

AN INVESTIGATION INTO THE SUBSTANCE VIEW OF PERSONS

By

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## Abstract

According to a recent survey, a significant majority of professional philosophers support the permissibility of induced abortion in the first trimester of pregnancy. This thesis aims to defend the minority ‘pro-life’ view that abortion is immoral throughout pregnancy. To achieve this goal, the metaphysical and moral account of human beings known as the *substance view of persons* will be critically examined. This account maintains that all human beings deserve equal consideration in their treatment. That is, they have equal moral value; they are moral persons. Accordingly, prenatal human beings, like adults, enjoy the same ‘right to life’, and therefore, the substance view implies that abortion is *prima facie* impermissible. In the course of my investigation of the substance view, I argue that it can be defended against many of the objections of critics. Yet, I nonetheless find that the substance view has important shortcomings. Therefore, I recommend an alternative account I have developed as a replacement, the *rational animal account*. During this investigation, I also develop some critiques of important pro-choice arguments and evaluate other pro-life arguments that try to avoid the issue of moral personhood.

## Acknowledgements

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## **A note on thesis content**

This is a PhD by papers, meaning that it consists primarily of a series of individual papers rather than a traditional thesis format. The majority of these papers are published peer-reviewed journal articles. They have been incorporated in their published form, with revisions as noted in each paper's introduction. I have also included excerpts from other papers I have published. For reference, I have provided a table below which details each published paper, its authorship, and how it has been used. Further details are provided in the context sections before each paper is presented.

Part one is introductory and contains no published content.

Part two consists of five papers, three of which I am the sole author. The two remaining papers are co-authored, and I am the first author of each, responsible for the initial idea and at least half of the writing. One co-author is Daniel Rodger of the Institute of Health and Social Care at London South Bank University, and the other is Nicholas Colgrove of the Department of Health Management, Economics and Policy at Augusta University.

Part three consists of a single unpublished paper, all of which is my own work.

Part four is also a single unpublished paper. It draws on a series of published peer-reviewed journal articles that belong to a debate that has become known as the impairment argument against abortion. Two of the articles I contributed to this debate are co-authored with Dr Perry Hendricks. Simply collecting these papers together would make it difficult to follow without reading the papers they respond to, so I have developed an entirely new paper that draws on

my published work but goes well beyond it. It incorporates some portions of my published single-authored papers whilst briefly discussing and citing the co-authored papers with Perry Hendricks. After completing this thesis, I intend to publish the papers in parts three and four.

Part five consists of three revised and updated previously published papers. I am the sole author of two of these and they are incorporated in their entirety (one is renamed). The third published paper is co-authored with Daniel Rodger. I am the first author of the co-authored paper, and the idea for the original paper was mine.

Thesis Part	Paper details	Authorship	Use	Changes
2	Blackshaw, B. P. and Rodger, D. (2019). The problem of spontaneous abortion: Is the pro-life position morally monstrous? <i>The New Bioethics</i> 25(2):332–348.	Co-authored	Entire paper	Minor edits
2	Blackshaw, B.P, Colgrove, N. (2020). Frozen embryos and the obligation to adopt. <i>Bioethics</i> 2020;34:857–861.	Co-authored	Entire paper	Minor edits
2	Blackshaw, B. P. (2019). The ethics of killing: uniting the substance view with time-relative interests. <i>The New Bioethics</i> .	Single author	Entire paper	Minor edits
2	Blackshaw, B. P. (2022). Defending the substance view against its critics, <i>The New Bioethics</i> , 28:1, 54-67	Single author	Entire paper	Minor edits
2	Blackshaw, B. P. (2021). Can pro-life theorists justify an exception for rape? <i>Bioethics</i> 36(1): 49–53.	Single author	Entire paper	Minor edits
4	Blackshaw, B. P. (2019). The impairment argument for the immorality of abortion: A reply. <i>Bioethics</i> , 33(6), 723–724.	Single author	Several paragraphs included	Minor edits
4	Blackshaw, B. P. (2019). The impairment argument for the immorality of abortion revisited. <i>Bioethics</i> , 34(2), 211–213.	Single author	Several paragraphs included	Minor edits
4	Blackshaw B. P. (2024a). Defending the impairment argument. <i>J Med Ethics</i> 50:342-344	Single author	Several paragraphs included	Minor edits
4	Blackshaw, B.P. (2024b). A reply to Gillham on the impairment principle. <i>Med Health Care and Philos</i> 27, 31–35	Single author	Several paragraphs included	Minor edits

5	Blackshaw, B.P. (2022). The Non-identity Problem and the Psychological Account of Personal Identity. <i>Philosophia</i> 50:425–436	Single author	Entire paper	Minor edits
5	Blackshaw, B. P. & Rodger, D. (2021). If fetuses are persons, abortion is a public health crisis. <i>Bioethics</i> 35 (5):465-472.	Co-authored	Entire paper	Moderate edits
5	Blackshaw, B.P. (2020). Genetic Selective Abortion: Still a Matter of Choice. <i>Ethic Theory Moral Prac</i> 23:445–455.	Single author	Entire paper	Minor edits, new title

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## **PART ONE: Introduction**

### **1.1. Introduction**

The ethics of abortion is an intriguing and important topic. Intriguing, because it has a long history,<sup>1</sup> and draws upon diverse fields—the biological sciences, metaethics, normative and applied ethics, the metaphysics of persons and identity, human rights, and religion. Important, because the stakes are high, and in many countries, there is pressure for legislation from both sides of the debate. For those who defend the right to abortion (often referred to as ‘pro-choice’), the right of women to control their own bodies—their bodily autonomy—is under threat. Opponents of abortion rights (often referred to as ‘pro-life’) are concerned that millions of valuable human beings are being unjustly killed—they consider abortion as an act of homicide.

Abortion is a complex issue that is not yet settled, and robust debate continues. A momentous decision recently by the Supreme Court of the United States has focused attention on abortion laws. Since 1973, abortion has been considered a right under the US Constitution. In 2022, the Supreme Court overruled the judgements that formed the basis of this right, *Roe v. Wade* and *Planned Parenthood of Southeastern Pa. v. Casey* (2022, 597 U.S. 215). This has returned the authority to regulate abortion to individual US states, and has attracted enormous attention worldwide.

Opinion among ethicists on the permissibility of abortion is not evenly divided. Don Marquis has observed that ‘the view that abortion is, with rare exceptions, seriously immoral has

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<sup>1</sup> For example, the early Christian guide to living known as the *Didache* states that abortion is forbidden (Milavec 2003). It is usually dated to the first century C.E. (O’Loughlin, 2010).

received little support in the recent philosophical literature’ (Marquis, 1989, p. 183). More recently, David Bourget and David Chalmers (2021) surveyed professional philosophers on various positions, including abortion. They found that over 80% believe abortion should be permissible in the first trimester of pregnancy, and just over 13% believe it should be impermissible. This division is reflected in the literature on abortion.

Although taking a pro-choice view, David DeGrazia (2012, p. 43) argues that ‘a broadly pro-life approach remains standing as a reasonable option’. One goal of this thesis is to defend the pro-life position in the academic sphere not just as a reasonable option but as an option that is preferable to a pro-choice position.

I have chosen a ‘PhD by papers’ format for this thesis, which means the bulk of my work consists of a collection of related papers. The primary reason for this approach was my desire to engage with a range of dimensions of this debate, which is difficult to achieve with a traditional thesis format. It also has allowed me to record and reflect on my contributions as the work has progressed. Many of the collected papers have been published, resulting in numerous critical responses and the opportunity to respond to these criticisms. So, the published papers I have included have played a role in the ongoing debate. At times I have revised my views in response to objections and my own reflections, and so this thesis charts a philosophical journey regarding the ethics of abortion from a pro-life perspective. As this has been pursued part-time, this journey spans almost seven years.

There are eight published papers included in their entirety in this thesis, and they are listed in the section *A note on thesis content* at the start. Five of these papers are solely my own work, and three are co-authored. I am credited as the lead author for each co-authored paper. Where

they are relevant to the debate, I also refer to collaborations I have engaged in but not included as part of this thesis. It is worth noting that, as each paper stands by itself, there is sometimes some duplication in the introductions of published papers that are focused on the same topic.

I begin this introductory section by providing a description of the pro-life position that I examine in this thesis, followed by an outline of the subsequent thesis parts. Finally, I explain some foundational concepts that constantly recur in my work—personal identity and moral status.

## 1.2. The pro-life position

Broadly speaking, most pro-life advocates hold that all human beings have the same *moral value* (or moral status) as adult human beings. I will describe moral value and moral status in detail later in this introduction, but this implies that all human beings deserve equal consideration in their treatment. This includes prenatal human beings, from conception<sup>2</sup> onwards. Consequently, the pro-life position maintains that prenatal human beings should enjoy the same ‘right to life’ that adults possess, which is generally understood as the right not to be unjustly killed. This is usually expressed as the belief that all human beings are *persons*, where ‘person’ means ‘has equal moral value to a normal adult human being’. This belief is often referred to as a ‘person-at-conception’ view. If we are persons at conception, then abortion is *prima facie* impermissible, as it involves killing the embryo or fetus and therefore violates their right to life<sup>3</sup>.

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<sup>2</sup> Here and throughout this thesis, I use ‘conception’ interchangeably with ‘fertilisation’ to refer to the formation of the zygote from the merging of a sperm cell and an egg cell. It is also not uncommon to use ‘conception’ to refer to the later implantation of the zygote into the uterine lining.

<sup>3</sup> It is important to note that Judith Jarvis Thomson (1971) argues that even if the fetus is a person, abortion is still permissible in many or most cases. If her argument is successful, it undermines the claim that being a person at conception means abortion is impermissible. In part 5, I present a counter-argument to Thomson.

Of course, holding the view that we are a ‘person-at-conception’ requires a specific account that justifies *why* all human beings have equal moral value. The most commonly cited account is the *substance view of persons*, an account of the metaphysics and moral status of human beings (Beckwith, 2004; Lee, 2004; George & Tollefsen, 2011; Eberl, 2020; Playford, 2022). The substance view draws heavily on Greek metaphysics and medieval philosophy and claims that all human beings are Aristotelian substances with an essence (or nature) known as a rational soul. Entities with a rational soul are persons, and so according to the substance view, all human beings are persons. The substance view has been the focus of sustained critical interest, and numerous objections have been raised against it, primarily based on implications of the equal moral value claim (Ord, 2008; Lovering, 2013; Lovering, 2014; Lovering, 2017; Lovering, 2018; Simkulet, 2016; Simkulet, 2019).

Much of this thesis involves a critical examination and defence of the substance view. Initially, my primary goal was to investigate what the substance view entails regarding interests and rights and defend the substance view against the objections of critics. As a result of this work, I decided to further develop the view to strengthen its explanatory power. I published a proposal for a modified account that I dubbed the *Dual Aspect Account* (Blackshaw, 2019b). This account combines the substance view with a special account of interests conceived of as *time-relative interests*, proposed by Jeff McMahan (2002, pp. 165-174). As my research progressed, however, I identified numerous challenges for the substance view. I realised that its deficiencies suggested a need for an alternative ‘person-at-conception’ view, which is not encumbered by historical metaphysical frameworks and beliefs. To that end, I have developed the *rational animal account*, which argues that all animals that possess the genetic basis for rationality

should be granted the same moral status no matter what their stage of development. Much of this thesis, then, chronicles my evolving intellectual relationship with the substance view.

### **1.3. Overview of parts**

Having explained the pro-life position that my work focuses upon, I will now provide an overview of the contents and structure of the thesis. This introduction is the first of five parts. Some parts consist of several shorter papers, others of a single, longer paper. Before presenting each paper, I provide a context section that introduces each paper and explains its place in my work and the literature. Where relevant, I note published responses and evaluate the points they make (or detail my response, where it has been made). I also record my thoughts regarding future work in these areas.

Below, I describe each subsequent part and its constituent papers.

#### *Part Two: Defending the substance view*

In part two, I introduce the substance view, and in the first two papers, I defend it against some of the key criticisms that have been levelled against it. In the third paper, I propose a modification of the substance view I call the Dual Aspect Account to strengthen its ability to cope with these criticisms. As I noted above, this account combines the substance view with McMahan's time-relative interest account. The fourth paper provides a general defence of the substance view based on common moral intuitions. In this paper, I foreshadow the rational animal account, which I develop in the next part of the thesis. Finally, the last paper examines whether advocates of the substance view can consistently maintain that abortion is permissible in cases of conception via rape.

### ***Part Three: The rational animal account***

My investigation and defence of the substance view resulted in my identification of several challenges it faces. In part three, which consists of a single unpublished paper, I explain these challenges and develop an alternative view that I call the *rational animal account*. It is a ‘person-at-conception’ account like the substance view but does not require its commitment to Aristotelian metaphysics or suffer from the weaknesses I have identified. As a result, I argue it is a more plausible view that pro-life ethicists should adopt in preference to the substance view. Importantly, the work collected in part two defending the substance view is primarily based on its being a ‘person-at-conception’ account. So, this work is equally applicable to the rational animal account.

### ***Part Four: The impairment argument***

During the course of my research, I have made numerous contributions to alternative pro-life arguments as I have encountered them. Although the moral status of the fetus is widely considered to be a crucial consideration in the ethics of abortion, there are at least two arguments that attempt to demonstrate that abortion is seriously immoral without making explicit claims about moral status or personhood. My research has touched upon these arguments at times, and it is an ongoing topic of interest how they can be harmonised with the rational animal view. The two arguments I have worked with are Don Marquis’ ‘future like ours’ argument (Marquis, 1989) and Perry Hendricks’ (2019) more recent impairment argument. In this section, I present a detailed examination of the impairment argument. Although I have published numerous papers on this topic, most are short responses, and presenting the papers themselves would produce a section that was difficult to follow. Instead,

this part consists of a single unpublished paper incorporating elements of these earlier works, revised and presented with further reflections to present an in-depth assessment of the impairment argument.

#### *Part Five: Pro-choice arguments*

While the literature on pro-choice arguments is vast and relevant critiques plentiful, in this final part of this thesis, I present three of my own contributions, which I believe explore aspects of a pro-choice view in novel ways. In the first paper, I present my argument against the psychological account of personal identity, which opposes the account of personal identity generally presupposed by pro-life views. This argument utilises the *non-identity problem*, which questions how we can evaluate the harms or benefits of actions that affect which individuals come into existence. In the second paper, with my co-author Daniel Rodger, I present an argument against Judith Jarvis Thomson's (1971) violinist analogy based on public health ethics. Finally, I present a challenge to the liberal pro-choice stance with regard to the permissibility of genetic selective abortion. I show that if abortion for fetal abnormalities is considered permissible, parity of reasoning entails that abortion for any undesired genetic trait should also be permissible. Many people who accept the former will find the latter difficult to accept.

These final three papers critiquing a pro-choice view offer a satisfying conclusion to a thesis that has been primarily focused on defending the pro-life stance on abortion.

#### **1.4. Foundational concepts**

Having described the agenda and contributions of this thesis, I now turn to the foundational concepts that recur constantly in my work: personal identity and moral status. By necessity, my academic papers provide only brief explanations of these concepts, and so before presenting the papers themselves, I present a more detailed overview of each. I also provide a brief overview of dignity, which is closely related to moral status.

#### **1.4.1. Personal identity**

Accounts of personal identity are concerned with questions regarding the kind of thing that we are, when we begin and cease to exist, and how we are able to persist from one time to another. Personal identity may also involve defining what a *person* is, how and when we become persons, and exploring what changes might change the person that we are.

These metaphysical questions are highly relevant to the abortion debate. For example, if we begin to exist only when our brain is capable of consciousness, then abortions prior to this point prevent us from existing rather than kill us, implying that abortions are permissible if contraception is permissible. If we begin to exist from conception, then abortion ends our lives, complicating the question of its permissibility.

Accounts of personal identity can be distinguished by their answer to the question of what kind of thing we are. An early and very influential account of personal identity was proposed by John Locke, who defined a person as a ‘thinking, intelligent being that has reason and reflection’ (Locke, 1975, p. 335). For Locke, personal identity is based on our consciousness as an ongoing self, and we persist so long as this consciousness is preserved. The Lockean view forms the basis of the most widely accepted contemporary account of personal identity, *the psychological view* (Bourget & Chalmers, 2021). Derek Parfit is the most well-known exponent

of this view, defining personal identity as based on the maintenance of a certain level of psychological connectedness from one time to another, or what he calls *psychological continuity* (Parfit, 1987, pp. 199-217). Being psychologically connected to a future self means that your future psychological states depend on your current psychological states. For example, a current experience causes the memory of that experience in the future.

Infants do not have a sufficiently rich mental life to be considered a Lockean person until they are self-conscious (McMahan, 2002, p. 45). They also lack the necessary psychological connections required for maintaining psychological continuity (McMahan, 2002, p. 45). As a result, there is no psychological continuity between us and the infant we once were. On the psychological account, we therefore seem to begin to exist when we become self-conscious, and we cease to exist when we are no longer self-conscious, such as in the case of advanced Alzheimer's disease. Clearly, if infants are not psychologically continuous with the Lockean persons they become, then embryos and fetuses are not either. So, as I suggested earlier, on the psychological account of personal identity, abortion prevents us from existing, as does infanticide.

Another account of personal identity is based on the claim that we are biological organisms, or animals. This view is known as *animalism*, and is also known as the organism view (van Inwagen, 1990; DeGrazia, 2005, p. 48; Liao, 2006; Olson, 2007). According to animalism, we are fundamentally human animals, and each of us is numerically identical to our human animal (Olson, 2007, pp. 24, 39-44). Animalism grounds personal identity in functional or physical continuity rather than psychological continuity<sup>4</sup>. Animalism implies that we exist from when

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<sup>4</sup> Some animalists believe that a human animal ceases to exist on death, while others hold that we can persist beyond death, as long as our physical structure is preserved.

our biological organism exists, and so we are not Lockean persons for all of our existence. We are only thinking, intelligent beings contingently, not essentially. Consequently, those holding a pro-life position are often animalists. The substance view might be regarded as a version of animalism (Olson, 2007, p. 172).

One motivation for adopting animalism is its strong intuitive appeal. It seems natural to identify ourselves with our bodies, and this intuition extends to our prenatal bodies. Accordingly, Paul F. Snowdon argues that animalism ‘represents the default conception of ourselves’ and should be considered the default view of what human beings are (Snowdon, 2014, p. 106). Of course, there are also objections to animalism, and I address some of these in part three when I develop the rational animal account.

While the psychological account and animalism are the most prevalent accounts of personal identity (the former being much more widely accepted than the latter), there are various other accounts. For example, many who hold religious beliefs believe that we are essentially souls, immaterial entities that persist beyond the end of our biological lives.

