

The Moral Status of Infants and Fetuses Teleological Potential, Justice and Charity

Sara Chan Yun Yu*

Abstract

In this paper, I review accounts of the moral status of infants and fetuses to show that they either fail to establish that infants are properly rights-bearers or fail to explain the grounds of this status. I then develop an account of teleological potential understood with reference to Philippa Foot's Natural Norms and argue that it can ground the rights-bearing status of infants and fetuses while avoiding the typical objections to potentiality-based accounts. I then incorporate this into a two-fold account of moral status directed at concerns of justice and charity, and grounded in sophisticated cognitive capacities and sentience respectively, which allows one to maintain that fetuses possess rights-bearing status alongside the intuition that infants are due more moral consideration. Finally, I consider potential objections based on concerns about women's autonomy and implications about the severely cognitively disabled.

Although abortion remains highly contested in political spheres, recent philosophical literature tends to support a permissive view, reflecting the dominance of accounts that ground rights-bearing in sophisticated cognitive capacities.¹ Lacking such capacities, the typical argument goes, the fetus lacks the normative personhood and attendant rights that form the basis of a strong embargo against killing it. The requirement of sophisticated cognitive capacities, however, also excludes infants from normative personhood.² Those who maintain that infants are properly rights-bearers, therefore, have reason to think such accounts incomplete. To my mind, the most straightforward response to infants' lack of sophisticated cognitive capacities is to appeal to their potential to develop such capacities, which suggests that fetuses are similarly entitled to moral consideration. However, even if one is sympathetic, as I am, to fetal rights, it undeniably seems worse to harm an infant than to harm a very early fetus or a

* Graduate Student, University of Oxford. Email: sara.chan[a]philosophy.ox.ac.uk

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¹ Jaworska & Tannenbaum (2018).

² E.g. See Giubilini & Minerva (2012).

zygote. This essay aims to ground the rights-bearing status of both infants and fetuses while respecting this intuition. Towards this end, Section I motivates this project by reviewing existing accounts and showing how they fail either to establish infants' intrinsic rights-bearing status or to satisfactorily ground their possession of such status. Section II then develops an account of teleological potential as the grounds for rights-bearing status and Section III integrates this account into a two-fold account of moral status based on justice and charity and shows how this can explain why infants morally matter more than fetuses. Finally, Section IV considers some possible objections.

I: Existing Accounts

This section examines the pro-abortion and anti-abortion literature in search of an account that both ascribes rights-bearing status to infants and successfully explains the grounds for it. I will begin by clarifying some key terms. First, moral status refers how much an entity or its interests morally matter for the entity's own sake, and may be distinguished from moral standing, understood as whether an entity matters morally.³ Next, full moral status indicates that one is due the highest moral consideration and is sometimes described in terms of personhood, where to be a person in a normative sense is to possess full moral status. One feature of full moral status is that it entails pre-emptive moral consideration, or the possession of moral rights. I will refer to this specifically as rights-bearing status.

Perhaps the most influential view is that rights-bearing status is grounded in the possession of certain sophisticated cognitive capacities, such as autonomy,⁴ self-awareness,⁵ or the ability to conceive of oneself as a continuous subject of mental states.⁶ Precisely which capacity is unimportant for the purposes of this paper. What is important is that both infants and fetuses lack these sophisticated cognitive capacities. Some theorists, notably Tooley and Singer, bite the bullet and accept that infants therefore are not normative persons.⁷ Although other prudential reasons to treat infants as if they are rights-bearers may mitigate the

³ Steinbock (2011), Buchanan (2009), although some use the two interchangeably (e.g. Jaworska & Tannenbaum, 2018).

⁴ E.g. Quinn (1984), pp.49-52.

⁵ E.g. McMahan (2002), p.45.

⁶ E.g. Tooley (1972), p.44.

⁷ Tooley (1972), p.49, Singer (1993), pp.169-171.

practical consequences of this, the notion that infants are not intrinsically rights-bearers is still repugnant to commonsense morality.

