaczor, *A Defense of Dignity: Creating Life, Destroying Life, and Protecting the Rights of Conscience* (Notre Dame: University of Notre Dame Press), 2013.

<sup>7</sup> Nils Holtug, “Killing and the Time-Relative Interest Account,” *Journal of Ethics* 15.3 (September 2011): 179.

the Badness of Death “does not commit us to the claim that death is intrinsically bad for the person who dies; rather it is extrinsically bad, in the sense that it prevents certain intrinsic goods from accruing to this individual.”<sup>8</sup>

However, what makes the destruction of something bad is relative to the value of what or who is destroyed. Now *things* have value merely as conduits to other desired states of affairs. A smartphone is valuable as a means of communicating and computing but has little or no value in itself if it cannot bring about these other states of affairs. But, as Kant pointed out long ago, *persons* are not things whose value is contingent on bringing about satisfactory states of affairs.<sup>9</sup> The human person is no mere means to generating welfare units. Rather, persons have dignity, worth in themselves.<sup>10</sup> An individual’s death is the destruction of that individual as an integrated organism. If the organism in question has intrinsic worth, then the death of the organism is something bad. Thus, while part of what makes death bad (circumstantially considered) is the loss of future welfare units, what makes death bad in itself for the human person cannot be fully explained by lost welfare units.

Another objection can be raised against the TRIA, namely, that the Deprivation Account of the Badness of Death does not account for the harm of death *as death*. Many unfortunate occurrences can deprive us of future welfare units, such as kidnapping, imprisonment, full or partial lobotomy, drug overdose, serious stroke, intense sedation, or Alzheimer’s disease. All of these (and more) can take away opportunities that we would have had for enjoying benefits in the future. But death is a distinctive and specific harm that is not exactly equivalent to these other harms. If an account of the harm of death is to be precise, it should identify the specific deprivation that death itself inflicts on its victim. The obvious candidate is that death deprives the victim of life, and life (the most basic bodily well-being of an organism) is a good for that organism. Indeed, an organism is what it is in virtue of being alive. Without life, what was a human being, a horse, or a dolphin becomes simply a disordered heap of organic matter. Death is bad in itself for an organism (indeed, death is the destruction of that organism), so the infliction of death is the infliction of harm on an organism. If the organism in question is a human being with intrinsic dignity, this destruction is a weighty moral matter.

In “Killing and the Time-Relative Interest Account,” Holtug raises an objection to this line of thought. He writes, “The Deprivation Account entails a proposition many find compelling, namely that death need not always be bad for the individual who dies. If an individual’s future would hold more bad than good for her, it may indeed benefit her to die.”<sup>11</sup> However, in a discussion of physician-assisted suicide, Jorge Garcia points out that death cannot be a benefit to the one who dies. Garcia writes,

Ending her pain cannot be a benefit to her for the usual reason, then, because here [when the patient is dead] the patient does not experience relief and

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<sup>8</sup> Ibid., 170–171.

<sup>9</sup> Immanuel Kant, *Groundwork of the Metaphysic of Morals* (New York: Harper Perennial Modern Thought, 2009), 48.

<sup>10</sup> On this topic, see the magisterial article by Patrick Kain, “Kant’s Defense of Human Moral Status,” *Journal of the History of Philosophy* 47.1 (2009): 59–102.

<sup>11</sup> Holtug, “Killing and the Time-Relative Interest Account,” 171.

thereafter live pain-free. As the end of her pain here does not improve her experience neither does it improve her life, her condition. Rather, she (her integrated human life) ends along with the pain, and *she* is in no condition at all during the period when she is lifeless. We cannot, then, meaningfully compare it with her condition over the same time had she lived. . . . Thus, it is difficult to see just what benefit our killing renders her, as it *improves* neither her experience, nor her life, nor her condition.<sup>12</sup>

Even if the individual's future holds more negative experiences than positive experiences, death does not *benefit* the individual but rather *destroys* the individual. Good can come from bad and bad can come from good without good becoming bad or bad becoming good. Just because something good (the elimination of pain) comes from something bad (the destruction of the individual) does not mean that the death itself is a good for the individual.