Another account I engage with numerous times during the course of this research is McMahan’s *embodied mind account* (McMahan, 2002, pp. 66-94). McMahan acknowledges the importance of psychological continuity but believes we continue to exist even if that continuity disappears, such as in advanced cases of Alzheimer’s disease. This means continuity of the brain is required: sufficient ‘physical and functional continuity to preserve certain psychological capacities, particularly the capacity for consciousness’ (McMahan, 2002, p.69). This differs from the psychological account as described above: McMahan does not require psychological continuity, but preservation of psychological capacities. As a result, McMahan believes we

begin to exist around the time our brains are capable of consciousness, which he estimates as approximately twenty weeks after conception (McMahan, 2002, p. 269). On the psychological account, we do not exist until well after this point, when our brains can also support psychological continuity. By contrast, on animalism, we begin to exist when our biological organism begins to exist without any requirement for the capacity for consciousness or psychological continuity.

So much, then, for the most common conceptions of identity. Later, I argue for a conception of identity that, while similar to animalism, differs in certain respects. For now, however, I turn to my second key concept: moral status.

#### 1.4.2. Moral status

I earlier claimed that the moral status of the human fetus<sup>5</sup> is of central importance in the abortion debate. In its broadest sense, the moral status of an entity can be defined as what we are morally permitted to do (or not do) to that entity (Kamm, 2007, p. 227). It is permissible to do anything to some entities, such as ordinary rocks<sup>6</sup>. By contrast, it is not permissible to do just anything to animals, such as gratuitously torturing them. So, animals and most rocks differ in their moral status.

There are some inanimate objects that we do not treat in any way we like. For example, works of art have aesthetic value, and for that reason, we act to preserve them. They have value by virtue of their beauty, and beautiful things ought to be preserved, not destroyed. However, we

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<sup>5</sup> For convenience, I generally use the term ‘fetus’ to refer to all unborn human beings unless there is a specific need to differentiate between embryos and fetuses. In embryology, the developing human being is known as an embryo for the first eight weeks and a fetus from the ninth week until birth (Schoenwolf *et al.*, 2015, p. 4).

<sup>6</sup> Ordinary rocks lack any significance, such as archaeological, scientific or cultural value.

do not preserve works of art for the sake of the art itself, in that it is good for the work of art that it continues to exist. This distinguishes art from animals: we treat the latter well for the sake of the animals themselves.

This sense of treating entities in a certain way for their own sake is a narrower sense of moral status than restricting what we may or may not do to an entity. It raises the crucial question as to what criteria are used to decide if a given entity should be granted this kind of moral status. One widely cited criterion is the possession of interests. For example, Warren states that moral status means that ‘we are morally obliged to give weight in our deliberations to its needs, interests, or well-being’ (Warren, 1997, p. 3). Rocks, even significant rocks, do not have moral status in this narrow sense because they do not have needs or interests, or even well-being. Although we do not treat paintings in just any way we please, they too do not have needs or interests or well-being, and so they do not possess moral status in this narrow sense<sup>7</sup>. From this point onward, I will use ‘moral status’ to refer to moral status in this narrow sense and explicitly note when I am referring to the broad sense of moral status.

Clearly, some entities have higher moral status than others in the broad sense of the term, as we do not treat human beings in the same way we treat rocks. However, many ethicists believe that this is also true in the narrow sense of moral status. For example, it is common (but not universal) to regard animals as possessing lesser moral status than adult human beings, who are considered to possess what is known as *full moral status*. Another term for an entity possessing full moral status is *person*. This is not synonymous with the use of ‘person’ in the Lockean sense to mean an intelligent, thinking being, although the two definitions are often conflated. Lockean persons are persons in the descriptive sense, not the normative sense

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<sup>7</sup> This narrow sense of moral status is sometimes referred to as *moral standing* (Steinbock, 2011, p. 1).

(Steinbock, 2011, p. 54). Yet, there is a relationship between them. All Lockean persons are moral persons, but moral persons are not necessarily Lockean persons. For example, many pro-life advocates argue that fetuses are moral persons, and they are clearly not Lockean persons. For clarity, I will use ‘person’ to refer to moral persons, and ‘Lockean person’ to refer to an intelligent, thinking being.

Determining whether the fetus has the moral status of a person is an important issue in abortion ethics, as it is not thought to be permissible to kill persons except under very exceptional circumstances, such as in self-defence. Pregnancy may be another of these circumstances: an important argument put forward by Judith Jarvis Thomson (1971) contends that abortion is permissible in many or most cases, even if the fetus is a person. I argue against Thomson’s reasoning in part 5 of this thesis. However, if a fetus is *not* a person, it will be far easier to justify the permissibility of abortion.

This raises the question of what properties an entity must possess to have any level of moral status and what is additionally required to be considered a moral person. I have already mentioned that possession of interests is one possible criterion for moral status, but this must be clarified. A common claim is that a necessary requirement for possessing interests is sentience: being able to have sensory experiences such as pleasure and pain. Utilitarians believe that if a being can suffer or experience pleasure, it deserves moral consideration. Some ethicists argue that sentience is insufficient for moral status. For example, David DeGrazia and Joseph Millum state that “‘needs’ of insentient creatures have no more relevance to moral status than the ‘need’ of a car to have gas’ (DeGrazia & Millum, 2021, p. 183). However, in their view, a ‘conscious, caring standpoint’ must have interests relevant to moral status (DeGrazia & Millum, 2021, p. 183). Similarly, Steinbock argues that consciousness is necessary for morally

relevant interests (Steinbock, 2011, p. 7). Clearly, embryos and early fetuses are neither sentient nor conscious, and they, therefore, lack moral status on these views.

However, there is an alternative interpretation of interests. An entity's possession of an interest in X need not require a conscious interest in X, but rather that X is in their interest. For example, Tom Regan (1976, pp. 486-487) argues that A's having an interest in X can also be construed as meaning 'X is conducive to A's good'. The difficulty, then, is distinguishing between things such as machines and living beings. For example, Regan (1976, p. 494) claims that regular maintenance contributes to the good of a car. So, in one sense, maintenance is for the car's sake, in order that it runs properly. However, it does not seem to matter to the car whether it is maintained; Steinbock (2011, p. 9) similarly notes that cars have no stake in their condition. One difference between cars and living beings is that the proper functioning of a car is in the interest of the owner, not the car. Living beings have a strong interest for themselves in developing and flourishing, and on many a pro-life view, this is so even when they are non-sentient (Hershenov & Hershenov, 2015).

Whether one thinks non-sentient beings have interests or not, one must grapple with the problem that killing some beings with interests in their existence seems worse than killing others. For example, it seems worse to kill a human being than an animal. One possibility is that some beings have stronger interests than others, implying that their moral status is higher. This is the approach taken by Jeff McMahan's *time-relative interests* account, which I have already mentioned. I will examine McMahan's account in detail subsequently, but the basic idea is that time-relative interests are strongest for those with a rich and unified mental life. Consequently, children and adults have much stronger time-relative interests than the unborn and animals. The difficulty for this account is that newborn human beings have very weak time-

relative interests compared to more developed human beings and some animals. While these interests may be stronger than late-term fetuses, the view still implies that infanticide is permissible.

With regard to full moral status, or being a moral person, many ethicists take the approach that only Lockean persons possess full moral status, implying that advanced cognitive capacities are required for personhood. Suggestions for these capacities include self-awareness (Warren, 1973; McMahan, 2002, p. 45), present and future desires (Tooley, 1988, p. 87), rationality (Singer, 2011), and autonomy (Kant, 2012, 4:437). Once again, however, this raises the problem of infanticide, as infants do not possess most of these capabilities and would not be persons. Therefore, they could be sacrificed for the benefit of those who possess full moral status. Numerous ethicists have come to this conclusion (Tooley, 1983, p. 100; Warren, 1973; McMahan, 2002, p. 361; Giubilini & Minerva, 2013). The view also carries unfortunate implications for the status and treatment of other beings, too, who fall below the relevant threshold, such as the severely cognitively impaired.

The problem of infanticide suggests that some other criteria for full moral status be chosen rather than possession of advanced cognitive capacities. One possibility is the possession of the *potential* for advanced cognitive capacities, which includes infants and fetuses. This faces the objection that having the potential for a property is not necessarily equivalent to possessing that property. So, we require grounds for treating these in the same way.

Another approach is to consider the commonly held intuition that human beings have a special claim to moral consideration. This suggests membership of the human species as a possible criterion for full moral status. It includes infants and the cognitively impaired, and embryos

and fetuses, and so for those holding a pro-life position, it seems eminently suitable. Unfortunately, this option, too, has several drawbacks. First, it requires explaining *why* membership of the human species is morally relevant. It is difficult to avoid the implication that this is because human beings generally have advanced cognitive capacities, raising the question as to why these capacities are not the basis for moral status rather than species membership. Second, it does not satisfactorily explain the moral status of other species that might have similar capacities, such as an alien race, should it exist.

One possibility that tries to deal with these objections is to base moral status on dignity. For example, Martha Nussbaum (2006, pp. 179-183) argues that sentient beings have a set of capabilities that enable them to flourish. These capabilities make them valuable, and this calls for respect, which is what Nussbaum means by having dignity. In particular, humans have a rich set of capabilities such as imagination, thought, and reason, but Nussbaum (2006, p. 159) contends that animals also have capabilities that give them dignity. Pablo Gilabert (2018) also argues that human dignity is central to human moral status.

The substance view also draws on the intuition that human beings are special, but rather than basing personhood on species membership, it claims that all human beings are persons because they possess what it calls a rational soul. I will explain this claim in detail in the introduction to part two, but for now, I note that the value of a rational soul is also based on the concept of dignity.

It is widely agreed that when an entity possesses full moral status, there is a strong moral presumption against killing that entity—stronger than if it possessed a lesser moral status. This is often interpreted in the language of *rights*: for example, moral persons are said to have a

*right to life*. Rights are entitlements: to be able to *do* certain things, such as the right to freedom of belief, or that others *do or not do* certain things that affect the rights-holder, such as saving or killing them. Rights are often categorised as *positive rights* and *negative rights*. Positive rights impose a duty on others to actively do something for the rights-holder. For example, the right to healthcare requires the state to offer medical services to those in need. Negative rights require others to refrain from doing something to the rights-holder. For example, the right to free speech is a requirement for others to refrain from censoring or restricting the speech of the rightsholder. Rights have normative force and provide reasons that typically override other reasons not based on rights. This means they protect rights-holders from other parties, such as governments, that are pursuing what might be valuable goals. Why rights have this overriding normative force has long been debated, as is the justification of rights. However, they play an important role in moral theories (Sumner, 2017, p. 364).

It is important to note that different rights have different levels of resistance to competing normative reasons (Sumner, 2017, p. 359). This means some rights can be overridden if the competing reasons are important enough. These competing reasons might be other rights that conflict with them. However, certain rights may be absolute, or if not absolute, have extremely high thresholds. For example, the right to life is thought to have a high threshold, and so the right to free speech may be limited if it is used to incite violence that endangers someone's life.

Both the substance view and the rational animal account offer, in effect, accounts of the justification of our status as rights-holders and an explanation of why prenatal human beings have the same status, making them inviolable against sacrifice in just the way that you or I are.

### **1.5. Final introductory remarks**

It is now time to explore the first group of papers that comprise part two, in which I mount a number of defences of the substance view. As I explained earlier, it should be kept in mind that this work is a record of a philosophical journey that has been published in stages over many years. Part two primarily represents the earliest stage of this journey. That the substance view avoids the objections I consider in part two is not to say that it should be accepted, as I argue in part three, where I develop an alternative, the rational animal account.

Before presenting each paper, I explain its context: when and why I wrote the paper, and where it fits in with other work. I also note related future work that I hope to undertake. I exclude abstracts that are part of the published papers because the context section largely covers the content of the abstracts.

## **PART TWO: Defending the substance view**

### **2.1. Introduction to part two**

As I explained earlier, this part of this thesis is a defence of the substance view of persons, a widely cited account used in pro-life ethics to argue for the immorality of abortion. It is a ‘person-at-conception’ view, regarding all human beings as possessing the same moral status whether they are zygotes, fetuses, infants, children, or adults. As a result, all human beings have the equal right not to be killed unjustly, and abortion is a violation of the right to life that all moral persons are entitled to.

Because of its importance in pro-life arguments, the substance view has been the focus of sustained critical interest. Numerous objections have been raised, mostly to the effect that the view entails strongly counterintuitive, if not absurd, obligations that demonstrate that the substance view is implausible. This part of the thesis chronicles my work in responding to these arguments and my initial proposal to modify the substance view to provide additional resources to counter them, which I call the *Dual Aspect Account*.

A notable feature of these criticisms is that they do not involve any substantial engagement with the foundations of the substance view itself but rather are targeted at the implications of its moral claim. As such, they are valid criticisms of any ‘person-at-conception’ view. The papers that follow, likewise, do not delve in any detail into the substance view. Although this could be seen as a deficiency, the result is that the collected papers in part two provide a general defence against a range of criticisms that are applicable to any ‘person-at-conception’ account.

As my research progressed, I began to investigate the substance view in more detail and gradually became aware of some of its shortcomings. Early fruits of these reflections appear in the third paper presented, which attempts to unite the substance view with McMahan's time-relative interest account. In part three, I examine these shortcomings to prepare for my final proposal of an alternative account to the substance view, which I call the *rational animal account*.

As I noted at the start of this thesis, the first two papers in this part are co-authored, the first with Daniel Rodger and the second with Nicholas Colgrove. In each of these, I am the first author. I am the sole author of the other three papers.

Before I introduce each paper, I provide a brief overview of the substance view and of the relevant objections. I examine the substance view in more detail at the start of part three of this thesis, prior to developing the rational animal account.

## 2.2. The substance view

The substance view is a metaphysical account of the nature of human beings. It answers questions such as what we are essentially and how we persist as the same individual through time and change. The substance view is more than just a metaphysical account, however. It makes a moral claim: that human beings are persons and, therefore, possess high moral value. It is based on the work of Thomas Aquinas, one of the greatest theologians and philosophers of the medieval period, who was heavily influenced by the Greek philosopher Aristotle (Eberl, 2020, p. 18).

The most crucial Aristotelian concept Aquinas utilises is that of *substance*. Briefly, an Aristotelian substance is an entity capable of existing in its own right, such as a rock, a horse or a human being (Lear, 1988, pp. 24-26). In the sixth century, Aristotelian commentator Boethius defined a person as ‘an individual substance of a rational nature’ (Ebbesen, 1990; Boethius, 1918). Aquinas adopted Boethius’ definition as the central claim of the traditional substance view (Seidl, 1987, p. 435).

The concept of ‘rational nature’ needs explanation. For now, it can be taken as meaning the ability to develop rationality; I will elaborate on this in part three. Human organisms are the paradigm example of entities that possess a rational nature. Therefore, Boethius’ and Aquinas’ definition, and therefore the substance view, implies that all human beings are persons. As a result, the substance view has been adopted as the default ‘person-at-conception’ account by pro-life philosophers.

There are some caveats with the substance view. For example, what Boethius and Aquinas meant by a ‘person’ is not necessarily equivalent to the modern bioethical understanding of a person as an entity possessing full moral status, although this equivalence is assumed by most substance view proponents. There are also various difficulties associated with the Aristotelian concepts of substance and rational nature. As I have noted, these challenges are explored in detail in part three; for now, it is sufficient to understand the substance view as a ‘person-from-conception’ account.

### **2.3. Criticisms of the substance view**

Critics of the substance view (*e.g.*, Lovering 2013, 2014, 2017; Simkulet 2016, 2020) and its defender (*e.g.*, Friberg-Fernros 2015, 2018a, 2018b, 2019a) have focused on three objections in particular. The first is the argument from spontaneous abortion, which claims that if embryos are as valuable as other human beings, then pro-life advocates should be prioritising preventing the loss of vast numbers of embryos through miscarriage (spontaneous abortion). Second, the embryo rescue argument contends that most people would choose to rescue a young child from a burning building rather than a container of ten frozen embryos. This, it is claimed, shows that we do not believe that embryos are of equal value to other human beings. Third, few pro-life advocates support the view that aborting a fetus or embryo should incur a legal penalty as severe as killing a child or an adult. However, if all human beings have the same value, it seems that women who choose to abort should receive a prison sentence commensurate with other deliberate killings.

Interestingly, these criticisms target implications of the substance view rather than specific aspects of the substance view itself. As I have noted, this means that the criticisms are equally

applicable to any ‘person-at-conception’ account, as is the work I have done in defence of the substance view that I detail below.

I have engaged with these critics in several different ways in the papers comprising this part of the thesis. In the first two papers, which are co-authored, I, with my two co-authors, have developed responses to some objections critics have raised. The further three papers in this part are single-authored pieces and are more wide-ranging. In the first of these, I have proposed a modification to the substance view to strengthen it against such objections. In the next paper, I have defended the substance view by appealing to our moral intuitions. Finally, in the last paper, I show that defenders of the substance view cannot always deny the charges against them. In particular, I show that they must reluctantly accept that it is not permissible to allow an abortion exception for pregnancy that ensues from rape.

After introducing and presenting the papers that comprise this part of the thesis, I will briefly survey my more recent research on *inconsistency arguments*, which is a direct progression of the first two papers in this part. To ensure the predominance of single-authored work, I have not included these co-authored papers in this thesis. This survey does, however, illustrate how the work included here has formed the basis for ongoing research.

## **PAPER 1: The problem of spontaneous abortion: is the pro-life position morally monstrous?**

### **Context**

The problem of spontaneous abortion, also known as the embryo loss argument, was, to my knowledge, first raised by Timothy Murphy (1985), who noted that a high percentage of pregnancies spontaneously abort. He argued that those who place a high value on embryos and fetuses are morally obliged to act in ways that will help alleviate the problem. McMahan (2002, pp. 165-166) briefly mentions the argument, and Toby Ord (2008) developed it further, claiming that high rates of spontaneous abortion entail that it is one of humanity's most serious problems—which in his view is absurd. Moreover, Ord claims that those who hold such views regarding embryos do not themselves act as if this is a serious health crisis.

With my co-author Daniel Rodger, I have developed a detailed response to the argument from spontaneous abortion that begins in the next section (Blackshaw & Rodger, 2019a). We point out that spontaneous abortion is not actually a cause of death, but is rather a general term meaning the natural death of a fetus prior to 20 weeks. When broken down into actual causes of death, we show that the most significant cause of fetal death up to 20 weeks is chromosomal abnormalities, followed by induced abortion. Unfortunately, chromosomal abnormalities are currently not preventable, and so the most significant preventable cause of death up to 20 weeks is induced abortion. Thus, pro-life advocates are justified in prioritising induced abortion, assuming that numbers can be reduced.