One account that seeks to explain the moral consideration intrinsically due to infants is Jeff McMahan's Time-Relative Interests Account (TRIA). Ultimately, McMahan endorses some form of the sophisticated cognitive capacities account.⁸ In addition, however, he introduces the TRIA to explain the moral concern due to entities who lack such capacities. According to the TRIA, how much an entity or its interests matters morally depends not only on the strength of those interests, but also on the strength of the psychological connections, such as memory and hope for the future, between the individual presently and the individual when those interests will be realized.⁹ This allows McMahan to explain why it is worse to kill infants than to kill animals: in virtue of their potential for sophisticated capacities, infants have extremely valuable futures, even discounted by their weak psychological connections to those futures.¹⁰ Next, the TRIA can also explain why infants are due more moral concern than fetuses: once infants are born they are exposed to much stimuli, leading their cognitive capacities develop very quickly thus enabling them to have greater psychological connections to their later interests, and entitling them to more moral concern.¹¹ Ultimately, however, although infants' valuable futures and rapidly increasing psychological connections to these futures entitle them to some intrinsic moral status, it still does not ground rights-bearing.

Next, moving away from the sophisticated cognitive capacities account, another influential account is Joel Feinberg's interest view which grounds rights-bearing status in the capacity for interests.¹² Despite focusing on interests, however, Feinberg still requires certain sophisticated cognitive capacities for rights-bearing status, because he holds that the capacity for conscious self-awareness is prerequisite for desires, which in turn is necessary for having interests.¹³ Ultimately, therefore, Feinberg's view implies that infants lack intrinsic rights-bearing status, although he does mitigate this by arguing

⁸ McMahan (2002), p.242.

⁹ McMahan, *forthcoming*, p.2, MacMahan (2002), pp.79-81.

¹⁰ McMahan (2002), p.199, p.205. Elizabeth Harman (2003) also appeals to potential to make a similar point (p185).

¹¹ Moreover, early fetuses lacking even the developed biological substrates to support consciousness, are on McMahan's view of human beings as embodied minds merely unoccupied human organisms below the threshold of respect.

¹² Feinberg (1993), p.209.

¹³ Feinberg (1993), pp.201-203, 209.

infanticide is wrong because of other reasons such as the common good.¹⁴

Notably, not all who count themselves interest theorists align themselves with Feinberg on what is required to have interests. Bonnie Steinbock, for example, maintains that interests require simply the capacity for consciousness or sentience, which allows her to claim infants have interests.¹⁵ Crucially, however, Steinbock takes interests to ground moral standing rather than rights-bearing.¹⁶ In other words, although infants possess the capacity for interests on Steinbock's account, this is insufficient to ground rights-bearing status.

Thus far, I have discussed several accounts of rights-bearing which support a permissive view of abortion and found that none ascribe intrinsic rights-bearing status to infants. This is, perhaps, unsurprising since infants do not differ significantly from late fetuses in terms of intrinsic cognitive qualities. I will next examine whether the anti-abortion literature may provide a plausible account of the rights-bearing of infants and fetuses.

One traditional way to ground the rights-bearing status of infants and fetuses is in their membership of the human species. Early versions of this view, for example, as posited by Stanley Benn, posit being human as both necessary and sufficient for rights-bearing.¹⁷ Since this precludes other rational species, however, more recent accounts, such as John Finnis's, often accept sophisticated cognitive capacities as the primary grounds for rights-bearing status and posit species membership as a secondary sufficient but not necessary condition.¹⁸ That is, one possesses rights-bearing status either if one possesses sophisticated cognitive capacities or if one is a member of a species which characteristically possesses such capacities. Such accounts, however, are vulnerable to the charge that they ground the substantial moral fact of rights-bearing in a seemingly morally irrelevant biological fact: It is unclear why species membership should be morally relevant for members who lack the morally relevant attributes,¹⁹ and to hold that it does, Peter Singer claims, is "speciesism" and morally equivalent to racism or sexism.²⁰ The Species Membership account is unsatisfactory

¹⁴ Feinberg (1993), p.210.

¹⁵ Steinbock (2011), pp.6-7.

¹⁶ Steinbock (2011), p.77.

¹⁷ Benn (1967), pp.69-71.

¹⁸ Finnis (1995), p.48.

¹⁹ McMahan (2002), pp.212-214.

²⁰ Singer (2015), p.9.

because although it ascribes rights-bearing status to infants, it fails to explain why species membership should ground such status.

Next, other influential accounts within the anti-abortion literature include the Sanctity of Life Account, the Special Relations Account and the Future Like Ours Account. Upon closer examination, however, these accounts turn out to be tangential to rights-bearing: according to Ronald Dworkin's Sanctity of Life account, opposition to abortion derives from belief in the intrinsic, sacred and non-incremental value of human life.²¹ Since this value is non-incremental, it is not better for there to be more human lives, but since it is intrinsically valuable, there is objective reason to protect human life where it does exist. Notice, however, that the moral reasons thus generated are impersonal duties: abortion is immoral because it disrespects life, rather than because the fetus itself is worthy of special moral consideration.²² The sanctity of life account is silent on the issue of rights-bearing status.

