



## PHILOSOPHY AND THEOLOGY

Who has a right to live, and why? Michael Gorman, in his essay “Personhood, Potentiality, and Normativity” (*American Catholic Philosophical Quarterly*, Summer 2011) argues not that it is mistaken to base the fetal right to life on potentiality but that an argument on this basis will be extraordinarily difficult to make because “potentiality” has so many senses. The senses of “potentiality” include but are not limited to (1) the immediately exercisable capacity for “ready rationality,” (2) the ability to develop “ready rationality” under normal conditions (but this excludes humans with severe genetic defects and those suffering catastrophic brain damage), and (3) the ability to develop “ready rationality” under extraordinary conditions. (This last includes human beings with severe genetic defects and those suffering catastrophic brain damage, but would also include, as Gorman notes, kittens and tulips made rational by some sort of miracle.) Gorman’s list of various meanings of “potentiality” could also add (4) basic natural capacity (whether or not it is immediately exercisable), which is a position articulated by Robert P. George, Christopher Tollefsen, Patrick Lee, and many others.

Gorman notes, quite properly, that defining “potentiality” or “capacity” and then getting clear on what is or is not logically possible within the category so defined is a tricky matter. These complexities are explored also in J. A. Burgess’s “Potential and Foetal Value” (*Journal of Applied Philosophy*, May 2010). With some justification, Gorman fears that we might be clarifying the obscure (whether the human fetus has moral status) by means of the even more obscure (what is logically possible).

So as an alternative, Gorman proposes that we link personhood and normativity: “There are ‘norm-constituted’ categories or kinds. For a kind of this sort, there is at least one feature such that an entity belongs to the kind only if it *should* have that feature (not: only if it *does* have it).” “Should” is meant here in a non-moral sense, such that if a being is lacking in what it should have, it is imperfect, not yet brought to the point of its having all that it needs for its perfection. The standard of perfection is the normal adult. Normativity of this kind is embedded in “objective differences

between sickness and health, normalcy and defect, immaturity and maturity, and so on.” Gorman then defines a being with basic moral status in terms of this normativity: “A person is an individual substance that is subject to the norm of ready rationality. Any individual substance that should be rational, in the sense of ‘should’ adumbrated above, is a person.”

A question that remains is, what reason do we have to think it true that every “individual substance that is subject to the norm of ready rationality” is a being that has a right to life? To answer this question, it might help to turn from disputed cases to obvious ones. It may be best to begin with what is not in dispute: that it is wrong to kill you or me. *Why* is it wrong to kill you or me? I believe it is wrong to kill us because it would undermine our flourishing. Since this wrongfulness is not limited just to you and me but extends to all others who are like us, it is wrong to kill anyone who has flourishing like ours. (Some might argue all mammals have flourishing like ours, or all animals or all sentient beings. Whether or not dolphins or great apes have flourishing like ours, other human beings undoubtedly do.)

This argument is similar to Donald Marquis’s future-of-value argument.<sup>1</sup> However, his view excludes from protection human beings in the last stages of life as well as some seriously handicapped human beings who do not have a future of value (as Marquis understands it). The flourishing-like-ours argument is inclusive enough to include all human beings. It also has the advantage that it explains what is wrong generally with a variety of acts. Mutilation, kidnapping, and rape, for example, do not take away a future like ours, but do inhibit flourishing like ours.

In a wonderful essay, “Why Abortion is Seriously Wrong,” Donald Marquis compares two kinds of defense of human life, namely, the future-of-value view (which I will call by its initials, FOV) and the substantial identity or basic capacity view advocated by Frank Beckwith, Patrick Lee, and Robert P. George (which can be identified by its authors’ initials, BLG).<sup>2</sup> In his article, Marquis begins by addressing the strengths of the FOV account. In many ways, FOV and BLG are similar, so we will focus on some differences.