Further, we explain that if it is believed that there is a significant moral difference between killing and letting die, this further justifies prioritising reducing the number of induced

abortions. We note Amy Berg's (2017) claim that the killing vs letting die distinction is only applicable to someone in the position to kill or let die, and for everyone else, we are equally obliged to try to prevent deaths by any cause. In response, citing Thomas Pogge (2010, p.127), we point out that in a democratic society, all citizens bear some responsibility for induced abortions by helping to maintain a legal system that permits them. Therefore, induced abortion can be considered killing even for those not directly involved in abortion provision.

We do not dismiss the argument entirely, however. We accept that pro-life advocates must take the problem of spontaneous abortion more seriously and encourage research into chromosomal abnormalities in order to reduce their numbers. We do point out that significant resources already go into reducing the occurrence of miscarriages.

Jessalyn Bohn (2021) has provided a helpful correction to our arguments. She points out that the term 'miscarriage', which we equate with 'spontaneous abortion', is ambiguous. It can mean intrauterine death, which is how we have used it, but it can also mean preterm delivery. In the case of intrauterine death, miscarriage is not a cause of death. It describes the result of the embryo or fetus dying from another cause, and in this scenario, Bohn agrees that our argument succeeds. In the case of preterm delivery, however, miscarriage *is* a cause of death—the embryo or fetus dies because of the preterm delivery, and this must be taken into account when comparing causes of death. Bohn calculates that preterm delivery might cause death in up to 8.4% of all pregnancies. This is still far less than the 29% of pregnancies that are ended by induced abortion, and so our conclusion (that pro-life advocates should focus on preventing induced abortions) still holds.

## **1. Introduction**

It is widely accepted that a substantial proportion of human embryos<sup>8</sup> die within a few weeks of conception, with estimates of losses from conception to birth often exceeding 70% (Jarvis 2017). Numerous ethicists have argued that this high incidence of spontaneous abortion (more commonly known as miscarriage<sup>9</sup>) is problematic for the pro-life view that a human embryo from conception has the same moral status as an adult human being.

Critics of the pro-life view have argued that if the human embryo possesses full moral status, then spontaneous abortion equates to a serious public health crisis (Douglas and Savulescu 2009). This view has been most persuasively articulated by Toby Ord (2008), who has stated that belief in the full moral status of embryos entails that spontaneous abortion is one of the most serious problems facing humanity. Ord regards this conclusion as completely implausible, and therefore a compelling argument against the pro-life view, which he thinks should be abandoned. More recently, Lovering (2017, p. 307) has similarly claimed that this conclusion is ‘counterintuitive if not absurd’. Clearly, a view of the moral status of human embryos and fetuses that entails an absurd conclusion is untenable. Moreover, pro-life advocates do not seem to treat spontaneous abortion as a public health crisis in the way construed by Ord, and he suggests this means they do not actually believe full moral status begins at conception.

Alternatively, if this view regarding the moral status of human embryos is to be maintained, it is claimed that knowledge of the magnitude of spontaneous abortion entails certain moral obligations for pro-life advocates. It has been argued that pro-life advocates should ‘shift their resources away from opposition to abortion and toward preventing miscarriage, because so

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<sup>8</sup> Technically, the developing human being is known as an embryo for the first eight weeks and a fetus from the ninth week until birth (Schoenwolf *et al.*, 2015, p. 4). As the majority of spontaneous abortions occur in the first few weeks after conception, throughout this paper, we generally use ‘embryo.’

<sup>9</sup> Spontaneous abortion and miscarriage are equivalent terms. They both refer to pregnancy loss before viability (Kolte, 2015, p. 495).

many more deaths are caused by miscarriage’ (Berg, 2017, p. 1224). William Simkulet goes further, describing pro-life advocates as ‘intellectually dishonest’ and claiming they ‘behave monstrously when they oppose voluntary, induced abortions while ignoring the much greater loss of life caused by spontaneous abortions’ (Simkulet, 2017, p. 790).

Here, we defend the pro-life view that human beings possess full moral status from conception against two claims. Firstly, that it is absurd to hold that spontaneous abortion is one of the most serious problems facing humanity, and that this absurdity entails pro-life advocates should abandon their claim that human embryos and fetuses possess full moral status. Secondly, that if pro-life advocates do continue to hold this view on moral status, they are morally obliged to redirect their resources away from opposition to induced abortions towards reducing spontaneous abortion. If they do not, they are behaving in a manner that is morally monstrous.

Before we address these claims ourselves, we examine what is meant by equal moral status, and survey the existing pro-life responses to the claims. We delve into the statistics regarding spontaneous abortions and induced abortions, before considering the absurdity claim. We then examine the various factors that affect pro-life moral obligations towards induced abortion and spontaneous abortion, and present our conclusion about how these two obligations compare with each other.

## **2. Equal moral status**

It is important at the outset to clarify what the pro-life position entails when it is claimed that human embryos possess equal moral status with adult human beings. This is often phrased as possessing full moral status from conception, or equivalently that they are persons from conception. This does not entail that embryos have all the rights that adults do—many rights

can only be exercised by adults—but it does mean they have the same right to life. Crucially, however, this does not necessarily entail equal treatment, as pointed out by Dodsworth, Toth-Fejel and Stangebye (2008) in their response to Ord. In their view, this entails that embryos have a weaker claim to aid than adults. There are additional considerations that influence our obligations to others but have no implications for their moral status: for example, parents treat their own children differently from other children, and this does not imply their children have higher moral status. Much of our response examines the key considerations that should influence our treatment of human embryos.

### **3. Existing pro-life responses**

Ord criticises those who believe that the human embryo possesses full moral status as lacking curiosity about the issue of spontaneous abortion, claiming ‘it would surely be a matter for heated discussion in the journals or in the Church’ (Ord, 2008, p. 19). The topic has subsequently received attention in the literature<sup>10</sup>. Primarily, pro-life philosophers have focused on three points, all of which we agree with. Firstly, they point out that our knowledge of the frequency of spontaneous abortion is unreliable. For instance, Buratovich (2013), Lee (2010), and Kaczor (2014) argue that the percentage of normal human embryos that die before implantation is almost certainly inflated. Secondly, they believe high rates of spontaneous abortion do not necessarily imply anything about the moral status of human embryos, a position held by Beckwith (2007), Kaczor (2014), and George and Tollefsen (2011). They all appeal to the historically high rates of infant mortality—at times upwards of 50%—in some developing nations and reason that high rates of mortality do not necessarily indicate anything about moral status. Oderberg (2008) makes a similar point, arguing that it would be as much of a mistake

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<sup>10</sup> See: DiSilvestro, 2008; Burda, 2008; Brakman, 2008; Camosy, 2008; Marino, 2008; Card, 2008; Dodsworth *et al.*, 2008.

to infer that the moral status of embryos is compromised by high rates of mortality as it would to the thousands of individuals who die as a consequence of starvation and poverty each day. Thirdly, a significant proportion of spontaneous abortions involve entities that are the result of a failure or defect in the fertilization process, and so, in many cases, what is lost is not a human embryo to begin with (George & Tollefsen, 2011; Herranz, 2013; Lee, 2010).

Herranz (2013) has perhaps the most detailed examination of this issue, devoting a chapter of his book to early human embryo loss. In his view, the argument lacks force because reliable data is lacking, and Herranz concludes that ‘real and specific data on embryo attrition’ is required to make it tenable (Herranz, 2013, p. 147). Additionally, he believes that rather than biological failure, ‘we can understand embryo loss as the price we have to pay for the gift of each one’s singular individuality, for each person’s uniqueness’ (Herranz, 2013, p. 144).

These responses, however, do not address the argument of inconsistency of action—that the high rates of spontaneous abortion entail that pro-life advocates have a moral obligation to direct more of their time and resources to reducing spontaneous abortions, instead of opposing induced abortions, which are responsible for fewer deaths—and that their failure to do so implies they do not actually believe (or at least are not being consistent with such a belief) that human embryos are persons. Kaczor does suggest that most spontaneous abortions are difficult to prevent, and claims that rates could be reduced only ‘at great expense and burden to all those involved and with little hope of success’ (Kaczor, 2014, p. 139). He believes that affirmation of the moral status of all human life does not entail that extraordinary efforts must always be made to save lives. Ord, however, notes that some known causes of spontaneous abortion (for example, maternal alcohol use, nutritional deficiencies, and maternal smoking) could be

reduced relatively easily and claims there is limited evidence that pro-life advocates are interested in acting to do so (Ord, 2008, pp. 17,19).

A recent defence of the full moral status of the embryo in the context of spontaneous abortion has been made by Henrik Friberg-Fernros (2018a) in a response to Simkulet (2017). His claim is that the moral distinction commonly granted between causing and allowing death (or killing and letting die) can be extended to preventing deaths being caused (by induced abortion) and preventing deaths occurring by spontaneous abortion. He grounds this on the basis that induced abortion, from the pro-life view, involves two ‘tragedies’—the death of a person and the human act of killing this person—and therefore preventing induced abortions warrants being considered a higher priority than spontaneous abortions. Friberg-Fernros’ approach uses Jeff McMahan’s (2002) time-relative interest account to explain why we might prioritise the deaths of children and adults over those of the unborn. Briefly, time-relative interests are stronger for those with a richer mental life, and so children and adults have stronger time-relative interests than the unborn. We explore this in more depth below.

One deficiency in existing responses considered previously is a sufficiently in-depth examination of the statistics involving spontaneous abortion, including the various causes. We provide this below and also correct errors in the range of spontaneous abortion rates provided by Berg (2017). We also consider in greater depth the preventability of spontaneous abortions, the badness of death, and the morality of killing versus letting die and how this impacts pro-life moral obligations.

#### **4. The prevalence of spontaneous abortion**

Ord, Berg, and Simkulet establish their case by presenting statistics on the prevalence of spontaneous abortions. The rates Ord uses for spontaneous abortion are 56% by 6 weeks, 63% by term, and Simkulet ‘over 60%’ by term. Ord grants that there is room for disagreement with these figures, noting that the lowest estimate for spontaneous abortion is 45%.

Berg cites a very broad range of 22% to 89%. The 22% figure is incorrect: the study she cites (Weintraub & Sheiner, 2011) is actually citing a study on early pregnancy loss, which it defines as ‘reproductive loss that occurs ~14 days after conception, at around the time of the next expected menstrual period’ (Elish *et al.*, 1996, p. 406). This will certainly be lower than the overall spontaneous abortion rate. Her cited upper limit of 89% is uncharacteristically high, and the source is a study (Rolfe, 1982) that involved only 11 participants, and used early pregnancy factor (EPF) to detect early embryo loss. There are doubts about EPF’s utility for diagnosing early pregnancy (Jarvis, 2017) and it has rarely been used since hCG<sup>11</sup> testing became widely available. Jarvis states that rates of 70% or higher ‘are excessive and not supported by available data’ (Jarvis, 2017, p. 15). Consequently, we will focus on Ord and Simkulet’s figures.

The wide range of rates cited indicate that there is substantial uncertainty about the numbers involved. Jarvis (2017) confirms that these estimates are very imprecise, noting limitations in the widely cited work of Roberts and Lowe (1975), and the difficulty of establishing rates of spontaneous abortion prior to biochemical signs of pregnancy. Detecting hCG, a placental hormone initially produced by the human embryo, is only possible from the time of implantation, which at the earliest occurs 6 to 7 days after conception. Most estimates of pre-implantation loss are derived from IVF data. Jarvis (2017, p. 14) doubts IVF losses are

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<sup>11</sup> Human chorionic gonadotropin.

representative of the rates of natural embryo loss, citing studies<sup>12</sup> that show IVF is substantially less efficient than normal reproduction in terms of the number of egg-sperm interactions required to produce a live birth. The primary source for natural pre-implantation loss is the anatomical work of Hertig and Rock (1956), who together collected 34 early human embryos from women undergoing gynaecological surgery over a fifteen-year period from 1938. Jarvis describes Hertig and Rock's estimates and Hertig's (1967) analysis as having 'cripplingly low precision' (2017, p. 13). He concludes that 'natural pre-implantation embryo loss remains quantitatively undefined' (Jarvis, 2017, p. 15), and cites the best available data as suggesting a range of 10–40%, substantially less than Ord's figure of 50%. Jarvis (2017, p. 15) claims that 'overall pregnancy loss from fertilisation to birth is approximately 40–60%', the upper estimate being similar to Ord and Simkulet's figures. We note this uncertainty for completeness, but for the purposes of argument will grant Ord's 63% figure so that we do not cherry-pick a low rate favourable to the pro-life position.

An important point acknowledged by Simkulet and Ord is that a significant number of spontaneous abortions result from defects so severe that a human embryo is never formed. Anembryonic pregnancies, which comprise perhaps one third of spontaneous abortions (Lathi *et al.* 2007), have no identifiable embryonic elements and thus may never have been human organisms to begin with. Similarly, complete hydatidiform moles which arise when an ovum lacking its DNA is fertilised by one or two spermatozoa (Schoenwolf *et al.* 2015) and develop as a mass of uncoordinated tissue, were also never human organisms.

Using a spontaneous abortion rate of 63% and estimates of 133 million annual births, Ord concludes there are over 200 million spontaneous abortions annually (the actual figure is 226

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<sup>12</sup> Such as Jones *et al.*, 2010.

million). If a third of these spontaneous abortions are not human organisms, then approximately 151 million spontaneous abortions of actual human embryos occur annually. According to the World Health Organisation (WHO) (2017), 56.4 million people died during 2016, and so the spontaneous abortion figures are almost three times greater than the number of deaths of post-birth humans annually. If, as pro-life advocates claim, these are deaths of human beings with full moral status, there is obviously a *prima facie* case to answer.

### **5. Humanity's most serious issue**

Both Ord and Lovering suggest that it is absurd to believe that spontaneous abortion is one of the most serious problems facing humanity, but claim that this belief is entailed by the view that embryos possess full moral status. Ord compares his 200 million figure with the 7.6 million people who die from cancer annually and the 60 million people who died during the Second World War, asking if pro-life advocates can really believe that spontaneous abortion is more important than these issues.

Certainly, for someone who does not assign full moral status to human embryos, this no doubt seems an absurd claim, but Ord's target is pro-life advocates, and so we must consider whether or not it seems absurd to them. We can judge this by comparing it with a very similar claim about induced abortion. Sedgh *et al.* (2016) estimate that 56 million abortions were performed annually between 2010–14. While substantially less than the 151 million spontaneous abortions we estimated may involve actual human beings, this figure also dwarfs cancer deaths and is similar to Second World War deaths, and, if embryos have full moral status, induced abortion is clearly also one of humanity's most serious problems. It seems evident that pro-life advocates do not regard this as an absurd proposition—they do consider induced abortion as one of humanity's most serious problems, they demonstrate it by their allocation of resources,

and this is a consequence of their views on the moral status of human embryos. It seems logical, then, for pro-life advocates to also accept that spontaneous abortion is also a serious problem for humanity.

## **6. Spontaneous abortion and pro-life moral obligations**

What moral obligations do pro-life advocates have toward reducing rates of spontaneous abortion? Here, we make some basic assumptions that are widely agreed upon and proceed on this basis to examine pro-life obligations. We assume that death and suffering are bad and take the view expressed by Peter Singer that ‘if it is in our power to prevent something bad from happening, without thereby sacrificing anything of comparable moral importance, we ought, morally, to do it’ (Singer, 1972, p. 231). On the pro-life position, huge numbers of human beings with full moral status—persons—are dying prior to birth, and so this entails that a *prima facie* moral obligation exists for pro-life advocates to act to reduce rates of spontaneous abortion. Given our assumptions above and that pro-life resources are limited, we can derive two important considerations that should influence how pro-life advocates should act to fulfil this obligation: the preventability of death and the badness of death. This implies that deaths that are preventable should be prioritised over deaths that are not preventable, *ceteris paribus*: if we allocate the majority of our resources towards deaths that are very difficult to prevent, this will entail far fewer deaths will be prevented than if we primarily act to reduce preventable deaths. Reduction of the badness of death has certain implications also—some deaths are worse than others in their consequences, and so we should also prioritise the prevention of these deaths if possible. For example, a common intuition is that it is worse for a healthy young person to die than an elderly person. Finally, it may be that some deaths are morally worse than others. For example, if deliberate killing is morally worse than letting someone die, then this also may need to be a consideration.

At this point, we note that Simkulet's claims are far stronger than noting that a moral obligation exists. He asserts that opposition to induced abortion is 'morally negligent', even 'morally monstrous', given it focuses on 'the comparably small evils of induced human abortion, rather than the overwhelming evils of spontaneous abortions' (Simkulet, 2017, p. 789). Simkulet believes that on the pro-life view, the problem of spontaneous abortion is so significant that it should take absolute priority over opposition to induced abortion. He doubts that pro-life advocates can meet their moral obligations towards spontaneous abortion while opposing induced abortion in the manner that they do.

Interestingly, Simkulet does not quote any figures on induced abortion for comparison. Given annual spontaneous abortion estimates of 151 million actual human beings (based on Ord's figures) and induced abortion estimates of 56 million, it is clear that Simkulet's use of 'insignificant' and 'overwhelming evils' is inappropriate. Both figures are very significant in comparison to post-birth deaths of 56 million from all causes. If we have a moral obligation to act to reduce all deaths, for pro-life advocates, this means acting to reduce all prenatal deaths as well as post-birth deaths.

We will now examine the three primary considerations we have suggested should influence pro-life moral obligations towards spontaneous abortions: preventability of deaths, the badness of death, and killing versus letting die.

## **7. Preventability of death**

To delve into the preventability of deaths, particularly for spontaneous abortions, we must investigate the various causes of spontaneous abortion, and evaluate their potential for

prevention. It is important to note that spontaneous abortion is an umbrella term encompassing all natural deaths prior to 20 weeks gestation, and it has a variety of different causes. As Tollefsen (2008, par. 9) has noted, ‘it is not as if there is one pathology or disease that is responsible for all incidents of early embryo loss. This makes analogies to a single disease that wipes out a corresponding number of adults highly inapt’. McMahan also suggests multiple causes as a possible explanation of complacency about spontaneous abortion (McMahan, 2002, p. 165). Direct comparisons of spontaneous abortion with induced abortion, or indeed with any postnatal cause of death, give the misleading impression that it is a single cause of death that far outweighs any other cause. This is analogous to comparing, say, deaths from road accidents to post-birth deaths from all natural causes and claiming that the latter is overwhelming compared to the former. If our goal is to reduce intrauterine mortality and we are to prioritise our resources, we need to look at the different causes of spontaneous abortion.