Next, the Special Relations Account is built on the fact that certain relationships, such as the parent-child relationship, generate particular duties, such as parents' duty to care for their children. Robert Nozick suggests that the relationship of shared species membership may generate duties to treat members of same species with respect in a similar manner.²³ Crucially, however, the parent-child relationship grounds the special duties of parents towards their children but does not change the child's intrinsic moral status: unrelated individuals have no special duties to the child. Although the Special Relationship account may generate duties for people to treat infants with particular moral consideration, it does not ground intrinsic rights-bearing status.

Finally, Don Marquis's Future Like Ours Account (FLOA) holds that abortion is immoral for the same reason that killing an adult person is immoral, namely because it deprives the victim of a valuable future.²⁴ The problem, however, is that it does not seem that what is primarily wrong about killing an adult person is that it deprives him of a valuable future. It is equally wrong to kill a 90-year-old as it is to kill an 18-year-old, despite the 18-year-old losing more years of good life. Death may be worse for the 18-year-old than for the 90-year-old, but it is equally wrong to kill them both because doing so violates

²¹ Dworkin (1993), pp.73-74.

²² McMahan (2002), p.331.

²³ Nozick (1997), p.308.

²⁴ Marquis (1989), pp.189-192.

their right to life. Thus, although the FLOA may explain why death is bad for fetuses and infants, and so in a sense why it would be wrong to kill them, it does not address rights-bearing.

I have now reviewed accounts of rights-bearing status on both sides of the abortion debate and found that they either fail to establish that infants are properly rights-bearers or fail to explain the grounds of this status, thus establishing the need for such an account.

II: Natural Norms and Teleological Potential

To my mind, the argument from potential, which posits that the potential to develop sophisticated cognitive capacities grounds rights-bearing status, is the most promising starting point, firstly because it is an intuitive response to infants' lack of sophisticated cognitive capacities and secondly because it grounds rights-bearing status in an intrinsic property. This section will attempt to develop a plausible version of the argument from potential.

Despite its promise, the argument from potential is infamous for two problems: first, the potential for X does not normally confer the rights of X.²⁵ For example, before 2016, Donald Trump's potential to become president did not give him presidential rights until he actually realized that potential. Second, the argument from potential is vulnerable to the following *reductio ad absurdum*: an egg and sperm technically have the potential for sophisticated cognitive capacities, but most would deny that they are rights-bearers.²⁶

These objections are valid but need not be definitive. It is not categorically true that potential can never ground rights: the right to health insurance, for example, is grounded in the potential to fall ill rather than the actuality of being ill.²⁷ Potentiality accounts may still succeed by explaining why potential should matter in this case.²⁸ Meanwhile, the second problem can be answered if the *reductio* can be resisted. Whether and how an account from potential may meet these objections depends on how the notion of potential is cashed out.

What does it mean to have potential? One option is that X has the potential to become Y if X will eventually become Y. This, however, is easily subject to

²⁵ Singer (1993), p.153, Boonin (2003), p.46, McMahan (2002), p.308.

²⁶ Griffin (2008), p.84, Sumner (1981), p.104.

²⁷ Manninen (2007).

²⁸ Steinbock (2011), p.59.

counter-example: suppose an infant had a genetic cardiac disease that would kill him before he was 3 years-old, it seems strange to suppose that he would therefore not be a rights-bearer whereas other infants without that disease would be. Alternatively, one might determine potential with respect to possibility rather than actuality. That is, X has the potential to become Y if X might possibly become Y. This however is similarly vulnerable to counter-example. Extensive gene therapy could render it possible for dogs to develop sophisticated cognitive capacities, which would imply that normal dogs possess rights-bearing status, which is counterintuitive.²⁹

These examples show that determining potential with respect to actuality or possibility results in a quagmire of unpalatable scenarios. The crucial thing, as James Griffin remarks, seems to be that “the moral significance of potentiality [...] depend[s] upon not only what it is potential for, but also *what it is the potential of* (italics mine)”.³⁰ A viable account of rights-supporting potential must discriminate between different kinds of entities. I submit that a normative or teleological account of potential can do so.