FOV and BLG part ways in their account of precisely the wrong done in killing. Marquis writes, “The future of value view locates the wrong of killing just where it should be in another respect. It locates the wrong of killing in the prospective future of the victim. When Fred kills Joe, Fred does not alter Joe’s past. Joe’s past is already completed. It cannot be changed. Furthermore, when Fred kills Joe, Fred does not really alter Joe’s present. The present is instantaneous; it divides the past and the present. Because killing should make a difference to the victim, it must concern the victim’s prospective future.”<sup>3</sup> Marquis is correct that killing does not

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<sup>1</sup> Donald Marquis, “Why Abortion Is Immoral,” *Journal of Philosophy* 86 (April 1989): 183–202.

<sup>2</sup> Donald Marquis, “Why Abortion Is Seriously Wrong: Two Views,” in *Bioethics with Liberty and Justice: Themes in the Work of Joseph M. Boyle*, ed. Christopher Tollefsen (New York: Springer, 2011), 3–22.

<sup>3</sup> *Ibid.*, 4.

alter the past, but what it always does is change the *present* while it may or may not alter the future. When Fred kills Joe, Fred does really alter Joe's present, causing a change in Joe from being living to being deceased. Furthermore, if someone is about to be killed or die of natural causes anyway, then they do not have a FOV, but in such a case it would still be wrong to kill them according to BLG. Killing does make a difference to the victim precisely by altering the victim in the only way that the victim can be altered. The past is gone, the future does not yet exist, so the way a victim is harmed is in the present.

Marquis notes that both FOV and BLG fit "killing into the category of harm." But in explaining this point, it seems clear that BLG has an advantage over FOV. On the FOV view, abortion would be much worse than the killing of a forty-year-old, since it deprives the deceased of a much greater future value. This seems both counterintuitive and contrary to the commonly held beliefs that everyone who has a right to live has an equal right to live by virtue presumably of losing something of equal value, namely, their life. Aside from circumstantial differences, all intentional killing of the innocent is equally wrong.<sup>4</sup>

Next, Marquis compares FOV to various accounts of killing which (unlike BLG) base the wrongfulness of killing on an individual's positive attitude toward his or her future: "Versions of such accounts refer to one's hope for one's future, or to one's desire to live, or to one's plans and projects concerning one's future life, or to one's caring about one's future, or to one's valuing one's future, or to one's taking an interest in one's future."<sup>5</sup> Marquis criticizes these views because "they do not account for the wrongness of killing human adults who lack a positive attitude toward their futures. For example, they do not account for the wrongness of killing those who suffer from severe depression, or those who ask you to kill them because they want to sacrifice their lives to the gods or to those who have been given some drug that causes them to want to die."<sup>6</sup> To make Marquis's survey more complete, it is important to note that David Boonin's view does account for these sorts of cases by

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<sup>4</sup>See Christopher Kaczor, "Equal Rights and Unequal Wrongs: Human Dignity and the Ethics of Abortion," *First Things*, August–September 2011, 21–23.

<sup>5</sup>Marquis "Why Abortion is Seriously Wrong," 4, citing various criteria for the right to live, including having hope for one's future, Mark Brown, "The Morality of Abortion and the Deprivation of Futures," *Journal of Medical Ethics* 26 (2000): 103–107; having a desire to live, Michael Tooley, "Abortion and Infanticide," *Philosophy and Public Affairs* 2 (1972): 37–65, and Peter Singer, *Practical Ethics* (Cambridge, UK: Cambridge University Press, 1979); having plans and projects, David DeGrazia, *Human Identity and Bioethics* (New York: Cambridge University Press, 2005); caring about one's future, Jeff Reiman, *Abortion and the Way We Value Human Life* (Lanham, MD: Rowman and Littlefield, 1999); valuing one's future, John Harris, "The Concept of the Person and the Value of Life," *Journal of the Kennedy Institute of Ethics* 9.4 (1999): 293–308; and taking an interest in one's future, Ronald Dworkin, *Life's Dominion: An Argument about Abortion, Euthanasia, and Individual Freedom* (New York: Knopf, 1993), and Bonnie Steinbock, *Life Before Birth* (New York: Oxford University Press, 1992).