There is already significant ongoing research into spontaneous abortion, which, as we have noted, is commonly referred to as miscarriage. This research is aimed at treating recurrent miscarriage—two or more miscarriages—and improving IVF success rates. According to Jevé and David (2014, p. 166), ‘recurrent miscarriage is one of the most widely researched areas in medicine.’ Although establishing causation can be difficult, particularly for pre-implantation spontaneous abortions, a number of probable causes have been identified. The most common cause of spontaneous abortion is chromosomal abnormalities, accounting for perhaps 70% of all spontaneous abortions (Salim, 2011), whether anembryonic or not (Lathi *et al.*, 2007). These abnormalities are mostly aneuploidies, an abnormal number of chromosomes in cells (O’Connor, 2008). The most frequent of these are trisomies, where cells have one extra chromosome, and are rarely compatible with life with the exception of Down’s syndrome and Klinefelter’s syndrome (O’Connor, 2008). This is a broad category of causes—there are a

variety of aneuploidies, which in turn are caused by chromosomal defects in oocytes or spermatozoa, or errors in the fertilisation process.

Here we note that Ord uses a very conservative range of 30-60% of spontaneous abortions being caused by chromosomal defects. Schreck and Williams (2013, p. 2) explain that earlier techniques had various limitations that failed to detect certain defects, and figures of 60% aneuploid fetuses found in early studies ‘should be considered a minimum estimate of the incidence of chromosome abnormalities in miscarriages’. Accordingly, we have chosen to use the higher end of Ord’s range, 60%, in our later calculations of the primary cause of spontaneous abortions.

Other causes or risk factors for spontaneous abortion include immunological and immunogenetic causes, thrombophilias, endocrinological causes, uterine malformations, and acute maternal infections (Macklon *et al.*, 2002; Larsen *et al.*, 2013). Certain lifestyle factors are also thought to contribute, such as smoking, alcohol and caffeine consumption, obesity, heavy lifting, and night-shift work (Nilsson *et al.*, 2014). Finally, increasing maternal age is implicated in higher rates of spontaneous abortion (Salim, 2011; Nilsson *et al.*, 2014). These are not exclusive causes: for example, increasing maternal age is also known to increase the risk of chromosomal defects (Ozawa *et al.*, 2019).

How preventable, then, is spontaneous abortion? The primary cause, chromosomal abnormalities, cannot currently be treated, although in the future gene-editing may be possible for affected embryos in known pregnancies. The majority of spontaneous abortions due to chromosomal defects occur before pregnancy is known, so advances are likely to have a limited effect on spontaneous abortion rates. Some uterine abnormalities can be surgically corrected,

and treatments exist to reduce the risk of spontaneous abortion in women with antiphospholipid syndrome. Lifestyle factors can be modified: Nilsson *et al.* (2014) estimate that lifestyle changes can reduce the risk of late miscarriages, a minority of spontaneous abortions, by up to 25%. Given that increased maternal age has been shown to result in higher rates of spontaneous abortion as noted above, it seems plausible that if women have children earlier in life and use contraception when not intending to become pregnant, this could reduce spontaneous abortions.

## **8. The badness of death**

Intuitively, some deaths seem worse than others, if we measure the badness of death by its effects on the overall value of a life. A young adult who dies suffers the loss of far more net good from their future possible life than an elderly person, so their death can be considered worse. Curiously, though, most people regard the death of an embryo or fetus as less bad than the death of an adult, even though they have more net good ahead in their future possible life. One sophisticated attempt to capture such intuitions about death is Jeff McMahan's (2002) time-relative interest account (TRIA). McMahan's account tries to estimate the net good in an individual's future possible life, and applies a multiplier based on the degree of special concern an individual rationally has for their own future. This egoistic concern varies between individuals—an infant, for example, has a very weak concern about their future—and is based on the degree of psychological unity between the individual now and in the future. One's psychological unity over a time period is dependent on the richness and continuity of their mental life. According to McMahan, then, death is not as bad for an infant or a fetus because, despite the net good in their future possible life, their weak psychological unity discounts their interests. This is the approach Friberg-Fernros (2018a) takes in his defence of the substance view of persons—a common pro-life position that claims all human beings are rational substances of equal value. In his view, there is greater evil involved in the deaths of born human

beings because of their greater time-relative interests. We hesitate to use the term 'evil', but certainly, on McMahan's account, the deaths of born human beings are far worse than those of fetuses in terms of the loss of their time-relative interests.

We should note here that McMahan's TRIA is not usually associated with pro-life views. It forms part of his Two-Tiered Account of the morality of killing, which introduces the threshold of respect marking the level of psychological capacities that distinguish persons from non-persons. Below this threshold, McMahan considers that the TRIA governs the wrongness of killing, and above it, for persons, all killing is equally wrong. Because this threshold lies over fetuses and infants, McMahan regards induced abortions as permissible and even infanticide. We can, however, utilise his TRIA account as a measure of the badness of death without accepting his threshold of respect for persons and his Two-Tiered account of the morality of killing.

It is also worth noting that some causes of death involve a substantial amount of human suffering, while others do not. Given that spontaneous abortions are defined as those occurring in the first 20 weeks of pregnancy, and the majority in the first few weeks, it seems that there is little suffering experienced by fetuses that spontaneously abort as they are generally reckoned not to possess the cognitive apparatus that would enable them to experience pain. This is also the case for the majority of induced abortions. Of course, we must be careful not to neglect the considerable suffering that parents undergo when a wanted child miscarries. As Friberg-Fernros (2018a) also notes, when an adult human being dies (or a child), the interests of others associated with the person who has died are also damaged and make a death worse. It is clear, however, that post-birth deaths involve vastly more suffering on behalf of the person who dies than do deaths of fetuses, as they are experienced by conscious human beings.

There is one further consideration: if a high proportion of spontaneous abortions are a result of chromosomal defects, many of which are severe, then merely acting to increase the percentage of these fetuses that survive may actually substantially increase suffering if their condition is not resolved: for example, this could result in an increase in grossly deformed children being born who survive only for a few days. According to Oderberg (2000, pp. 81-2), such treatment would be regarded as extraordinary because of its futility in achieving the aim of restoring health, and so it would not be morally obligatory to administer.

### **9. Killing versus letting die**

Some pro-life advocates have used a distinction between killing and letting die as a justification for a stronger moral obligation towards preventing induced abortions because they are regarded as morally worse than spontaneous abortions. We have already noted that Friberg-Fernros (2018a) has claimed that deliberate killing involves two tragedies from the pro-life perspective—the death of a person and the human act of killing this person. Simkulet (2017, p. 788) is doubtful this distinction is helpful to the pro-life position, claiming that there would have to be a ‘wide gulf’ in the degree of badness between spontaneous abortion and induced abortion for this to make a significant difference, presumably because of the much higher number of deaths from spontaneous abortion (151 million compared to 56 million).

More importantly, Berg, citing Thomas Pogge (2010), points out that ‘the distinction between killing and letting die does not appear to extend to preventing cases of killing versus letting die’ (Berg, 2017, p. 1222). It may be morally worse for an individual to kill than to let die, but pro-life advocates are bystanders who are trying to prevent deaths involving others. As far as they are concerned, failing to prevent induced abortions and failing to prevent spontaneous

abortions are both cases of letting deaths happen. Simkulet also makes this point, citing Berg (2017, p. 788).

Berg, however, fails to note Pogge's subsequent argument, that of our participation in induced abortions as citizens in a democratic society. As Pogge notes, 'we are responsible for helping to bring these deaths about by participating in maintaining and enforcing a legal system that, by permitting abortions, foreseeably results in these extra deaths' (Pogge, 2010, p. 127). Pogge demonstrates the force of this argument by comparing the responsibility of US citizens prior to 1860 for slavery laws. Whether or not one personally owned slaves, citizens were morally responsible for the injustice of slavery. Likewise, pro-life advocates are participants in abortion legislation, and even though they are unwilling participants, they still bear some moral responsibility for induced abortions that occur, at least within their own society. This means that the killing versus letting die distinction remains a significant consideration in considering pro-life moral obligations.

Let us now consider the killing versus letting die distinction and its validity here by briefly surveying the vast literature on this area. Numerous accounts attempt to explain how they are different and why this difference is morally relevant, whilst objections typically involve producing pairs of examples that seem to show doing and allowing (or killing and letting die) as morally equivalent.

It is a widely shared intuition that killing is worse than letting die: as James Rachels notes (2001), we do not consider ourselves murderers for failing to contribute to famine efforts. Rachels points out that we cannot avoid letting people die, whether it be children starving or people dying from preventable diseases: while it is not difficult for most people to fully

discharge a duty not to kill, we cannot fully discharge a duty not to let people die. Additionally, if we kill someone, they are dead, but if we fail to save someone, it is still possible that they will be saved by someone else.

Philippa Foot (2002) defends the distinction based on the difference between negative and positive rights. Negative rights are a right to non-interference (such as the right to life), while positive rights are the right to aid or support. Foot regards negative rights as stronger than positive rights, grounding this view on the manner in which an agent is involved in a harmful sequence of events. Interference (i.e. violating a person's negative rights) involves initiating a harmful sequence, whereas failing to aid permits an existing harmful sequence to continue. Jonathan Bennett (1998) frames it slightly differently, using the idea of positive and negative behaviours. A positive behaviour regarding an action is classified as such when most behaviours at the time would not result in the upshot, and a negative behaviour is when most behaviours would result in the upshot. For example, there are only a few ways in which someone could act in taking someone's life (positive), but any number of ways someone could act with regard to not saving someone's life (negative). In Bennett's view, the difficulty of avoiding a bad upshot is what is morally relevant. If most of the ways someone acts will not lead to the bad upshot, then being causally relevant to the upshot is morally worse than being causally relevant when most of the ways someone acts do lead to the bad upshot.

Fiona Woollard (2015) builds on the work of Foot and Bennett, claiming that in doing harm, the agent's behaviour is part of a sequence leading to harm, whilst in allowing harm, the agent's behaviour is relevant (in that they could have prevented the harm) but not part of the sequence leading to the harm: doing harm is causally imposing on the victim. Woollard sees what she calls the Doctrine of Doing and Allowing—which states that it is harder to justify doing harm

than allowing harm—as a principle protecting us from harmful imposition by others, and a necessary one if anything, including our bodies, is to belong to us. In doing harm, the victim is causally imposed upon, while in allowing harm, the victim normatively imposes on others, and so the doctrine protects us from either imposition.

Where do these accounts of doing and allowing harm leave us with regard to spontaneous and induced abortions? The debate is ongoing, but it is clear that many have strong intuitions that there is a moral difference between doing and allowing in various scenarios, and denying this difference would require a radical revision of our moral beliefs. It may be that the distinction is blurred when comparing between certain contrived examples, but we doubt that this affects cases that are widely agreed to demonstrate a moral difference. Let us examine a comparison as analogous as possible (on the pro-life view) to most induced abortions and spontaneous abortions: the deliberate killing of a newborn baby who could be expected to live a normal life, and allowing a newborn with a fatal and incurable chromosomal disorder to die. Our claim is that these two scenarios are clearly not morally equivalent—indeed, letting die in this case may not be morally problematic at all, while killing a newborn baby is never permissible if we grant the child full moral status and the right to life this entails. We have seen that perhaps 60% of spontaneous abortions are due to chromosomal abnormalities, which are currently not preventable, and so the majority are analogous to allowing a newborn with a fatal and incurable chromosomal disorder to die. Conversely, the majority of induced abortions are performed on fetuses who could expect to live a normal life, according to *Finer et al. (2005)*—in their survey, the most frequently cited reasons for abortion in the United States were that having a child would interfere with education or ability to care for dependents (74%), and would be unaffordable (73%). We conclude that pro-life advocates can legitimately utilise the killing and

letting die distinction to claim that participating in an induced abortion is typically significantly morally worse than failing to act to prevent a spontaneous abortion.

## 10. Discussion

Having examined in some detail the considerations that we believe should influence our moral obligations, what can we conclude about the moral obligations of pro-life advocates towards both spontaneous abortion and induced abortion? Preventability of death is the first factor we examined, and so we reviewed the various different causes of prenatal deaths to determine which were the most significant. Using Ord's figures, we have calculated 151 million spontaneous abortions of actual human beings (once anembryonic pregnancies are removed). If aneuploidies represent approximately 60% (91 million) of spontaneous abortions of human organisms, and if we include the 56 million induced abortions in the total, aneuploidies are the cause of 44% of prenatal deaths prior to 20 weeks<sup>13</sup>. Induced abortions account for 27% and the remaining 29% of deaths are spontaneous abortions from a number of disparate causes. We note that as Ord's 63% figure for spontaneous abortion rates that we have used is outside Jarvis' more recent estimated range of 40-60% (Jarvis, 2017, p. 15), future revisions are likely to result in a decrease in the estimated numbers of spontaneous abortions, increasing the percentage of deaths attributable to induced abortion<sup>14</sup>.

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<sup>13</sup> Total prenatal deaths of human organisms are approximately 151 million spontaneous abortions and 56 million induced abortions. Aneuploidies, accounting for 91 million deaths, are therefore approximately 44% of prenatal deaths.

<sup>14</sup> If the midpoint of Jarvis' (2017) range of 40-60% is used—50%—this means the number of spontaneous abortions is equivalent to the number of births, 133 million. Removing anembryonic pregnancies yields 88 million spontaneous abortions of human beings. Using our 60% aneuploidy rate, aneuploidies account for 37%, induced abortions 39%, and other causes 24%.

On these calculations, the largest single cause of prenatal deaths is aneuploidies, followed by induced abortion. We have noted that there are many different types of aneuploidies, and in turn, there are a variety of causes for them. As a broad category, however, this gives us an initial indication of where resources might be directed, just as ‘cancer’ covers many types and has various causes. Similarly, induced abortion can be a result of abortifacients or various surgical techniques, and those choosing it have a variety of motivational causes.

In terms of pro-life moral obligations towards preventing prenatal deaths, clearly, the initial priority should be the two largest causes of death, which together comprise 71% of prenatal deaths. We have noted that we should address the most preventable causes without ignoring other causes, and as in-utero aneuploidies are currently untreatable and usually occur before detection of pregnancy, their preventability is very low. This does imply that research into earlier detection of pregnancy should be supported by pro-life advocates. We have noted the possibility in the future of gene-editing techniques that can be used in-utero, but there are some caveats: development would likely require supporting destructive research on embryos—unacceptable for the pro-life position—and there are also ethical concerns regarding the safety of these techniques<sup>15</sup>. Finally, we must keep in mind that merely preserving the life of embryos with usually fatal chromosomal defects is not necessarily a moral obligation if the result is an infant with defects so severe that it soon dies—as we have noted, this would be regarded as extraordinary treatment because of its futility in restoring health.

The other significant cause of death, induced abortion, is a result of human agency, and is theoretically reducible by changing human behaviour. Legislative change is the most obvious means of doing so, although the lack of reliable abortion data in many countries makes the

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<sup>15</sup> See, for example, Lanphier *et al.* (2015).

efficacy of this approach difficult to demonstrate. Sedgh *et al.* (2016) conclude that abortion rates in different countries are similar irrespective of the legal status of abortion, but suggest that in countries with restrictive abortion laws, there is a higher unmet need for contraception which contributes to abortion rates. Phillip Levine and Douglas Staiger's (2004) study compared how changes in abortion legislation affected rates of abortion in various countries, concluding that modest legal restrictions on abortion in Eastern Europe reduced abortion rates by up to 25 percent. Levine has also considered the impact of Roe vs Wade on abortion rates, concluding that recriminalizing abortion in the United States would result in an additional 440,000 births per year (Levine *et al.*, 1999).

There are also other means by which induced abortion rates could be reduced, such as restricting public funding of induced abortions (Morgan & Parnell, 2002) and requiring mandatory abortion counselling (Singh *et al.*, 1996). Although research is not conclusive, there may be an inverse relationship between contraceptive use and abortion rates. Marston and Cleland concluded that 'rising contraceptive use results in reduced abortion incidence in settings where fertility itself is constant' (2003, p. 6). More recently, Miller and Valente (2016, p. 1007) suggested that 'reductions in the cost of contraception may reduce the incidence of abortion' based on their study of the legalization of abortion in Nepal, although the context was actually an expansion of Nepal's abortion supply which resulted in a decline in contraceptive use. We do not consider that a causal link between increased contraceptive use and a decline in abortion rates is sufficiently established for pro-life advocates to support campaigns to promote the widespread availability of affordable contraception for the sole purpose of decreasing abortion rates.

The badness of death is our second consideration, and we have used McMahan's time-relative interest account to show that the badness of death primarily affects human beings who have already been born, by having their life cut short or by suffering a prolonged unpleasant death. This justifies the allocation of resources towards alleviating sickness and disease, despite the numbers of prenatal deaths being significantly higher than those of humans who have been born. The badness of death, however, provides little insight into whether spontaneous abortions should be prioritised over induced abortions, as it is equivalent for any prenatal deaths irrespective of the cause.

Finally, we have concluded that in the majority of cases, induced abortion (from the pro-life perspective) is significantly morally worse than letting die—indeed, when it is not preventable, letting die does not seem morally problematic. We also noted that as citizens in a society that permits induced abortions, pro-life advocates bear some responsibility for them and, therefore, have an obligation to act to reduce the number of induced abortions.

Once we take these factors into account, we have a much clearer understanding of pro-life moral obligations. There is little pro-life advocates can do directly to address the primary cause of spontaneous abortions—aneuploidies—if embryo experimentation is regarded as unethical. Given that induced abortion is the second highest cause of prenatal death, and there is considerable potential to lower rates by legislation and influencing societal attitudes, it seems reasonable that induced abortion is prioritised and considerable resources are dedicated towards reducing it. Given our conclusion about its moral badness and Pogge's argument that all citizens in democratic societies are participants in abortion legislation, albeit sometimes unwillingly, this makes induced abortion a legitimate priority for pro-life advocates over spontaneous abortions.

This does not mean pro-life advocates have no obligations towards reducing spontaneous abortions. There are some causes of spontaneous abortion, such as thrombophilia, that are potentially reducible by further research that is acceptable to pro-life advocates, and this research should be supported, along with research into earlier detection of pregnancy. We have noted, though, that considerable research is already conducted in this area, and this diminishes any moral obligation to contribute if there are more profitable avenues for reducing deaths.