Something is normative if it derives from a standard or a norm, and something is teleological if it involves explanation in terms of purpose. Massimo Reichlin has suggested that an Aristotelian (i.e. teleological) notion of potentiality that conceives of a fetus as “already possessing the human nature (understood as a principle of becoming, rather than a static thing) and actively developing its potential for personhood”,³¹ can ground fetal rights. Contemporary readers, however, may be somewhat wary of Aristotelian teleology.³² Where does the telos come from, they wonder? Who sets the norms? This essay aims to answer these questions with appeal to Phillipa Foot’s notion of natural norms.

According to Foot, living things have the capacity for “natural goodness”, that is, they have goods (and bads) independent of the plans or desires of other things.³³ For example, it is good for a plant to grow well, and it is bad for it to be diseased. This kind of goodness stands in contrast with good predicated of things because it benefits something else, for example, when it is good that an ox plough a field because the farmer desires that the ox plough the field. Natural

²⁹ Example from McMahan (2002), pp.310-312.

³⁰ Griffin (2008), p.84.

³¹ Reichlin (1997), p.1.

³² E.g. see Bernard Williams’s (1985) critique of Aristotelian metaphysical teleology pp.43-44.

³³ Foot (2001), p.26.

goodness is determined with respect to what is characteristically good for a species insofar as it furthers individual survival and propagation of the species.³⁴ A good x is an x that is ordinarily well-suited as an x to do or live well, to thrive or flourish in a characteristically x way.³⁵

An obvious obstacle to extending this view to people is that most now reject the notion of a nature-determined good for individual persons.³⁶ A man can swear celibacy and there is value in that choice because he freely chooses it even if it is against the end of species propagation. This intrinsic value of autonomy arises because people are possessed of rational capacity, and it is to this that Foot appeals in extending natural goodness to people.³⁷ We can understand the characteristic way of being and flourishing for persons as the rational way.³⁸ A thriving human being is one that autonomously chooses his own destiny, and the value of his doing so is properly counted natural goodness. This dovetails nicely with the idea that it is sophisticated cognitive capacities that makes persons special.

Foot's next key premise is that the meaning of good in "a good plant is not diseased" is not significantly different compared to in "a morally good man keeps his promises".³⁹ Moral goodness does not occupy a sphere distinct from natural goodness. This may surprise contemporary readers whose intuitions have been honed by John Stuart Mill to regard the moral sphere as special and generally other-regarding. Foot, however, argues that moral goodness fits within the wider class of evaluations of natural goodness and shares the same structure of normative evaluation: just as natural goodness is determined with respect to the characteristic good of a species, moral virtues are evaluated in relation to how they contribute to characteristic human flourishing, which is in turn determined with respect to natural norms.⁴⁰ For example, just as it is good to stay in bed when one is sick, because that furthers the pursuit of health which is part of human flourishing, it is on Foot's schema, morally good to keep a promise because that furthers an aspect of human flourishing. Notice that this works only because virtue is part of human flourishing, and virtue is only part of

³⁴ Foot (2001), p.31, see also Hursthouse (1999), p.199.

³⁵ Foot, (2001), pp.34-35, Hursthouse (1999), p.205.

³⁶ Foot (2001), p.37, see also Hursthouse (1999), p.220.

³⁷ Foot (2001), p.56.

³⁸ Hursthouse (1999), p.222.

³⁹ Foot (2001), p.39, Hursthouse (1999), pp.205-206.

⁴⁰ Foot (2001), p.66

human flourishing because human beings are firstly social beings whose good is furthered in living in community with each other, and secondly rational beings who can understand morality. Moral goodness is a special subset of natural goodness which generates particularly important considerations and is applicable to beings whose rationality enables them to understand morality.

If we accept moral goodness as a subset of natural goodness, natural goodness can function to explain the notion, key to moral status, of “mattering for one’s own sake”. The capacity for natural goodness is necessary and sufficient for mattering for one’s own sake, which I shall call the possession of normative status. Since moral value is a subset of natural value, however, normative status is necessary but not sufficient for moral status. A plant has natural goodness but does not matter morally. Something further, such as the sentience, is required.