<sup>6</sup>Ibid.

positing “ideal desires,” that is, the desire that the agent would have if not depressed, on drugs, or brainwashed by a religious cult.<sup>7</sup>

Patrick Lee has provided a superb explanation of why such understandings of the right to life fail. He writes,

The positive attitude account puts the cart before the horse. Conditions are not worthwhile because they are desired; rather, they are desirable because they are worthwhile, because they have whatever it takes to make something worth being desired. Clearly, some of our desires are bad and some are merely whimsical. Since worthless objects are sometimes desired, it follows that being desired cannot be what makes an object to be worthwhile. So, prior to being desired, the object of desire must have something in it which makes it fitting or suitable to being desired. What makes a thing good does not consist in its being the satisfaction of desires or preferences; rather, desires and preferences are rational only if they are in line with what is genuinely good. So, a state of affairs should be desired or cared for if it is inherently valuable. A condition's being valuable makes desires for it reasonable, not vice versa.<sup>8</sup>

We can and ought to shape what we desire and value. This takes place in part by introspection to determine what we *truly* desire as opposed to what we desire in an unconsidered or superficial way. Even more importantly, we ought to shape what we desire by trying to determine what is actually fulfilling for us, what is objectively good, rather than merely subjectively pleasing, perhaps because of vicious habit. As Aristotle pointed out, the desires of a virtuous man and a vicious man are not alike: as a person becomes more virtuous by choosing good acts, his desires change over time so that he wants to do what is right.

Marquis turns next to the substantial identity account advocated by BLG. He sees some serious problems with this account. He writes,

That we are human beings, and that fetuses are human beings, are biological facts. As a general rule, biological facts aren't morally significant. That we have one Y chromosome does not give us more rights than those [who lack a Y chromosome]. That we are Caucasian does not give us more rights than those who are not. Accordingly, why should the biological fact that we are human have any great moral significance? Singer has labeled the view that the biological property of being a human being makes, without further argument, a moral difference “speciesism.” Singer's point is that the connection between the biological and the moral of which substantial identity theorists are so fond is arbitrary.<sup>9</sup>

Gorman's perspective is relevant here. The biological species of an organism is relevant in terms of determining which normative framework(s) to make use of in

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<sup>7</sup>I have written elsewhere that Boonin's account also ends up failing. Christopher Kaczor, *The Ethics of Abortion: Women's Rights, Human Life, and the Question of Justice* (New York: Routledge, 2011), sec. 4.1.1.

<sup>8</sup>Patrick Lee, “Substantial Identity, Rational Nature, and the Right to Life,” in *Bioethics with Liberty and Justice*, ed. Tollefsen, 25, original emphasis.

<sup>9</sup>Marquis, “Why Abortion is Seriously Wrong,” 5, citing Singer, *Practical Ethics*, 117.

considering the flourishing of the being in question. The normative connects the biological and the moral in a non-arbitrary way.

Lee's essay also makes reference to the idea of an orientation to rationality. This is possessed by all human beings in virtue of what they are, and it distinguishes human beings from (to use an example of Gorman's) kittens that, if injected with a special drug, would have this orientation. Either one is or is not the kind of being whose flourishing consists in making use of reason and will. Of course, a human being may have or fail to have flourishing like ours in any number of degrees, but the orientation to flourishing like ours is something one either has or does not have.

If all human beings have a right to live, the question of when human beings begin to exist becomes relevant. In his article "Stem Cell Research and the Problem of Embryonic Identity," Phillip Montague argues that "the claim that all adult human beings once existed as zygotes actually stands or falls with the possibility of tracking the continuous existence of single individuals from zygotes to adult humans, or—in the reverse direction—from adults to zygotes" (*Journal of Ethics*, December 2011). This assertion is unfair, because the targets of his critique, Robert P. George and Christopher Tollefsen, repeatedly deny that *all* adult human beings once existed as zygotes. In their book *Embryo: A Defense of Human Life*, now in its second edition, they state, "For the vast majority of us—all those who were not the products of monozygotic twinning (i.e., twinning from a single fertilized egg)—we began to exist at conception: the point at which a new and distinct individual of *Homo sapiens* came into being as a complete, living human organism."<sup>10</sup> In this passage, and others, they deny that *all* adult human beings once existed as zygotes. Montague also critiques a straw man when he writes, "A single individual cannot become two individuals. Of course, individuals can generate other individuals while they themselves remain single individuals." Montague offers no evidence whatsoever that George and Tollefsen hold that a single individual becomes two individuals in the case of twins or any other case.