Modifying lifestyle risk factors such as alcohol consumption and obesity are likely to have a positive impact, and spontaneous abortion rates could be reduced by encouraging women to live healthier lifestyles. As we have suggested, if women have children earlier rather than later in life and use contraception at other times, this may reduce spontaneous abortions. Campaigns or government measures that encourage this behaviour could be supported: for example, Mills *et al.* (2011, p. 857) conclude that while the impact of direct cash incentives and indirect payments is uncertain, ‘policies which reduce the incompatibility between work and mother roles lead to younger ages at first birth’. The main issue with allocating resources towards these sorts of measures is that their eventual impact on spontaneous abortion rates is quite indirect. Given their efficacy on the concomitant goals of healthier lifestyles and earlier childbearing ages is difficult to quantify (Mills *et al.* 2011, p. 857), it is likely to be even more difficult to determine their effect on spontaneous abortion rates, and so other measures should take priority.

Finally, even if little can currently be done to reduce rates of spontaneous abortion, pro-life advocates should, at a minimum, commit to discussing and publicising this issue.

## 11. Conclusion

Various ethicists have argued that high rates of spontaneous abortion are problematic for pro-life advocates who regard human embryos as having the same moral status as adult human beings from conception. This view implies spontaneous abortion is one of the most important problems faced by humanity, which is claimed to be an absurd conclusion and, therefore, a *reductio* against this belief about moral status, which should be abandoned. We have explained that from a pro-life viewpoint, this is not an absurd conclusion, noting that pro-life advocates currently take a similar issue, induced abortion, to be one of humanity's most important problems.

A further claim is that if this belief about the moral status of human embryos is maintained, knowledge of the high numbers of spontaneous abortions entails a strong moral obligation to take action to reduce them, an obligation which pro-life advocates have failed to take seriously. Moreover, it has been claimed that it is 'morally monstrous' to continue to oppose induced abortion rather than diverting resources towards reducing spontaneous abortion rates.

The overall numbers of both induced and spontaneous abortions are far greater than the number of deaths of human beings post-birth, and it is clear that a *prima facie* moral obligation exists to act in ways that will reduce all prenatal deaths, including those from spontaneous abortion. However, we noted there are various considerations that will affect this obligation. These factors include directing efforts towards the most preventable causes, the badness of death, and the killing and letting die distinction. Taken together, these lead us to conclude that for pro-life advocates, induced abortions are morally worse than spontaneous abortions. Upon examining the figures, conservative calculations have shown that chromosomal defects and induced

abortion are the primary causes of prenatal death, and there are a variety of lesser causes. Little can currently be done to reduce deaths from chromosomal defects, and so we conclude that the primary obligation for pro-life advocates is to continue to oppose induced abortion—and they are not morally negligent or morally monstrous for doing so.

This does not, however, imply that spontaneous abortion can be ignored by pro-life advocates: it must be recognised that it is an important issue accounting for a high proportion of deaths of human beings. Accordingly, it should be an issue of concern, and widely discussed in pro-life circles. Ethical research into reducing spontaneous abortion rates should, therefore, be strongly encouraged. These actions need not divert significant resources from opposing induced abortion, and failing to do so may indicate the critics discussed here are correct in their assessment that pro-life advocates do not believe their own claims about the moral status of human embryos.

## **PAPER 2: Frozen Embryos and The Obligation to Adopt**

### **Context**

After Daniel Rodger and I had completed our spontaneous abortion paper, above, Lovering published a fourth argument against the substance view and similar views (Lovering, 2020). This argument, which he calls ‘the moral argument for frozen human embryo adoption’, draws upon both the embryo rescue argument and the argument from spontaneous abortion. The claim is that for those who believe the death of an embryo is ‘a very bad thing’, there is a moral obligation to prevent the death of at least one of the millions of frozen surplus embryos that exist in storage facilities (Lovering, 2020, p. 243). For example, pro-life advocates ought to prevent at least one of these deaths by adopting and gestating a frozen embryo.

Nicholas Colgrove and I developed a reply to Lovering, which I present below (Blackshaw & Colgrove, 2020). We point out that those who regard the deaths of frozen embryos as a very bad thing will regard the deaths of all embryos as a very bad thing, no matter how they die. For example, the deaths of embryos by induced abortion occur in much greater numbers than deaths of frozen embryos, and so these should be prioritised. We also explain that embryo adoption is expensive, and there are many more cost-effective strategies for preserving the lives of frozen embryos, as well as humans already born.

With the benefit of hindsight, section four of this paper should not have cited Peter Singer’s effective altruism. P3 of Lovering’s argument states that ‘if it is in one’s power to prevent something very bad from happening without thereby sacrificing anything of comparable moral importance, one ought, morally speaking, to do so’ (2020, p. 243). We suggest that if we buy into effective altruism, in addition to preventing bad things, we should also do the most good

we can, However, P3 is taken directly from Singer's work, and he makes it clear that P3 also means we should not '[fail] to promote some moral good, comparable in significance to the bad thing that we can prevent' (Singer, 1972, p. 231). There was no need to suggest effective altruism was necessary, and avoiding it would have meant its additional claims regarding the efficiency and effectiveness of our actions would not need to be bought into.

## 1. Introduction

In recent years, Rob Lovering has developed several arguments that challenge the plausibility of the account of human persons known as the substance view, which asserts that all human beings are of equal value, whether they are embryos or adults (Lovering, 2013, 2014, 2017). He has now developed an interesting new argument, which he refers to as the *moral argument for frozen human embryo adoption*, and which we will refer to as the *moral argument* (Lovering, 2020).

Lovering's moral argument draws on two of his previous arguments. The *embryo rescue argument* claims it is strongly counterintuitive to rescue ten frozen embryos instead of a five-year-old human being, and hence serves as a *reductio* argument against the substance view (Lovering, 2014, 2017). The *embryo mortality argument* notes that a high percentage of pregnancies end in spontaneous abortion, resulting in the deaths of many millions of human beings each year (Lovering, 2013). Lovering suggests that substance view proponents have a strong moral obligation to act to reduce these deaths—which he contends is absurd and hence another *reductio*. Further, they fail to act in ways that will mitigate spontaneous abortion, implying either that they are acting immorally or they do not hold their views regarding the intrinsic value of all human beings seriously (Lovering, 2017).

Lovering's *moral argument* combines elements of the embryo rescue argument and the embryo mortality argument—the idea of rescuing embryos from death from the former and the moral obligations we might infer from the substance view from the latter. Although he avoids explicit mention of the substance view, its proponents are among his targets, as can be seen by his first premise—that “the death of a frozen embryo is a very bad thing.” (Lovering, 2020, p. 243). As the substance view regards all human beings as equally valuable, and the death of a child or adult is generally thought of as a very bad thing, it follows that proponents of the substance view regard the death of an embryo as a very bad thing. Lovering proceeds to note that on this premise, there are millions of surplus embryos—valuable human beings—frozen at the very beginning of their lives and in danger of being discarded and subsequently killed. Consequently, if the death of an embryo is thought to be very bad, he argues there is a moral obligation for at least some people to act to prevent at least one of these deaths.

Lovering states that one possible use of his argument is to serve as a *reductio ad absurdum* of views that entail that the death of an embryo is a very bad thing. He suggests that it might also serve to show proponents of these views as acting in a manner that is morally criticizable or immoral—that they are acting inconsistently with their beliefs.

Here, we examine Lovering's claims. After outlining the moral argument in detail, we respond in two parts. First, we challenge Lovering's suggestion that the moral argument serves as a *reductio* for views (such as the substance view) that entail the death of a frozen embryo is a very bad thing. Second, we show that proponents of the substance view and others who regard the death of a frozen embryo as a very bad thing are not morally obliged to adopt and gestate frozen embryos—there are far more effective strategies for preserving the lives of frozen embryos than adoption. Moreover, we point out that those who regard the deaths of frozen embryos as a very bad thing will generally regard the deaths of *all* embryos as a very bad thing,

whether they are discarded embryos, aborted embryos or embryos that spontaneously abort. This entails that these other embryos must be taken into account when considering moral obligations.

## 2. The moral argument for frozen embryo adoption

Lovering's (2020, p. 243)<sup>16</sup> moral argument proceeds as follows:

P1. The death of a frozen embryo is a very bad thing.

P2. Via embryo adoption, it is in some people's power to prevent the death of at least one frozen embryo without thereby sacrificing anything of comparable moral significance.

P3. If it is in one's power to prevent something very bad from happening without thereby sacrificing anything of comparable moral importance, one ought, morally speaking, to do so.

C: Therefore, said people ought to prevent the death of at least one frozen embryo via embryo adoption.

As noted above, those who believe P1 (e.g., proponents of the substance view) often claim that the death of an embryo is comparable to the death of a born human being. Hence, such deaths are a "very bad thing." For the sake of argument, Lovering grants that this "moral assessment of the death of a frozen embryo is correct" (Lovering, 2020, p. 246).

P2 has two parts: (i) some people *can* save at least one frozen embryo, and (ii) this can be done without surrendering something "of comparable moral significance." Claim (i) is

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<sup>16</sup> This citation was overlooked for the published paper, and has been added for this thesis.

uncontroversial. Claim (ii) requires an explanation. The death of a frozen embryo is, we are assuming, “a very bad thing.” But what “costs” come with the adoption process? Those Lovering lists include the financial cost of adoption, the costs of carrying an embryo to term, giving birth, and—if embryo adoption entails raising the child—all of the sacrifices associated with parenting more generally. Believers in P1, Lovering claims, will usually take the death of an individual human being to be *worse* than the “negatives” listed here. Hence, P2 applies to those particular believers in P1 (i.e., those who think the death of a frozen embryo is worse than the “costs” of adoption). In their case, if they have the power to adopt, then they can do so without “sacrificing anything of comparable moral significance” (Lovering, 2020, p. 246).

Lastly, P3 comes from Peter Singer (2011, p. 199). According to Singer, P3 is consistent with a wide range of moral perspectives (2011, p. 199). It aligns with consequentialist theories because it states that we ought to do good when, on balance, doing good comes with relatively little costs. It aligns with non-consequentialist theories as well, Singer claims, “because the injunction to prevent what is bad applies only when nothing comparably significant is at stake. Thus, the principle cannot lead to the kinds of actions of which non-consequentialists strongly disapprove” (Singer, 2011, p. 199). In other words, should the non-consequentialist maintain that certain actions (e.g., adultery) are wrong, then when faced with the option of (a) saving a life but violating one’s core moral commitments or (b) failing to save a life, but maintaining one’s core moral commitments, P3 permits them to select (b).

Consequently, P1-P3, *if accepted*, together imply Lovering’s conclusion—that at least *some* people are obligated to adopt at least one frozen embryo.

### 3. The absurdity charge

Before examining the moral argument in detail, we will briefly address Lovering's absurdity charge; we have noted that Lovering suggests that the moral argument might serve "as a *reductio ad absurdum* of sorts against" P1 (2019). Clearly, he thinks the conclusion of the moral argument is absurd—that some people are obligated to adopt frozen embryos. But why think these types of moral obligation are absurd? There is nothing logically incoherent about them—they do not generate any contradiction. Lovering himself notes there are several organizations dedicated to adopting these embryos, which implies there are some people who believe this obligation is actionable, and clearly not absurd.

As far as practices go today, adopting and gestating such an embryo may be perceived as *wildly inconvenient*. However, Lovering himself vigorously defends P3 against objections that its implications are too demanding or impractical, and so perhaps he has another objection in mind. Either way, if there is a genuine absurdity that arises from P1, Lovering will need to articulate exactly what it is. Until then, we reject the notion that the moral argument is a *reductio* of views that accept P1 (e.g., the substance view).

### 4. What obligations do P1 proponents have?

Lovering is clear that his moral argument is aimed at those who believe P1 (i.e., those who believe that the death of a frozen embryo is a very bad thing) and so, we will examine the obligations P1-believers should be willing to accept with regard to frozen embryos. Lovering claims in P2 that "via embryo adoption, it is in some people's power to prevent the death of at least one frozen embryo without thereby sacrificing anything of comparable moral significance" (Lovering, 2020, p. 243). He cites the Lims as an example—a couple who made considerable sacrifices to adopt and gestate two frozen embryos that would otherwise have been discarded. However, the Lims only demonstrate that the first part of P2 is true—clearly,

it is in some people's power to prevent the death of at least one frozen embryo. As noted above, this is an uncontroversial claim—it seems likely that many people, including the parents of frozen embryos, also have the power to prevent the death of at least one frozen embryo.

The more pertinent part of P2 is Lovering's implication that the moral sacrifices associated with gestating a frozen embryo are not comparable to the moral significance of preventing the death of a frozen embryo. We will grant that for P1-believers, this is also uncontroversial. What Lovering does not consider, however, is the *opportunity cost* of the sacrifices that are required for embryo adoption. Recalling from P1 that the primary obligation is to prevent the death of frozen embryos, perhaps *adopting* a frozen embryo is not the most effective approach to doing so. Presumably, most frozen embryos are discarded because the parents already have successfully had the children they desired or have given up on further attempts at IVF, and no longer wish to pay the storage costs of their surplus embryos<sup>17</sup>. Rather than P1-believers gestating and adopting these embryos, in the short-term, a more cost-effective approach might be to sponsor their storage while also lobbying to change laws, as discussed below. The lives of many more embryos could be extended with such a strategy in comparison to direct adoption. Of course, eventually, these embryos will need to be adopted, but this could buy time to judge the efficacy of other strategies to reduce the supply of frozen embryos and encourage adoption. The point remains, however, that immediate adoption may not be the most cost-effective means of saving frozen embryos.

Given the widespread and growing use of IVF, it seems that the supply of surplus frozen embryos in the future will be inexhaustible (Ferraretti *et al.*, 2017). It seems far more conducive to the goal of preventing deaths to act in ways that will reduce or eliminate the *supply* of frozen

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<sup>17</sup> ReproTech—a company that specialises in long-term embryo storage—estimates that storage fees range from \$350-\$1,000 per year, depending on the facility (ReproTech, 2020).

embryos. For example, laws could be lobbied for that would prevent or discourage excess embryos being produced by IVF clinics, together with laws that prevent the destruction of surplus embryos, which, if enacted, would remove the immediate threat of their disposal<sup>18</sup>. Other possibilities include holding parents responsible for their embryos and requiring that excess embryos be made available for adoption. This latter point is especially pertinent if Lovering is correct that “only 6% of couples donate their excess embryos” (2020, p. 242 footnote 3). If this figure is correct, then the vast majority of parents are merely potential (i.e., not actual) donors (and so, this is something the P1-believer might work to change).

Technology should also be considered—ectogenesis is developing rapidly (Usuda *et al.*, 2019), and it may be that in a few years it is possible to gestate surplus embryos without requiring a human uterus. Of course, there may be ethical issues with doing so, but nonetheless, ectogenesis is a possibility well worth exploring because it promises to remove the physical sacrifices required by gestation away from prospective adoptive parents. Also, intercountry adoption is rapidly declining and may eventually be curtailed (Selman, 2012), presumably making adoption more difficult and strengthening demand. It is likely there will be little difficulty finding adoptive parents for surplus embryos gestated via ectogenesis. Consequently, P1-believers could cultivate an interest in this area and perhaps sponsor its development in some way<sup>19</sup>. Additionally, given Lovering’s claim that the likelihood of live birth following IVF is low (36%), it may actually save *more* lives if the P1-believer advocates for keeping

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<sup>18</sup> These types of laws are not without precedent either. Italy, for example, enacted legislation that “limited the number of embryos created during IVF to a maximum of three and required that all viable embryos be transferred into the patient’s uterus so no embryos would be stored or destroyed” (Bayefsky 2016). Germany’s 1991 Embryo Protection law included the same types of restrictions, though it has recently been relaxed to allow for the use of PGD. See Bock von Wülffingen, B. (2016).

<sup>19</sup> For more on the claim that (from the perspective of P1-believers) ectogenesis may be worth pursuing, see Kaczor, C. (2015) and Simkulet, W. (2020).

excess embryos frozen until technology improves (and raises the likelihood to much more favourable levels).

Emphasising the importance of saving as many frozen embryos as possible raises a broader issue with regard to obligations towards embryos—P1-believers will generally also hold to a more general premise, which we will call P0: the death of an embryo is a very bad thing. A frozen embryo is but one category of human embryo in danger of losing its life. As Blackshaw and Rodger note, over 50 million embryos (and fetuses) are killed annually via induced abortion, and even more spontaneously abort, dwarfing the numbers of frozen embryos that are discarded annually (Blackshaw & Rodger, 2019a). P0-believers will surely consider that they have obligations to *all* embryos, and as Blackshaw and Rodger argue, efforts to prevent their deaths should be strategically directed to where they are most effective.

This casts considerable doubt on P2—adopting a frozen embryo with all the attendant costs and time commitment may well mean sacrificing resources that could otherwise have been directed to combating induced abortion or spontaneous abortion, in addition to the strategies we have already discussed apart from adoption to deal with the frozen embryo problem. Importantly, these embryos are in far more imminent danger of losing their lives, as frozen embryos can seemingly be kept viable almost indefinitely (Yuan *et al.*, 2018). Each embryo lost to induced and spontaneous abortion is certainly of comparable moral significance to each frozen embryo, but their far greater numbers entail that these issues are of much important moral significance. Indeed, Lovering himself argues that P0-believers are morally obligated to act on the issue of spontaneous abortion (2013).

But why stop at saving embryos? P0- and P1-believers surely also believe that other human beings are of comparable moral significance. For example, imagine P1-believers buy into the “effective altruism” that lies in the background of P3. Singer’s “effective altruism” emphasises

the importance of doing the most good that one can do with one's resources<sup>20</sup> (Singer, 2015). Returning to Lovering's argument, he notes that the cost of embryo adoption is somewhere around \$8,000 (2020, p. 244, footnote 14). GiveWell reports that as of November 2016, the median cost of saving one life via the Against Malaria Foundation is \$3,162 (ranging from \$532-\$7,179 in individual cases) (GiveWell, 2017). The P1-believer, therefore, has a choice: Spend \$8,000 to save no more than one life (via embryo adoption) or spend that same \$8,000 to save as many as 15 lives (via charitable donation). Effective altruism—indeed, *P3 itself*—makes it clear what the P1-believer should do here: Donate rather than adopt. This does not imply that the P1-believer thinks embryos are not persons (or not valuable). It simply operates on the assumption that each life counts equally. And fifteen is greater than one. Hence, saving up to fifteen lives is the better course of action than saving one life (at most).

This problem becomes worse for Lovering when we recall his claim that “the likelihood of a successful birth via IVF is low (around 36%)” (Lovering, 2020, p. 245). Assuming Lovering is right, the P1-believer really has a choice between spending \$8,000 on a 36% chance to save (at most) one life or spending \$8,000 on a *much* higher chance of saving between one and fifteen lives<sup>21</sup>. Again, if someone accepts P3, it is abundantly clear what they must do: donate rather than adopt. As such, Lovering's claim that P1-believers ought to adopt embryos—because doing so does not require that they sacrifice anything of comparable moral significance—is patently false.