Next, natural norms provide a reference for understanding teleological potential. Recall that the characteristic way of man’s flourishing is via his rationality. This is his telos, it is the natural way in which his life is good. As members of the human species, infants and zygotes potentially have this characteristic way of flourishing, and it is good for their sake that they achieve it. They have the teleological potential for sophisticated cognitive capacities. In contrast, it is not in the nature of a dog in virtue of its dog-hood that it is characteristically rational, regardless of what possibilities gene therapy opens up.

Notice that in basing teleology on species norms, we are implicitly committed to a metaphysical view of persons in which physicality is essential. For example, that we are essentially physical beings with emergent mental properties. A metaphysical view in which we are, for example, embodied minds, would be in tension with the important role species plays in this account.

Next, since natural norms are determined with respect to species, one might worry that this is a disguised kind of speciesism. Although the account from teleological potential does have the same implications as the Species Norm account however, it differs crucially in that it explains why species is a morally relevant fact. By situating moral goodness within the wider concept of natural goodness which is determined with respect to species norms, the relevance of species to morality is made clear: natural goodness, which includes moral goodness, depends on what kind of thing something is, and what kind of thing something is depends on species. On this account, species is not morally

irrelevant.

Having explained how teleological potential can be understood with reference to natural norms, I will now show how teleological potential thus understood can address the problems for potentiality accounts set out at the beginning of this section.

The first problem was how to explain why potential should matter. Bertha Alvarez Manninen suggests that for potential to ground a right, potential must generate an interest in a moral right such that possessing the moral right constitutes a benefit for the potential entity and a denial of the moral right constitutes a harm.⁴¹ What makes this criterion plausible is that it restricts the scope to moral rights. Rights, such as access to healthcare, are fundamentally crucial to one's well-being in a way benefits such as presidential powers are not, which allows explanation of why one can be grounded by potential and the other not. The account from teleological potential can meet Manninen's criterion. It is inbuilt into the concept of teleological potential that it is good for the entity to realise its potential because that potential is its essential nature and not to realise it is accordingly a positive harm, rather than merely a lack of a good. Finally, although rights-bearing status is not itself a right, it is at least as important to well-being as a right since the possession of any right is contingent on the possession of rights-bearing status. Therefore, on the plausible assumption that it is because rights are fundamentally crucial to welfare that they can be grounded in potential, it seems that rights-bearing status, being similarly fundamental to well-being, may also be grounded in potential.

Next, the second problem was how to resist the *reductio ad absurdum* that the potential of the sperm and the egg to develop into normative persons implies that they have rights-bearing status. From a teleological perspective, the sperm has the purpose of fertilizing the egg, and there is goodness when it does so. Crucially however, from a teleological perspective, the sperm is but a part of the man, and although it may be "good" for the sperm to fertilize the egg, the goodness is proper to the man, rather than to the sperm. Something cannot be good "for the sperm's own sake", because the sperm does not have a sake of its own. The sperm does not possess the normative status that is a precondition for moral status. A similar argument may be made with respect to the egg. As for the gametes considered jointly, although they together possess all the genetic

⁴¹ Manninen (2007).

material for a full human organism, before combination they are still not one organism, and so should not be considered as one entity for which the question of moral status arises. In contrast, the zygote is not a part of either father or mother, but a new entity individualized by its own genetic code. Its goodness therefore cannot be determined with respect to either father or mother, but only properly with respect to itself. The zygote therefore possesses normative status, and being a complete human organism, the teleological potential for normative personhood that grounds rights-bearing status.⁴² Since this account does not depend on the zygote being numerically identical to the person it will later become, it is unaffected by the possibility of splitting. Splitting refers to when the zygote, or the few totipotent cells that it divides into, gives rise to not one but two individuals, that is, twins. The possibility of splitting is a problem for accounts that base the harm of killing the fetus on the fetus's numerical identity with a later person, because if splitting occurs, the zygote is not identical to a later person, and cannot be identical to two people.⁴³ In contrast, the account from teleological potential can accommodate the possibility of splitting, because the zygote possesses the teleological potential for sophisticated cognitive capacities regardless of whether this potential is eventually actualized in one or more individuals.

Some may protest that to extend rights-bearing status to the zygote is itself absurd. I suspect, however, that those who would make such an objection would also object to extending rights-bearing status to fetuses, and so would not be attracted to this account anyway. Meanwhile, the majority of those committed to fetal rights already extend rights-bearing status to the zygote.

In sum, this section developed an account of teleological potential based on natural norms. In doing so, I hope to have presented a plausible account of the grounds of the rights-bearing status of infants as well as fetuses.