Conflicting interpretations of the twinning phenomena have been offered. For example, one could view twinning as the ceasing to exist of the original embryo (Zyggy) giving rise to two other embryos (Sally and Allie). One could also view the original embryo, Zyggy, as surviving the twinning process and giving rise via budding to another embryo (Allie).

Montague then applies these two views to the non-twinning embryo. The division of one cell into two is typically thought to involve the destruction of the first cell, which gives rise to the daughter cells. But if this is true, argues Montague, the zygote was destroyed in the first cleavage and *neither* daughter cell is identical to the zygote. On the other hand, if we think that the first cell is not destroyed, but rather through budding gives rise to other cells, then the original cell always exists in the multicellular embryo, "which implies that no adult human being can possibly be identical to Z, and no adult human being has ever existed as a zygote."

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<sup>10</sup> Robert P. George and Christopher Tollefsen, *Embryo: A Defense of Human Life*, 2nd ed. (Princeton: Witherspoon Institute, 2011), 69–70.

A phase sortal can be thought of, in Aristotelian terms, as an accidental characteristic, that is, a characteristic that a subject may or may not have and yet remain the same individual. Thus, a zygote is a phase sortal in the life span of a human being, for at the first cell division the zygote no longer exists. In a similar way, a teenager is a phase sortal in the life of a human being, for at her twentieth birthday, the teenager ceases to exist. The question is not whether a teenager or a zygote ceases to exist, however, but rather whether the living organism ceases to exist. In the cases of both the zygote and the teenager, the living organism survives the accidental change.

In an earlier article, Marquis offered another argument why the zygote is not a human being: “This one-celled human being, this zygote, will split into two cells. Each of the two cells does not seem to be different in any important respect from the human from which each originated. The situation here is like the fission of one amoeba into two amoebas, with (let us suppose) no space separating the amoebas. Therefore if the zygote from which the two human cells originate is a human being, then each of these two cells must also be a human being.”<sup>11</sup>

In “Some Questions for Philosophical Embryology” (*American Catholic Philosophical Quarterly*, Summer 2011), Christopher Tollefsen responds to Marquis’s point. Tollefsen notes that at three to four days there is already differentiation among the cells of the embryo, some cells going on to become the inner cell mass and others going on to become the outer cell mass. He also notes an experiment in which Magdalena Zernicka-Goetz of Cambridge University dyed the first two cells of the embryo, one red and one blue, and then tracked their descendants. The results, published in *Nature*, showed that “the first division of the [fertilized] egg influences the fate of each cell and ultimately, all the tissues of the body. . . . What is clear is that developmental biologists will no longer dismiss early mammalian embryos as featureless bundles of cells.”<sup>12</sup> If the early cells were in fact exactly the same, then the function and developmental paths of these cells should be the same. Much continues to be written on the moral status of the human embryo, but the best biological and ethical research points to the truth that all human beings—even in the first stages of life—merit equal basic protection from intentional harm.

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<sup>11</sup> Donald Marquis, “The Moral-Principle Objection to Human Embryonic Stem Cell Research,” *Metaphilosophy* 38 (2007): 198–199, quoted by Tollefsen in “Some Questions for Philosophical Embryology”; see next paragraph.

<sup>12</sup> Helen Pearson, “Your Destiny, From Day One,” news feature, *Nature* 418 (July 4, 2002): 14 and 15, quoted by Tollefsen.