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<sup>20</sup> See the comment on this section in this paper's context section.

<sup>21</sup> The Against Malaria Foundation, for example, reports that “even with holes” malaria nets—which cost only \$2.00 apiece—are “99% effective.” Furthermore, they estimate that for “every 100-1,000 nets we put over heads and beds, one child doesn't die.” Based on their estimates, therefore, this means that (approximately) for every \$200-\$2,000 spent, one child does not die. Thus, even in the worst-case scenario, the P1-believer may suppose their \$8,000 will save somewhere around four lives if donated (as opposed to securing a *fraction of a chance* at saving one life, if embryo adoption is pursued) (Against Malaria Foundation, 2020).

## 5. Conclusion

We have agreed with Lovering that some people who believe that the death of a frozen embryo is a very bad thing have the power to prevent the death of at least one frozen embryo via embryo adoption. We have denied, however, that they can do so without thereby sacrificing anything of comparable moral significance. We have shown that there are numerous other strategies for saving frozen embryos that are likely to be far more effective. We have also noted that those who believe the death of a frozen embryo is a very bad thing are likely to also believe that the deaths of embryos by induced abortion or spontaneously abortion are also a very bad thing—and so these far greater numbers of deaths must also be considered when determining moral obligations. Finally, the costs of embryo adoption may be such that these resources are better directed to saving the lives of humans who are already born and at risk of preventable diseases such as malaria—indeed, Peter Singer’s effective altruism entails this is obligatory.

### **PAPER 3: The ethics of killing: strengthening the substance view with time-relative interests**

#### **Context**

While developing the response to the problem of spontaneous abortion (with Daniel Rodger), I noticed that both Friberg-Fernros and Matthew Liao suggested appealing to *time-relative interests* to justify saving a child over an embryo (Friberg-Fernros, 2015; Liao, 2006). However, Lovering criticises Friberg-Fernros for this move, accusing him of using an *ad hoc* moral proposition to strengthen his case (Lovering, 2017). This criticism suggested asking in more detail whether substance theorists can coherently incorporate time-relative interests into the substance view to strengthen it against objections.

As the first paper of this part explained, Jeff McMahan (2002, pp.105-106) conceived of time-relative interests to better explain our intuitions about the badness of death, particularly the intuition that the deaths of embryos and fetuses seem not nearly as bad as the deaths of children or adults. According to McMahan, the degree of wrongness of killing of individuals below a certain threshold of psychological capacities is based on the strength of their time-relative interests. These vary in strength according to the number of psychological connections an individual has with their future self. Embryos and preconscious fetuses lack any time-relative interests, while conscious fetuses and infants have very weak time-relative interests. As a result, McMahan's account, known as the *Time-Relative Interest Account* (TRIA), entails that it is less wrong to kill embryos and fetuses than infants or very young children.

However, this sphere of morality, which McMahan calls the morality of interests, only applies to individuals whose psychological capacities fall below what McMahan calls the *threshold of*

*respect*. Individuals above this threshold are persons, and the wrongness of killing persons is no longer based on their time-relative interests—it is a violation of respect towards persons, who are of incalculable worth. It is always worse to kill persons than to deprive individuals of their time-relative interests. The interests of persons will always trump the interests of individuals who have not reached the threshold of respect. McMahan refers to his account as the *Two-Tiered Account* of the wrongness of killing, because it bases the wrongness of killing on different accounts depending on whether the individual is a person or not. Embryos, fetuses, infants and very young children are below the threshold of respect.

Taking Friberg-Fernros and Liao's use of time-relative interests as inspiration, I have developed a new moral theory of the wrongness of killing (Blackshaw, 2019b) in the following paper. Like McMahan, I distinguish between respect for worth and interests. But crucially, I use them simultaneously rather than McMahan's approach of separating them into two separate tiers. I refer to this new account as the *Dual-Aspect Account* of the wrongness of killing.

The Dual-Aspect Account entails, per the substance view, that all human beings are persons with equal moral value. However, it also claims that killings of human beings are not equally wrong—it is worse to kill individuals with greater time-relative interests than those with lesser time-relative interests. This accords more with our intuitions regarding the unborn—for example, it is widely thought that killing a late-term fetus is morally worse than killing an early-term fetus. A late-term fetus has weak time-relative interests, while an early fetus or embryo has none, and so the Dual-Aspect Account concurs with this intuition. Similarly, killing an infant seems substantially worse than killing a fetus, while killing a child is worse than killing an infant.

The Dual-Aspect Account is a promising development of the substance view that retains its central feature of equal moral status for all human beings, but offers a path to resolving some of the substance view's difficulties with common intuitions regarding the badness of death. As we will see, it provides a plausible explanation as to why it is morally worse to kill a postnatal human being than an embryo or fetus. While it does not entirely resolve the embryo rescue and embryo loss arguments, it is better able to deal with them than the substance view. The Dual-Aspect Account also avoids certain worries regarding McMahan's account, such as the implication that infants or young children can be sacrificed for the benefit of persons (Rodger et al., 2018).

It is important to note that the Dual-Aspect Account can be used with any 'person-at-conception' account: it is not limited to the substance view. This means that it could instead reference the rational animal account that I propose in part three of this thesis as an alternative to the substance view.

## **1. Introduction**

The *substance view* is an account of personhood that regards all human beings as moral persons because of the kind of thing human beings are: a certain type of *substance*, or individual being. Human substances are regarded as rational moral agents by nature, and remain so throughout their existence, and this grounds their worth. Typically, ethicists holding to the substance view regard abortion as impermissible in most circumstances.

There are contrasting accounts of human persons that deny that all human beings are intrinsically valuable: they instead ground value on the capacity to exercise certain functions such as rationality or self-awareness. These have been called *performance accounts* of persons (Kaczor, 2014, p. 102). One implication is that human beings who lack these capacities are not

granted the moral status of a person and thus lack a right to life. One account is Mary Anne Warren's multicriterial account (1997), which ties moral status to sentience, moral agency and membership of a human social community. Another is Jeff McMahan's (2002, p. 245-65) *Two-Tiered Account*, which provides a comprehensive explanation of the wrongness of killing for both non-persons and persons. By person, McMahan means an individual who possesses a level of psychological capacities that exceed what he refers to as the *threshold of respect*.

McMahan notes that many believe that the degree of wrongness of killing is correlated with the degree of harm suffered by the victim—or how bad death is for them. This harm is often regarded as the deprivation of the value of the expected future life they have lost. McMahan, however, points out that this implies that the death of an embryo is far worse than that of any other human being, which is highly counter-intuitive. His alternative proposal bases the badness of death on the frustration of an individual's *time-relative interests* rather than their ordinary interests. Unlike ordinary interests, time-relative interests vary in strength according to an individual's degree of psychological unity with their future self. An embryo has no psychological unity with its future self, so its time-relative interests are extremely weak. While McMahan ultimately does not endorse harm as a general account of the wrongness of killing in his Two-Tiered Account, time-relative interests still form an important component.

The Two-Tiered Account is motivated by what McMahan believes to be other widely held moral intuitions regarding the badness of death and the wrongness of killing human beings. Many people regard death as worse for a young adult than for an elderly person because a young adult's death is premature, and there were potentially many more years of life they could have enjoyed. Conversely, the death of an infant does not seem as bad as the death of a young adult, and the death of a fetus does not seem as bad as the death of an infant. McMahan claims

it is also widely thought that the deaths of early-term fetuses and embryos are not as bad as the deaths of other human beings, and it is not as wrong to kill them.

As the substance view regards all human beings as of equal moral value, it has difficulties dealing with these intuitions regarding embryos and fetuses, and this impacts its credibility. Here, I present a proposal that combines the substance view with McMahan's time-relative interest account: the *Dual-Aspect Account* of the morality of killing. I will show that it resolves some important issues for the substance view while preserving its central premise of moral equality for all human beings. I will then examine McMahan's Two-Tiered Account and the subsequent modifications he has suggested and compare these to the Dual-Aspect Account.

## **2. The Substance view**

The substance view is an account of human persons heavily associated with the anti-abortion (or 'pro-life') movement. It has its roots in the Aristotelian notion of *substance*: a substance is an individual object or being of a particular kind. Francis J. Beckwith explains that 'each kind of living organism, or substance, including the human being, maintains identity through change as well as possessing a nature or essence that makes certain activities and functions possible' (Beckwith, 2004, pp. 34–35). According to Beckwith, the nature of human substances is that they are rational moral agents, and this nature is the basis of their intrinsic worth—not their ability to actualize their capacities for rationality and moral agency that are inherent in their nature. All human substances are, therefore, intrinsically and equally valuable for as long as they exist, no matter what stage of development they may have reached, as they share the same nature. The substance view, then, entails that the zygote, embryo, fetus and postnatal human being are all of equal intrinsic value, and this value entitles them to respect—they deserve moral consideration by moral agents. In other words, they possess moral status. Persons are entities with what is called full moral status—those that deserve the highest moral

consideration. This entails that they have certain rights, including the right to not be unjustly killed.

As the substance view considers embryos, foetuses and infants of equal value, they all possess full moral status—they are all persons, and it is just as wrong to kill humans at these stages of development as it is to kill adult human beings. Abortion, infanticide and active euthanasia are regarded as impermissible. As frozen embryos too are persons, they have equal moral standing to all other human beings and so their destruction is also impermissible.

Prominent defenders of the substance view are often writing from a Catholic perspective, and include Lee (2004), and George and Tollefsen (2008) in addition to Beckwith.

### **3. The Two-Tiered account**

McMahan's *time-relative interest account* (2002) is a sophisticated attempt to explain certain strongly held common intuitions about the badness of death that he believes are 'presumptively reliable' (2002, p. 104). One intuition is that death is worse for a young adult than for an elderly person, other things being equal. This intuition supports a comparative account, where the badness of death is measured by its effects on the overall value of a life. A young adult who dies suffers the loss of far more net good from their future possible life than an elderly person, so their death is worse. However, a comparative account fails to explain some other common intuitions: for example, that the death of a fetus by spontaneous abortion is not as bad as the death of a young adult, and that the deaths of early-term fetuses (and embryos) are not as bad as the deaths of late-term fetuses. On a comparative account, an early fetus suffers the loss of more net good in its future possible life than a late-term fetus, and both suffer the loss of more net good than a young adult, contrary to these intuitions.

The time-relative interest account addresses these contradictions by applying a multiplier to the value of future events in an individual's life. This multiplier is based on the degree of special concern an individual rationally has for their own future—what McMahan calls their *egoistic concern*. This egoistic concern varies between individuals—an infant, for example, has a very weak concern about their future—and is based on the degree of *psychological unity* between the individual now and in the future. Briefly, someone's degree of psychological unity over a time period is dependent on the richness and continuity of their mental life.

An individual's present time-relative interests are a function of the expected good their future contains if they continue living, and the degree of psychological unity they will have with their future self. This explains the common intuition that the death of a fetus is not as bad as that of a young adult: the fetus's degree of psychological unity with itself in the future is very weak, severely discounting its future interests. It also explains why the death of an elderly person with a terminal disease seems not as bad as the death of a twenty-year-old healthy adult with presumably many years of life ahead.

This account of the badness of death is used by McMahan as the basis for the *Time-Relative Interest Account* of the wrongness of killing. On this account, acts of killing are wrong because they frustrate the victim's time-relative interests, and the degree of wrongness is based on the strength of those time-relative interests. According to the time-relative interest account, then, it is not as wrong to kill a fetus as it is to kill a young adult: it provides a moral justification for the permissibility of abortion.

There is an important issue that McMahan notes with the time-relative interest account. He claims there is a common belief that the wrongness of killing persons does not vary with the degree of harm caused to the victim or a number of other factors such as race, intelligence or age. McMahan calls this the *Equal Wrongness Thesis*, which contends that the wrongness of

killing should reflect our belief in the ‘fundamental moral equality of persons’ (McMahan, 2002, p. 235). Thus, the time-relative interest account of the wrongness of killing must be rejected for persons, as they vary in their time-relative interests. To deal with this conundrum, McMahan proposes that the wrongness of killing persons must be correlated with the worth or value of the person. On this alternative account, killing is wrong because it fails to respect the intrinsic worth of the victim as a person, and this worth does not vary with their time-relative interests—what McMahan calls the *Intrinsic Worth Account*. This intrinsic worth implies all killings of persons are equally wrong, *ceteris paribus*. There is a threshold that marks the level of psychological capacities that distinguishes persons from non-persons, such as animals, beyond which individuals have a level of worth that commands respect—what McMahan denotes the *threshold of respect*. Moreover, McMahan proposes that beyond a certain level of psychological capacities—the *threshold of equal worth*—‘all individuals above that level of capacity have equal worth’ (McMahan, 2002, p. 249). McMahan suggests that the threshold of respect and the threshold of equal worth coincide, and so he refers to this as *the threshold*.

McMahan’s general solution is to combine the time-relative interest account and the intrinsic worth account into a hybrid theory, which he calls the *Two-Tiered Account* of the morality of killing (McMahan, 2002, p. 245). Below the threshold, the time-relative interest account governs the morality of killing, while above this threshold, the intrinsic worth account applies. Thus, McMahan divides the morality of killing into two distinct and separate spheres, each governed by a different account: the *morality of interests* and the *morality of respect*.

#### **4. Issues with the substance view**

The substance view entails that all human beings are equally morally valuable and so concurs with the widely held intuition that all postnatal human beings are equally morally valuable. If

two human beings are of equal moral value, then this implies that it is equally wrong to kill them, *ceteris paribus*, and so the substance view implies that it is equally wrong to kill an embryo, a fetus or an adult human being. This, however, clashes with some commonly held intuitions about the wrongness of killing infants, fetuses and embryos that we have noted McMahan's Two-Tiered account was designed to cater for.

As we have seen, McMahan claims that it is widely (although not universally) believed that causing the deaths of fetuses is not as wrong as killing infants, and killing early-term fetuses (and embryos) is not thought to be as wrong as the deaths of late-term fetuses. Certainly, abortion law supports this assertion: it is extremely common for abortion laws to be permissive in the first trimester of pregnancy and restrictive regarding late-term abortions. Ronald Dworkin also believes that it is commonly held that 'it is worse when a late-stage fetus is aborted or miscarries than an early one' (Dworkin, 1993, p. 87). Cuisinier *et al.* (1993) note that their survey indicates the grief associated with miscarriage is greater for longer gestation times, while Pandora Sifnioti's (2018) recent survey on the embryo rescue scenario discussed below shows most people place a higher value on the life of a child than multiple embryos.

In Rob Lovering's view, the substance view *prima facie* implies similar penalties should be imposed for the act of abortion to those imposed for deliberately killing an adult human being (Lovering, 2013)—for the mother and the attending physician. He regards this implication as 'strongly counterintuitive if not absurd' (Lovering, 2013, p. 269). The substance view also implies similar penalties should also be imposed for destroying surplus in vitro fertilization (IVF) embryos, which also seems counterintuitive.

There are two additional important objections to the substance view: the *embryo rescue argument* and the *embryo loss argument*. These appeal to our intuitions about who we should *save* rather than who can be *killed* and so are not necessarily addressed by an account of the

morality of killing. I will, however, have some observations to make on these cases, and briefly review them below.

The embryo rescue argument poses a scenario of a rescuer entering a burning building that contains a ten-year-old child and a number of frozen embryos—at least two. The rescuer is unable to save both the child and the embryos, as they are in different rooms. As Sifnioti's (2018) survey suggests, it seems that most people would choose to save the child rather than the frozen embryos. This implies that it is generally believed that a child's value is greater than that of multiple embryos, contrary to the substance view, which regards all human substances as persons of equal intrinsic value from conception.

The embryo loss argument has similar implications. It is commonly estimated that 60-70% (Jarvis, 2017) of all conceptions spontaneously abort, and on the substance view, this entails that many millions of human beings morally equivalent to adults perish each year. Such loss is surely a crisis that is of the utmost importance to address, and yet intuitively, it does not seem to be. Moreover, substance theorists fail to assume any moral obligation for the prevention of these deaths, and yet they are typically extremely concerned about deaths caused by induced abortions. The implication is that substance theorists are either hypocritical in not fulfilling their moral obligations or do not actually believe their own views about the moral status of embryos.

There are various attempts to explain how the substance view can cope with these objections. Henri Friberg-Fernros (2015) and S. Matthew Liao (2006) have both suggested using McMahan's time-relative interest account to help cater for our intuitions about moral status that are raised by the embryo rescue argument. Let us now examine a formal proposal for combining these two accounts: the *Dual-Aspect Account* of the morality of killing.

## 5. The Dual-Aspect Account

As I have noted, there are seeds of the proposal that I outline here in work by Friberg-Fernros and Liao. According to Friberg-Fernros, an important difference between the killing of a child and an embryo is that ‘the killing of the child not only violates the right to life – which the child and the embryo have due to their status as human persons – but also violates the child’s time-relative interest, a fact which brings additional evil to the killing of the child compared with the killing of the embryo’ (Friberg-Fernros, 2015, p. 212). Liao has suggested using time-relative interests as a factor in choosing to save a child over an embryo, assuming both to be rightsholders (2006).

Kasper Lippert-Rasmussen (2007), in challenging McMahan’s equal wrongness thesis, offers what he calls the *Prioritarian View*, which also has some similarities to my proposal below. Based on the harm of killing, the Prioritarian View says that killing a person is wrong when it harms them, and the more harmful the killing is, the more wrong it is. In addition, the wrongness of extra harm ‘correlates negatively with the quantity of benefits the victim has already enjoyed’ (Lippert-Rasmussen, 2007, p. 735)—if they have enjoyed more through living longer, the wrongness of losing additional years of life is less than the wrongness of a younger person losing a similar number of additional years. This account is broadly comparable to using time-relative interests to calculate the wrongness of death<sup>22</sup>.

Lovering (2017) criticises Friberg-Fernros’ use of time-relative interests as utilising an *ad hoc* moral proposition added onto the substance view. He suggests there may be a place for conjoining them (Lovering, 2017, p. 308), and this is the basis of the approach I take here:

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<sup>22</sup> With hindsight, Lippert-Rasmussen’s account does involve an additional commitment over McMahan’s time-relative interests account. McMahan’s account does not consider the quantity of benefits a victim of killing has received.

formally combining the substance view with the time-relative interest account to yield a new moral theory of the wrongness of killing.