III: Justice and Charity

Even ardent supporters of fetal rights, however, would be hard pressed to deny that infants are due more moral consideration than early fetuses or zygotes: if one has the opportunity to save only one of either an infant or a zygote in a petri-dish from a burning building, most would agree that one should save the

⁴² See Werner (1974), pp.202-210, for an argument that the zygote is indeed a human being.

⁴³ E.g. see DeGrazia (2007), p.70.

infant. This section will incorporate the account from teleological potential within a two-fold approach to moral status based on justice and charity to accommodate this intuition.

The distinction between justice and charity is hardly novel. Justice and charity may pull in different directions. For example, to remunerate each worker according to how much he has worked is just, but to give more to he who needs more may be considered charitable. And since moral concerns may be directed at either justice or charity, it seems natural that moral status, may be directed at either justice or charity as well. Indeed, although the justice-based notion of rights-endowing moral status predominates in discussions of the moral status of persons, discussions of the moral status of animals often references charity.⁴⁴

I suggest that persons possess two kinds of moral status, directed at justice and charity respectively. Justice-oriented moral status is equivalent to rights-bearing status, and is grounded in sophisticated cognitive capacities, or the teleological potential for such capacities. Meanwhile, charity-oriented moral status is the moral consideration an entity is entitled to as a proper object of charitable feeling. Suppose someone was uncomfortably warm. Although he has no right, that is, no claim of justice that his discomfort be alleviated, it would be morally good to do so. The moral concern relevant here is not justice, but charity, and it is relevant because of the subject is sentient. There is no charity in fanning a hot rock. Charity-oriented moral status, therefore, is grounded in sentience because it is the feeling pain or pleasure which is the basis of an action's being cruel or kind. And just as animals with greater sentience increase in moral status, a human organism, as it increases in sentience may increase in charity-oriented moral status.

Notice how this differs from rights-bearing status. Whereas rights-bearing status is a threshold concept so someone with better cognitive faculties is not due more rights-bearing status, charity-oriented moral status admits of degrees. Accordingly, although I have argued that teleological potential may ground justice-oriented moral status, I doubt much can be made of a similar argument for charity-oriented moral status. We can understand full moral status, then, as possessing both rights-bearing status and the highest degree of charity-oriented moral status.

To return to the titular concern of this paper, infants, fetuses and even

⁴⁴ Morris (2011), p.268.

zygotes possess rights-bearing status in virtue of their teleological potential. Only infants and post-sentient fetuses, however, possess charity-oriented moral status, and fetuses increase in charity-oriented moral status as their sense capacities develop, thus explaining why infants matter more than zygotes, and why fetuses are thought to matter more the more developed they are. Thus, I hope to have shown that the intuition that infants are due more moral consideration than zygotes can be accommodated alongside acceptance of the rights-bearing status of the unborn implied by the account from teleological potential.

IV: Objections

Thus far, I have argued that there is currently a lack of an account grounding the rights-bearing status of infants, developed an account of teleological potential to answer this lack and integrated it into a two-fold approach to moral status. This final section will consider two potential objections to this account.

The first potential objection derives from the issue of woman's rights and is directed against the fact that this account affirms fetal rights. In the words of Mary Anne Warren, "so long as the fetus remains within the woman's body, it is impossible to treat it as if it were already a person with full and equal moral rights, without at the same time treating the woman as if she were something less".⁴⁵ The idea is that granting fetuses rights would be a form of discrimination threatening the bodily autonomy of women, hence fetuses cannot be granted rights and any account that does so is sexist and misguided.⁴⁶

Notice, however, that the mere fact that fetal rights may conflict with women's rights is no reason to suppose either that to grant fetal rights is to undermine women's autonomy, or to suppose that they cannot co-exist. Commonly accepted rights have the potential to conflict, but this is not normally taken to be a valid reason for denying that those rights exist. A's right to freedom of movement may conflict with B's property rights when A exercises her freedom by breaking into B's house, but that is no reason to deny A's right to freedom, only to judge that B's property rights should take precedence. Similarly, merely accepting fetal rights does not automatically override the rights of the mother. The fetus's moral status is but one factor informing the permissibility of

⁴⁵ Warren (1985), p.102.

⁴⁶ E.g. Copelon, Zampas, Bruise & deVore. (2005).

abortion. Judith Jarvis Thomson, for example, argues for the permissibility of abortion even assuming the fetus has full moral status.⁴⁷ How the strength of the mother's right to bodily autonomy weighs against the fetus's right to life is both important and interesting, but falls beyond the scope of this paper.