The TRIA leads to several counterintuitive conclusions. First, consider someone on death row waiting to be executed in a few minutes. Just before the execution, a guard on his own prerogative kills the inmate. This guard does something seriously wrong, but the inmate has lost (almost no) future benefits since he was going to die momentarily anyway. Second, Holtug points out that on the TRIA, the moral assessment of an action ends up depending on whether or not the action is performed.<sup>13</sup> Third, Peter Nichols in his article "Abortion, Time-Relative Interests, and Futures like Ours" argues that the TRIA implies that it is morally permissible to kill Alzheimer's patients:

It seems that an adult in the advanced stages of Alzheimer's Disease has very little time-relative interest in continuing to live, since there is only a very weak degree of psychological unity between such a person and herself at future times. Thus, the TRIA implies that it would be morally permissible—or at best, only very slightly wrong—to kill the Alzheimer's victim. [Jeff] McMahan's response to this problem is that psychological unity is the basis of rational egoistic concern, but that moral concern is grounded in an individual's intrinsic nature, which need not vary over time: "[T]he basis of our moral concern for the Alzheimer's Patient's future interests need not be any different from the basis of our moral concern for her present interests. Her future suffering should, for example, matter just as much to a disinterested third party as her present suffering should, other things being equal." . . . Thus, as third parties, we need to respect the Alzheimer's patient's current and future time-relative interests, just as we should do in cases of prenatal harm.<sup>14</sup>

But why, on McMahan's view, should the Alzheimer's patient be the object of moral concern? She is not an autonomous person and so, on McMahan's view, is not due respect. She has very little or no time-relative interests, so time-relative interests cannot ground moral concerns.

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<sup>12</sup> J. L. A. Garcia, "The Doubling Undone? Double Effect in Recent Medical Ethics," *Philosophical Papers* 36.2 (2007): 245–70.

<sup>13</sup> Holtug, "Killing and the Time-Relative Interest Account," 169–89.

<sup>14</sup> Peter Nichols, "Abortion, Time-Relative Interests, and Futures like Ours," *Ethical Theory and Moral Practice* 15.4 (2012): 501, quoting Jeff McMahan, *The Ethics of Killing: Problems at the Margins of Life* (New York: Oxford University Press, 2002), 284.

Finally, Matthew Liao, in his article “Time-Relative Interests and Abortion,” argues that the time-relative interest account permits not only abortion but also infanticide.<sup>15</sup> Neither the fetal human being nor the newborn human being has greater time-relative interests in life than a normal dog, so neither should be accorded a right to live. McMahan recognizes this implication of his view:

It therefore seems difficult, within the framework I have sketched, to avoid the conclusion that it would be permissible (and perhaps even morally required, if other things are equal) to kill the healthy, orphaned newborn in order to use its organs to save the three other children. (It should, of course, be obvious that [Peter] Singer’s understanding of the morality of killing has the same implication.) Most people will find this implication intolerable, and I confess that I cannot embrace it without significant misgivings and considerable unease.<sup>16</sup>

If the TRIA is commended to us because it is able to account for common intuitions about the badness of death, the implications of the TRIA for obligatory infanticide and harvesting a baby’s organs weigh heavily on the other side of common intuitions. Indeed, obligatory infanticide for organ harvesting is a *reductio ad absurdum* for the TRIA.

To avoid justifying infanticide, Liao points out that one could revise the TRIA so that having any subjective interests whatsoever is sufficient for granting a right to life. In this case, both infanticide and late-term abortion would be wrong, since both the newborn and the late-term human fetus have some interests, but a presentient fetus (lacking as he or she does all subjective interests) would not have a right to life.

Liao argues that this strategy for saving the TRIA fails to work in part because if the threshold is quite low, then normal dogs also have a right to live. “Many people believe that once a being meets the minimum requirement of the morality of respect for persons, then that being has equal worth to all the other beings who also meet this minimum requirement. Call this the Equal Worth View. On this view, even if other beings have comparatively stronger time-relative interests than this being does, all beings that meet the minimum requirement still have equal worth.”<sup>17</sup> But this view would entail that killing a dog is just as wrong as killing a college student. This is hard to believe. In addition, once the standards are lowered (in the revised TRIA) to include both newborns and sentient fetuses, it is difficult to see why presentient fetuses should not also be included in the realm of protection. The differences between a presentient fetus and a postsentient fetus are often miniscule, but radical differences in treatment cannot be justified by miniscule differences. In the revised TRIA, both early and late abortions are excluded. So the standard TRIA justifies both abortion and infanticide, and the revised TRIA justifies neither late abortion nor early abortion. Thus, unless we are willing to embrace obligatory infanticide and the killing of adults with Alzheimer’s disease (in addition to the more theoretical difficulties mentioned earlier), we should reject the TRIA as a justification for abortion.

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<sup>15</sup> S. Matthew Liao, “Time-Relative Interests and Abortion,” *Journal of Moral Philosophy* 4.2 (2007): 242–256.

<sup>16</sup> McMahan, *Ethics of Killing*, 360.

<sup>17</sup> Liao, “Time-Relative Interests and Abortion,” 251–252.