As has been outlined, McMahan's Two-Tiered Account consists of a combination of two distinct accounts that apply for separate spheres: the morality of interests, based on time-relative interests and applying beneath the threshold of respect, and the morality of respect, based on the equal intrinsic worth of all beings with psychological capacities exceeding the threshold of respect. Recall that the wrongness of killing is based on the strength of the victim's time-relative interests below the threshold of respect and is regarded as equally wrong above this threshold.

Rather than a Two-Tiered Account, where the first tier uses one account and the second uses a different account once the threshold of respect has been reached, I propose what might be called the *Dual-Aspect Account* of the morality of killing. The Dual-Aspect Account of killing employs the morality of interests and the morality of respect *simultaneously*, not in tiers. Rather than grounding the morality of respect on reaching a threshold of psychological capacities, the Dual-Aspect Account uses the substance view to ground respect. Consequently, for human substances, all of which are considered persons under the substance view, the morality of respect applies from conception onwards, encompassing all human beings. However, the Dual-Aspect Account says that the morality of interests must also be taken into consideration *irrespective* of the threshold of respect, and so the time-relative interests of human beings are also relevant when calculating the wrongness of killing. To put it another way, the Dual-Aspect Account defines the wrongness of killing as a function of the badness of death for an individual *and* their intrinsic worth as a human substance.

There are two important implications of the Dual-Aspect Account that are immediately apparent. Firstly, *all* human beings are rights holders with equal moral status, as per the

substance view (and contrary to McMahan's account). Secondly, killings of human beings are not equally wrong—also contrary to the substance view (but not McMahan's account). Although all human lives are due the morality of respect, as per the substance view, their time-relative interests vary, and so the wrongness of killing varies. McMahan's equal wrongness thesis only applies to persons, not all human beings.

## **6. Equal wrongness and moral equality**

Clearly, the Dual-Aspect Account rejects the equal wrongness thesis, which McMahan believes is necessary to reflect our views on the moral equality of persons—and yet the Dual-Aspect Account claims all human beings are persons and possess equal moral status. Is it tenable to reject the equal wrongness thesis, and is this stance incompatible with the claim that all persons are morally equal?

McMahan details a number of challenges to the equal wrongness thesis and is not confident all these challenges can be met. One important objection, formulated by Lippert-Rasmussen (2007), is based on our intuition that it is more wrong to render someone unconscious for a short period of time than for a much longer period of time. If it is equally wrong to deprive someone of a certain amount of consciousness by killing them as it is by rendering them unconscious, which is plausible, the equal wrongness thesis must be rejected. This demonstrates that doing so is certainly defensible and, therefore, not a significant objection to the Dual-Aspect Account.

McMahan, however, ties the equal wrongness thesis to our belief in moral equality, suggesting that if killing people with comparatively weaker time-relative interests than others is 'substantially less objectionable', this 'profoundly offends our sense of the moral equality of persons' (McMahan, 2002, p. 234). This seems a reasonable objection *if* time-relative interests

are the sole determinant of wrongness (i.e. McMahan's morality of respect is not employed)—it would imply that a person with very weak time-relative interests could be sacrificed for the benefit of a person with much stronger time-relative interests. This is the motivation for McMahan's introduction of his intrinsic worth account, coupled with his threshold of respect for persons.

According to the Dual-Aspect Account, however, human beings with weak time-relative interests cannot be sacrificed for the benefit of human beings with stronger time-relative interests. Moral equality is granted to all human beings on the basis of their rational nature, as per the substance view, and so all human beings are rights bearers, possessing a right to life. In the Dual-Aspect Account, time-relative interests *contribute* to the wrongness of killing, but they cannot *override* the high intrinsic worth of persons.

So, is discarding the equal wrongness thesis in the Dual-Aspect Account problematic for its claim of moral equality? Equal wrongness of killing does not seem *necessary* for moral equality. Gosepath (2015, p. 170) describes moral equality as being 'essentially entitled to the same *basic* moral rights and duties', and provided a person possesses a right to life and killing them is seriously wrong, it being less seriously wrong than the killing of another does not seem to imply a lack of moral equality on these terms. McMahan (2002, pp. 235-237) himself notes there may be factors that affect the wrongness of killing, such as a person's moral responsibility for killing, their motive in killing, and the presence of a special relationship that implies certain responsibilities to another person. For example, he grants a parent-child relationship exacerbates the wrongness of allowing a child to die, but this does not imply that mother and child have differing moral rights (McMahan, 2002, p. 236).

Another conception of moral equality is that of equal respect: Dworkin describes moral equality as the right to 'equal concern and respect' (1977, p. 370) for all individuals, while Rawls refers

to ‘the respect which is owed to persons irrespective of their social position’ (1999, p. 447). McMahan also uses this terminology, employing the ‘morality of respect’ (2002, pp. 245-248) as the sphere for moral equality. Is someone respected less because their killing is regarded as less seriously wrong than that of another based on factors such as their age? This also seems a dubious claim, given the factors we have noted that McMahan acknowledges may also make certain acts of killing more seriously wrong than others and yet presumably do not influence respect. Lippert-Rasmussen points out that not all rights violations are equally wrong: it is more wrong to violate a person’s right not to be killed than to violate their right not to be lied to, and both rights derive from the morality of respect (Lippert-Rasmussen, 2007, p. 736). He contends that violating a person’s right not to be killed might similarly vary in its wrongness, depending on how much time they have left to live, and so this need not impinge on moral equality.

We can also utilise McMahan’s account of the value of a life to explain this further. He outlines two concepts of a person’s value: the contents of their life and the worth of their life, the latter of which does not vary. The contents of people’s lives do vary, and so does the badness of death. Their worth is based on their nature, which according to McMahan, is by ‘the particular properties and capacities that make the individual the kind of thing that he or she is’ (McMahan, 2002, p. 241) This is not so different from the substance view, and by implication the Dual-Aspect Account, which grounds our worth in our rational nature. So even though the badness of death varies, and by consequence, the wrongness of killing in the Dual-Aspect Account, this does not imply that human beings vary in their worth.

Let us now consider how the Dual-Aspect Account deals with the objections raised against the substance view that have been discussed. I will then compare the Dual-Aspect Account with McMahan’s Two-Tiered Account.

## 7. Evaluating the Dual-Aspect Account

The first objection to the substance view was that it entails that all human beings are moral equals, implying it is equally wrong to kill embryos, fetuses and postnatal human beings. This clashes with our intuitions about the wrongness of killing embryos and fetuses: for example, it is widely thought that killing an embryo is not as wrong as killing an adult human being. It is also widely agreed that killing a late-term fetus is morally worse than killing an early-term fetus, and this is reflected in most abortion laws.

The Dual-Aspect Account is substantially more concordant with these intuitions than the substance view. Although all human beings are regarded as morally equal and possess the right not to be killed, embryos and less developed fetuses have very weak or non-existent time-relative interests. Under the Dual-Aspect Account, this entails killing a late-term fetus—which has much stronger time-relative interests—is morally worse than killing less developed fetuses and embryos. Similarly, killing a postnatal human being is substantially worse than killing a fetus, as even an infant has significantly stronger time-relative interests than a fetus. It is important to note, of course, that no deliberate killing of human beings is permissible under this account—all such killings are regarded as gravely wrong.

This also enables the Dual-Aspect Account to deal with Lovering's objection about the substance view's implications for the legal penalty for participating in an abortion. Recall that Lovering claims this implies participants in an abortion *prima facie* should be punished to the same extent as deliberate murderers of children or adults (2017). Friberg-Fernros<sup>23</sup>, in his

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<sup>23</sup> Here I stated that Friberg-Fernros believes that a short prison sentence was a reasonable punishment for both abortionists and pregnant women who secure abortions. Friberg-Fernros (2019b) replied to clarify that he did not support legal punishments for abortion, but was merely arguing that it was not unreasonable to do so. In response, I acknowledged his correction, and took the opportunity to detail mitigating reasons for lesser or no punishments for abortions (Blackshaw 2020a). One is provided by Friberg-Fernros (2017) himself, who argues that epistemic uncertainty regarding the immorality of abortion implies we should be reluctant to levy harsh penalties.

defence of the substance view, notes that there may be certain mitigating factors that justify a significantly lighter punishment but concludes that a prison sentence of a year's duration would be a reasonable requirement for both the mother and abortionist (2015). He bases this assessment on the shorter sentences dealt for infanticide in most countries, but this is problematic: as Maureen Marks notes, in Western countries, infanticide is generally attributed to mental illness due to childbirth, and perpetrators are given a lesser sentence (Marks, 2009). This mitigating factor is not available for abortion, so it is difficult to see how such a short sentence is appropriate under the substance view. This can be better accounted for under the Dual-Aspect Account, as an infant's time-relative interests are far weaker than an older child or adult. Like McMahan's account, the Dual-Aspect Account also entails that aborting a late-term fetus is morally worse than an early-term fetus. Unlike McMahan, the account entails that both abortions are morally wrong.

### **8. Embryo rescue and loss arguments**

The Dual-Aspect Account is somewhat better equipped than the substance view for dealing with the embryo rescue argument, even though it cannot resolve the conundrum. A five-year-old child's time-relative interests mean that her killing is a more serious wrong than the death of an embryo, even though they are both recognised as of equal moral value as human substances. It is doubtful, however, that we are obligated to *save* the human being that is more wrongful to *kill*. Even if this were so, it would only imply we should save the five-year-old child over a single frozen embryo—difficulties arise when multiple embryos are involved. As embryos and children are both rights holders with equal moral worth under the Dual-Aspect

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Additionally, Jim Stone (1995) argues that if women are punished for abortions, they will be reluctant to testify against abortion doctors.

Account, it seems that it would not be permissible to save a child over multiple embryos, contrary to most people's intuitions.

McMahan believes it is 'a mistake to assume that which of two acts one should prevent is determined by which would be more wrong' (McMahan, 2002, p. 239). He claims we should be concerned with trying to minimise bad *consequences*. Here, we are not deciding which *acts* to prevent but which *outcome* to prevent, which seems analogous. On the substance view and Dual-Aspect Account, one consequence is the loss of valuable human beings who are rights holders, but another is the badness of death, which is measured by time-relative interests. We could claim that a right to life is a right not to be killed, not a right to be rescued—particularly in a situation where a choice must be made between who is saved. It might be that the consequences we most wish to prevent are the deaths of human beings who possess the strongest time-relative interests. As embryos have no time-relative interests, this would mean prioritising children over embryos in a rescue scenario without implying embryos have lesser moral status. This is an issue that requires exploring further.

We could also bite the bullet and accept that multiple embryos should be saved over a child and explicate our contrary intuitions. One plausible explanation is that in a rescue scenario where we are forced to choose, it may be that our intuitions regarding who to save are primarily based on time-relative interests rather than moral worth. Again, as embryos have no time-relative interests, and children and their parents do, we intuitively choose to rescue children. This intuition can be attributed to our lack of experience with embryos: most people have never seen a frozen embryo, and embryos have no conscious experiences, meaning there is nothing that it is like to be an embryo. Conversely, we can all recall being a child, and we can easily identify with their interests and with those of their parents.

The embryo loss argument is a similar scenario that concerns not who we should *save*, but which deaths should be *prevented*. Again, McMahan's argument concerning the minimisation of bad consequences can be employed, and once more, those consequences might be the badness of death as measured by time-relative interests, as well as sickness and disease. Since healthcare budgets are limited, this might imply the prioritisation of healthcare concerns for human beings with time-relative interests over spontaneous abortion.

As with the embryo rescue argument, if our intuitions concerning deaths to prevent are based on time-relative interests as suggested, then this is a possible explanation for why we do not intuitively regard spontaneous abortion as an important and urgent issue: embryos and early fetuses do not have time-relative interests. It explains why we find spontaneous abortions far less tragic than the deaths of infants and children.

Our desire to minimise certain consequences, such as the loss of time-relative interests, does not mean *ignoring* prenatal deaths, however—and, of course, substance theorists are commonly strongly opposed to induced abortion. The high number of spontaneous abortions is problematic, though—critics such as Simkulet (2017) have suggested that, at a minimum, equal resources should be directed towards both preventing spontaneous abortions and preventing induced abortions, perhaps more—and yet substance theorists rarely even raise spontaneous abortion as an issue. I have explored this incongruence elsewhere (Blackshaw and Rodger 2019a [i.e. the first paper in this part]), and here note two key points. Firstly, considerable healthcare resources are *already* invested into preventing miscarriage, as this is a widely experienced issue for couples wishing to conceive, both naturally and by in vitro fertilization (IVF). Secondly, the primary cause of spontaneous abortions—*aneuploidies* or chromosomal defects—is not regarded as preventable, whereas induced abortions, the next largest cause of prenatal deaths, could presumably be reduced by various measures such as introducing stricter

laws or defunding abortion clinics. This justifies the resources directed towards opposing induced abortions.

At this point, let us review and compare how well the substance view and the Dual-Aspect Account deal with the embryo rescue and embryo loss arguments. Both accounts claim that embryos are valuable human beings of equal moral worth to adults. Both have to deal with the intuition that a single child or adult life is more important to preserve than many embryos. The Dual-Aspect Account does have an advantage in that it regards killing of children and adults as more seriously wrong than embryos or fetuses, but this is of limited value for these arguments. If, however, we employ McMahan's argument concerning the minimisation of consequences and regard frustrated time-relative interests as important consequences we should minimise, or we accept the explanation that our intuitions in these scenarios are based on time-relative interests, the Dual-Aspect Account is clearly superior in explaining our intuitions in these cases. This is because time-relative interests are an integral part of the account, whereas for the substance view, appealing to time-relative interests is ad hoc.

## **9. Abortion and frozen embryos**

An important question for the Dual-Aspect Account is its implications for the permissibility of abortion. I have noted that it implies that the killing of late-term fetuses is more seriously wrong than the killing of early-term fetuses, and infanticide is more seriously wrong than abortion. Under the Dual-Aspect Account, though, all human beings possess a right to life and cannot be killed with impunity, and so abortion is always a more serious matter than under McMahan's Two-Tiered Account, where the wrongness of abortion is based solely on time-relative interests—fetuses being below McMahan's threshold of respect. It is important to recognise, though, that abortion is not *necessarily* impermissible under the Dual-Aspect Account or indeed the substance view—Judith Jarvis Thomson provides a much-discussed argument for

the permissibility of abortion regardless of the moral status of the fetus (1971), based on a woman's right to withdraw the life support she is providing to her fetus. I do not, however, concede that Thomson's argument succeeds.

There is no ambiguity regarding the permissibility of embryo experimentation and deliberate destruction under the Dual-Aspect Account—as embryos are rights-holders these acts are not permissible. It *may* be permissible to temporarily store embryos in a frozen state, but if so, this should be time-limited and restricted to circumstances where this is essential—egg freezing is far less morally problematic as this does not involve a human being.

It is worth noting that Thomson's argument, *if accepted*, is also applicable to frozen embryos. If a woman has a right to withdraw life support to an embryo or fetus that is a rights-holder, it follows that no woman can be compelled to offer life support to an embryo. It is less certain whether an embryo storage facility can permissibly withdraw the life support it is offering to an embryo by freezing it, as there are no bodily autonomy issues involved and presumably, a single embryo's storage is inexpensive. Also, if there are women willing to adopt and gestate unwanted embryos, it may be obligatory to allow them to do so, given their right to life.

## **10. Dual-Aspect versus Two-Tiered Account**

McMahan's Two-Tiered Account is comprehensively developed and, through its use of time-relative interests, provides a satisfying explanation for our intuitions concerning the badness of death. The Dual-Aspect Account, having incorporated time-relative interests, is equally satisfying in this regard.

The most significant issue for McMahan's account is the counter-intuitive conclusions regarding the moral equality of all human beings. McMahan claims that his equal wrongness thesis reflects our commitments to equality, however that commitment, as he sometimes

acknowledges, extends beyond the set of beings he regards as persons (McMahan, 2008, p. 83)<sup>24</sup> Yet under the Two-Tiered Account, infants and small children do not possess sufficient psychological capacities to reach the threshold of respect. While their time-relative interests are greater than those of animals because their future contains considerable good, the interests of actual persons will prevail over their relatively weak time-relative interests. This entails the permissibility of infanticide, and as McMahan observes, ‘most people draw a sharp moral distinction between abortion and infanticide, regarding infanticide as just as seriously wrong, if other things are equal, as the killing of an adult person’ (McMahan, 2002, p. 339). While McMahan’s account can explain why infanticide is morally worse than abortion, based on the stronger time-relative interests of infants over fetuses, he recognises that ‘these differences ... do not support the commonsense conviction that there is a deep and radical gulf between abortion and infanticide’ (2002, p. 342). According to McMahan, we have to jettison some of our commonsense beliefs: ‘our vague, intuitive commitment to a fundamental moral equality among all human beings—all members of the species *Homo sapiens*—has to be abandoned’ (McMahan, 2002, p. 233).

As McMahan notes, however, ‘the implications of the view are even more shocking to common sense than I have so far acknowledged’ (2002, p. 359): it also seems permissible to sacrifice an infant to save older children who have stronger time-relative interests. Together with my co-authors, I explore such ‘pre-personal’ acts in further detail (Rodger *et al.*, 2018), and they are all deeply counter-intuitive, serving as *reductios* for McMahan’s account. One particular case McMahan (2002, p. 323)<sup>25</sup> discusses is where a pregnant woman deliberately takes a drug that provides her with some benefit but causes cerebral deficits in the fetus, preventing it from ever reaching the threshold of respect and from having any significant time-relative interests. Under

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<sup>24</sup> I have rewritten this sentence to improve clarity.

<sup>25</sup> Missing citation added.

the Two-Tiered Account, there is no basis for condemning such an action, despite our strong intuitions that it is wrong. A related issue that McMahan discusses is that of a fetus with cerebral defects that could be successfully treated by gene therapy (2002, p. 319). As the fetus has similar time-relative interests to that of a dog, under McMahan's account, there is no more reason to administer the therapy to the fetus than there is to a dog. This, McMahan acknowledges, is deeply counter-intuitive and cannot be explained using his account.

As I have related, the Dual-Aspect Account, being based on the substance view, explicitly regards all human beings, prenatal and postnatal, as equally morally valuable, and so none of these issues apply. Infanticide is impermissible, as is the killing of innocent human beings who are severely mentally disabled. Other 'pre-personal' acts, such as sacrificing an infant for the benefit of older children, are likewise forbidden. The account also implies that if a fetus is suffering cerebral defects that could be corrected by gene therapy, then the therapy should be administered, just as it should be for any human being. It is, therefore, compatible with our intuitive commitment to the fundamental moral equality of all human beings. True, it discards McMahan's equal wrongness thesis for killing, but I have shown that this is not necessary for moral equality. Since all human beings—embryo, fetus, infant or adult—are rational human substances they are due the morality of respect and are rights holders.