Next, and more importantly for this paper, legal rights are distinct from intrinsic rights and rights-bearing status, although ideally the latter should inform the former. It seems that on a scale of moral fundamentality, the intrinsic moral status of the fetus is metaphysically prior to the permissibility of abortion which is prior to the laws of society, and so ideally, legal rights concerning abortion should be based on the ethics of abortion which in turn should be built upon how the moral status of the fetus weighs against the rights of the mother. To reason in reverse from the not uncontroversial positions that fetuses cannot be granted legal rights or that abortion must be permissible to the conclusion that the fetus therefore cannot intrinsically be a rights-bearer seems a dubious argumentative move, especially since it is possible to maintain that the fetus has rights-bearing status alongside a permissive view of abortion.

Next, a second objection to the account may be made based on its implications about the severely cognitively disabled. Although the account of teleological potential can maintain that the severely cognitively disabled have the teleological potential for sophisticated cognitive capacities in virtue of their humanity, and hence do possess rights-bearing status, it also seems committed to implying that the severely cognitively disabled are defective since they lack the characteristic rational way for human beings to flourish.

Perhaps, however, there may be room to resist the idea that the severely cognitively disabled are defective human beings while maintaining that for an adult human being to lack rationality is a defect. That is, one might allow that severe cognitive disability is a defect in the abstract but deny that this defectiveness is carried over to the individuals who possess it. As an analogy, consider the Japanese art of *kintsugi*, or "golden joinery", which involves repairing broken pottery with gold-dusted lacquer. Although the breaks are objectively flaws, in the finished product they are instead what makes the pot unique and beautiful. Moreover, the finished pot is not flawed. Similarly, we might allow that severe cognitive disabilities in the abstract are defects, but maintain that when instantiated in severely cognitively disabled people, they are

⁴⁷ Thomson (1971).

part of what makes them who they are, and moreover, such people are not defective.

In order for the *kintsugi* analogy to work with respect to the severely cognitively disabled, however, a coherent story must be told about how the cognitively disabled flourish in a normatively human way that is not the typical rational way. It is not impossible that such a story could be told: for example, citing disability-positive testimony and the wide range of ways in which humans can pursue interesting and meaningful lives, Elizabeth Barnes has recently argued that physical disability is merely a different rather than a defective way of being; although deaf people lack the intrinsic good of hearing, there are also other goods in which they participate by virtue of their deafness, such as the experience of music through vibrations.⁴⁸ On this view, deafness is a way of experiencing life that cannot be summed up simply by the lack of hearing. If such a view can be extended to cognitive disability, the *kintsugi* analogy might be applicable.

Unfortunately, however, conceiving of severe cognitive disability as merely a different way of being seems rather in tension with the account from teleological potential. Whereas in the *kintsugi* example where the repaired breaks do not fundamentally undermine the main purpose of the bowl or the cup, whether this purpose is functional or purely aesthetic, the lack of rationality in an adult human being, on an account that holds that the *telos* of human beings is the rational way, does undermine the main *telos*. It seems impossible for a way that is not rational to achieve the *telos*, and so impossible for another way of flourishing to be as good as the rational way. Conversely, if one instead holds that the rational way is but one of the ways of human flourishing, rationality loses its special status as the human *telos*, which the account from teleological potential needs to maintain. Ultimately, therefore, the implication that the severely cognitively disabled fail to achieve the human *telos* seems to be a bullet the proponent of the account from teleological potential will have to bite. Crucially, however, the practical implications of this are muted since even if they do not actualize this potential, the severely cognitively disabled do still have the teleological potential for sophisticated cognitive capacities that grounds rights-bearing status.

⁴⁸ Barnes (2016), p.57.

Conclusion

In conclusion, this paper has developed an account of the moral status of infants and fetuses, arguing firstly that teleological potential for sophisticated cognitive capacities understood with reference to natural norms can ground their rights-bearing status, and secondly that moral status should be understood as two-fold and directed at either justice and charity, with infants typically having more charity-oriented moral status than fetuses. There may, however, be objections to this account deriving from women's bodily autonomy and the case of the severely cognitively disabled, and although I have suggested that women's autonomy need not be incompatible with fetal rights, I am not sure that this account can deny that the severely cognitively disabled fail to achieve the human *telos*.

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