There are also some more theoretical concerns about the Two-Tiered Account, particularly regarding the threshold for the morality of respect. As McMahan notes, the existence of a threshold beyond which moral worth ceases to vary with capacities 'may seem an arbitrary, ad hoc stipulation motivated entirely by a desire to salvage our egalitarian intuitions' (2002, p. 249). Tim Mulgan identifies a related concern: what he calls the spectrum argument (2004, p. 448). Personhood is based on degreed characteristics, and we cannot identify exactly where it begins, yet there is a sharp and significant moral boundary between persons and non-persons.

Under the substance view and consequently the Dual-Aspect Account, all human beings come under the morality of respect and so there is no arbitrary threshold. McMahan's difficulties with the arbitrariness of the degree of psychological capacities required to exceed the threshold for the morality of respect are largely avoided. A threshold is still required, but there is no question of vagueness at the boundary—animals are substantially below the threshold, while all human beings are well above it. There would still be an issue if an alien species were found that had a degree of rationality greater than that of all non-human animals, but substantially less than that of an adult human being—a decision would have to be made about whether members exceed the threshold. This would, however, be problematic on any existing account.

McMahan, in reviewing objections to his account, notes that 'most derive from the way that the account attempts to base an all-or-nothing moral framework on characteristics that are matters of degree' (2008, p. 95). He outlines a number of challenges to the equal wrongness thesis, all of which he considers to be powerful, and tentatively suggests a Three-Tiered account as a solution to some of them.

### **11. The Three-Tiered Account and beyond**

McMahan's proposal for a Three-Tiered Account involves two thresholds of psychological capacity. The first threshold marks where individuals begin to develop higher capacities such as self-consciousness, rationality, and autonomy, and the second threshold marks the point when individuals indisputably possess these capacities. Below the lower threshold, time-relative interests govern the treatment of individuals. Above the higher threshold, individuals are regarded as morally equal and have 'maximum inviolability', i.e. they cannot be sacrificed for the greater good except to avert great harm to others above this threshold, as do those above the threshold of respect in the Two-Tiered Account (McMahan, 2008, p. 98). Those whose psychological capacities place them between the lower and higher thresholds have an

intermediate moral status: they are governed by constraints, as are individuals above the higher threshold, but these constraints are not maximally inviolable. Rather, they vary in their psychological capacities.

The Three-Tiered account certainly resolves the ‘all-or-nothing’ moral difference that troubles the Two-Tiered Account: individuals gradually increase their moral status between the thresholds as their psychological capacities develop. McMahan acknowledges, though, that as it locates some humans below the higher threshold, including very young children and the radically impaired, the Three-Tiered account still ‘will not satisfy common sense morality’ (McMahan, 2008, p. 104). McMahan also notes a new issue: individuals between the thresholds should be sacrificable for those above the higher threshold, but those above this higher threshold (with its maximum inviolability) should not be sacrificed for those in between. However, those individuals who are on the verge of the higher threshold differ very little in psychological capacities from those just over the higher threshold, and so it seems implausible that the latter could not be sacrificed for the former in some circumstances. It seems the ‘all-or-nothing’ moral difference re-emerges in a slightly different guise.

McMahan suggests other possibilities, such as a fully gradualist account of moral status without thresholds, based on the degree of development of psychological capacities, but sees this as ‘profoundly counterintuitive’, given the implication that all human beings have differing moral worth (McMahan, 2008, p. 102). He concludes that it ‘is hard to avoid the sense that our egalitarian commitments rest on distressingly insecure foundations’ (McMahan, 2008, p. 104). Again, the substance view and Dual-Aspect Account avoid these issues by explicitly regarding all human beings as moral equals. The obvious challenge is to explain how the substance view grounds this moral equality, which I briefly discuss before concluding.

## 12. Grounding the substance view

The primary theoretical difficulty for the substance view, and consequently the Dual-Aspect Account, is explaining how being a ‘rational substance’ justifies equal moral status for all human beings. This involves demonstrating that our moral status can be grounded by our possession of an essential rational nature—meaning we either have or had the capacity for what Rahul Kumar calls ‘rational self-governance’ (McMahan, 2008, p. 72) *or* are internally directed towards developing this capacity. McMahan poses two important questions for the substance view (McMahan, 2008, p. 88). Firstly, he asks why an immature human being’s internal directedness toward the development of a rational nature should affect how we ought to treat that individual *now*. He then asks how we know that *all* human beings are internally directed towards this rational nature, as those who are radically impaired seem to lack this potential.

Liao has addressed these questions with his account that claims all human beings are rights holders because they have the *genetic basis* for moral agency (Liao, 2010). He argues that possessing *actual* moral agency cannot be the sole ground for rights-holding because it is intuitively permissible to save an infant in preference to an adult in some situations. If the infant were not a rights-holder, it would not be permissible to give them preference. This is the same intuition that the Two-Tiered Account has difficulty explaining, as it does not regard infants as rights holders. Liao’s account is compatible with the substance view and seems a plausible approach to dealing with McMahan’s concerns.

## 13. Conclusion

The substance view of persons has been criticised for failing to deal with our intuition that the killing of embryos and fetuses is less morally wrong than that of adult human beings. It also implies that participants in both abortion and the destruction of human embryos should *prima*

*facie* be punished to the same degree as those who intentionally kill other human beings, which seems very counter-intuitive. The embryo rescue argument and the embryo loss argument also pose difficulties for the substance view. Substance theorists have mounted defences against these objections, and debate is ongoing, but it seems a fair assessment to say that these defences have not yet convinced critics of their veracity.

I have proposed combining the substance view and McMahan's concept of time-relative interests into what I have called the *Dual-Aspect Account* of the wrongness of killing. Using the substance view to ground our moral worth means *all* human beings come under the morality of respect rather than requiring the attainment of a certain level of psychological capacities. Therefore, the killing of all human beings, as rightsholders, is *prima facie* impermissible, subject to the usual defeaters such as self-defence. However, the Dual-Aspect Account's addition of time-relative interests to the wrongness of killing entails it is a greater wrong to kill human beings with stronger time-relative interests. Consequently, abortion and infanticide, while they do involve the death of a human being who is a rightsholder, are less morally wrong than killing children and adults, in line with our intuitions. The embryo rescue and embryo loss arguments still pose a problem for the Dual-Aspect Account, as they do for the substance view. However, the integration of time-relative interests into the Dual-Aspect Account means using these interests to explicate our intuitions about embryos is not *ad hoc*, and so responses based on the Dual-Aspect Account utilising time-relative interests are more persuasive.

How does the Dual-Aspect Account compare with McMahan's Two-Tiered Account? The latter account certainly explains our intuitions about the wrongness of killing embryos and fetuses, arguably more effectively than the Dual-Aspect Account, which regards this as killing rights holders and thus gravely wrong, albeit less wrong than killing adult human beings. However, the Two-Tiered Account suffers from some serious objections itself, mostly noted

by McMahan: it entails the permissibility of infanticide and implies infants and the severely cognitively disabled can be sacrificed for the benefit of human beings with stronger time-relative interests. It also implies we have no reason to administer gene therapy to a severely disabled fetus that could benefit. There are also some theoretical concerns with McMahan's equal wrongness thesis, which faces considerable challenges, as well as the sharp threshold distinguishing non-personhood from personhood. The three-tier account does little to resolve these issues.

Under the Dual-Aspect Account, there is no threshold for human beings to reach to be regarded as persons—all human beings qualify—and so infants and the cognitively disabled are regarded as rights holders. The Dual-Aspect Account is, therefore, exempt from McMahan's difficulties in this regard. Abortion is not necessarily impermissible under the Dual-Aspect Account, as Thomson's argument for bodily autonomy can still be employed by those who accept her reasoning, but abortion is a far more serious moral wrong than under McMahan's account.

It seems clear that the Dual-Aspect Account is a substantial improvement over the substance view—it preserves the most important features of the account while dealing more persuasively with some difficult objections to it. A comparison with McMahan's Two-Tiered Account is less clear—while the Dual-Aspect Account resolves the significant issues faced by the Two-Tiered Account's threshold for persons by its incorporation of the substance view, the Two-Tiered Account has no difficulties explaining our intuitions in embryo rescue scenarios and embryo loss. I submit that the Dual-Aspect Account of the morality of killing is a promising approach that defenders of the substance view should give serious consideration to adopting and developing further.

## **PAPER 4: Defending the substance view against its critics**

### **Context**

As well as proposing the Dual-Aspect Account, I have also developed a more general defence of the substance view, presented below (Blackshaw, 2022b). The criticisms of the substance view discussed so far involve a fairly narrow set of intuitions regarding embryos and fetuses. In this paper, I examine a number of widely held intuitions regarding our identity with a fetus, human exceptionalism, the moral equality of infants, children and adults, and the wrongness of prenatal injury<sup>26</sup>. I compare how consistent these intuitions are with both the substance view and the psychological view and conclude that they offer better support for the substance view. It is important to note that up to this point, I have been using the term 'psychological view' to refer to the metaphysical account of personal identity. In this paper, I use it in a broader sense that includes a moral dimension: a claim that only Lockean persons possess full moral status.

I also mention Perry Hendricks' (2019) argument, which points out that our intuitions regarding embryos may be unreliable because we have mental tools that lead us to identify self-propelled movement with agency, and we associate agency with persons. As embryos are not self-propelled, our intuitions do not attribute agency to them, and this makes it difficult to believe that embryos are persons. This explains why our intuitions do not attribute personhood to embryos and, therefore, why thought experiments comparing embryos to children result in our wanting to prioritise the needs of children over embryos.

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<sup>26</sup> As mentioned in the introductory chapter, I have also written a paper discussing the difficulties the psychological view has in accounting for severe prenatal injury that inflicts identity-changing injuries (Blackshaw 2022a). I present this paper in part five of this thesis.

This paper also foreshadows the rational animal account, my suggested alternative for the substance view presented in part three, which I developed subsequently. It notes that ‘the substance view can also be understood apart from an Aristotelian-Thomistic framework’ and draws upon animalism’s claim that we are animals (Blackshaw, 2022b). I also suggest that we are a special kind of animal, a rational animal.

Importantly, as with the other papers in part two, the arguments in this paper are applicable to *all* ‘person-at-conception’ accounts of human beings, including the rational animal account. That is, any person-at-conception account is in better accord with the judgements on which I focus in this paper than the psychological view.

## 1. Introduction

The substance view is a metaphysical account of our nature. It answers questions such as what we are essentially, how we persist as the same individual through time and change, and when we cease to exist. It is an account of our personal identity. The central claim of the substance view is that we are human animals that, from fertilisation, have the potential to develop rationality. This potential is known as a *rational nature*, and it is possessed by all human beings, no matter what stage of development they happen to be at. This makes them morally considerable, and as all human beings have this rational nature, they have equal moral status. This has particular implications for how we treat prenatal human beings, suggesting that abortion is *prima facie* impermissible.

The substance view has recently been subject to sustained criticism by a number of philosophers (Berg, 2017; Lovering, 2013, 2014, 2017; Simkulet, 2016, 2017). They have claimed that those who hold to the substance view have the same moral obligation to rescue embryos and fetuses from death as they have for fully developed human beings. They assert

that this obligation entails strongly counterintuitive, if not absurd, implications that demonstrate that the substance view is implausible. Defences have been made against these claims (Friberg-Fernros, 2015, 2017; Blackshaw & Rodger, 2019a), but many critics seem unpersuaded so far.

These arguments might seem to form a strong argument against the substance view taken in isolation, but there are a number of other important intuitions that these accounts also should explain. Here, I make the case that the substance view enjoys considerable success accounting for five widely shared intuitions: our identity with a fetus; human exceptionalism; the moral equality of children and adults; the wrongness of infanticide; and the wrongness of deliberate prenatal injury. I also show that these intuitions are problematic for the main competing account, the psychological view.

I also explain that one of the most commonly cited objections to the substance view, the argument from spontaneous abortion, is strongest when it denies that there is a moral distinction between killing and letting die, another widely accepted moral intuition. If the control principle is also granted—another common moral intuition according to which we are morally responsible for our actions only when we are in control of those actions—this argument is weaker still. I conclude that, far from being discredited, the substance view emerges as just as plausible an account as the psychological view.

## **2. The substance view**

The substance view claims that we are animals of a very particular kind—the kind that possesses a rational nature. Its origins lie in Thomas Aquinas’s development of Aristotle’s claim that human beings are a special kind of substance. A substance is an individual thing that exists in itself; unlike plants and other animals, we are rational substances (Feser, 2018, p. 88).

Patrick Lee and Robert George explain that a rational substance possesses ‘the basic, natural capacities ... for conceptual thought and deliberation and free choice’ (Lee & George, 2007, p.94). Importantly, the substance view claims we are rational substances from fertilisation, and so all human beings possess a rational nature irrespective of their stage of development, even though they may not actually possess rationality at every stage. Instead, they all have the capacity to develop it, even if this is prevented from actualising by a physical shortcoming. This rational nature distinguishes us from all other animals and gives us high intrinsic value. As all human beings possess this rational nature, we all have the same value and enjoy the same basic rights, from zygotes, fetuses, infants, and children to adults. Therefore, all human beings enjoy what is called full moral status and can be described as moral persons. As a result, substance view proponents regard abortion as impermissible in most circumstances (Beckwith, 2004; Lee, 2004).

The substance view can also be understood apart from an Aristotelian-Thomistic framework. A more recently developed account is animalism, which claims that ‘each of us is numerically identical with an animal’, just as the substance view does (Olson, 2007, p.24). I have already noted that we are rational animals, possessing a rational nature. This can be interpreted as a claim that we all have the intrinsic potential for rationality, no matter what stage of development we are at. So, the substance view can be thought of as a variety of animalism that places a high value on this special potential.

According to the substance view, rational substances, or persons, come into existence at fertilisation and maintain their identity until they die. The substance view is, therefore, both an account of what it means to be a person—an entity of high moral worth possessing certain rights—and an account of personal identity—an explanation of how individuals maintain their identity from day to day.

### 3. The psychological view

The most widely accepted competing account to the substance view is the psychological view<sup>27</sup> which I will use to refer to both psychological accounts of personal identity and psychological accounts of what it means to be a person. According to this view, personal identity is based on the continuity of psychological connections, such as memories of earlier experiences. To be considered a person requires reaching a certain level of psychological capacities, sometimes known as the personhood threshold. For example, Mary Anne Warren's criteria for personhood include 'the presence of self-concepts, and self-awareness' (Warren, 1973, p. 55). Kuhse and Singer refer to 'self-awareness, self-control, a sense of the future, a sense of the past, the capacity to relate to others, concern for others, communication, and curiosity' (Kuhse & Singer, 1985, p. 120).

The psychological account of persons is not necessarily tied to the psychological account of personal identity. For example, Jeff McMahan holds to the psychological account of persons, but has proposed the embodied mind account of personal identity, which bases personal identity on the capacity for consciousness rather than continuity of psychological connections (McMahan, 2002, pp. 66-94). According to McMahan, we begin to exist when the brain is capable of supporting consciousness—so we were once a late-term fetus. On the psychological account of personal identity, we do not begin to exist until sometime after the human organism we will inhabit is born—when our brain begins forming strong psychological connections. For convenience, I will generally refer to these accounts (including McMahan's) as the psychological view, and distinguish them when necessary.

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<sup>27</sup> According to a PhilPapers survey, over one-third of philosophers nominated the psychological view of personal identity, which is by far the most popular account of personal identity (Bourget & Chalmers, 2014).

#### 4. Moral intuitions

Jeff McMahan defines a moral intuition as a moral judgement that is ‘not the result of inferential reasoning’, but rather ‘arises on its own’ and is ‘immediately compelling’ (2017, pp.104-105). Jonathan Haidt describes moral intuitions as ‘gut feelings in our mind’ (2001, p. 825). In moral philosophy, intuitions are analogous to scientific data: philosophers tend to believe moral claims based on intuition, and they are used as evidence (Climenhaga, 2018). Accordingly, if diverse intuitions support philosophers’ theories, they are more confident in them (Climenhaga, 2018). Philosophers tend to assume the intuitions they identify are widely shared. It is rare for them to empirically test their claims to verify this, although experimental philosophy is a rapidly growing field (Plakias, 2015).

McMahan explains that John Rawls’ method of ‘reflective equilibrium’ is a common approach to using our intuitions in moral enquiry (McMahan, 2017, p.110; Rawls 1999, p.18-19). Beginning with a set of intuitions, we filter out those intuitions that ‘are the obvious products of distorting influences’, such as ancient superstitions and taboos (McMahan, 2017, p.110). We use the remaining intuitions to infer moral principles, and we subsequently modify these principles when conflicting intuitions are found. As a result, a good deal of moral philosophy involves thought experiments that attempt to elucidate our intuitions to provide evidence for or against moral theories. It is common for critics of theories to create thought experiments that produce intuitions contrary to these theories, while defenders of these theories try to explain away such intuitions (Climenhaga, 2018). This suggests that intuitions contrary to a moral theory are regarded as evidence against that theory.

McMahan notes that even those philosophers who reject the epistemic authority of intuitions nonetheless appeal to common intuitions to some extent (McMahan, 2017, p.107). For example, Peter Singer is famously sceptical of the role of intuitions (Singer, 2005). However,

Michael Huemer points out that even Singer appeals to our moral intuition with his example of a small child drowning in a pond to develop his ‘obligation to assist’ principle (Huemer, 2005, p.150; Singer 2011, p.199).

## 5. Substance view criticisms

The substance view has recently been criticised by a number of philosophers. As the substance view entails all human beings are of equal moral value, critics have claimed that those who hold to the substance view have the same moral obligation to rescue embryos and fetuses from death as they have for fully developed human beings. They assert that this obligation entails strongly counterintuitive, if not absurd, implications that demonstrate that the substance view is implausible. The most common objections to the substance view are encapsulated in the long-running exchange between Rob Lovering (2013, 2014, 2017) and William Simkulet (2016, 2017), and Henrik Friberg-Fernros (2015, 2018a), although others have previously raised these issues (Murphy, 1985; Ord, 2008). Lovering and Simkulet have three main objections to the substance view, based on their claim that the substance view entails the following moral proposition: ‘It is just as *prima facie* seriously wrong to kill or let die the standard human fetus as it is to kill or let die the standard adult human being’ (Lovering, 2017, p. 306). This is derived from the substance view’s claim that all human beings have equal moral worth.

The first *reductio* is known as the embryo rescue argument. This postulates a scenario of a building on fire containing five frozen human embryos, and one five-year-old girl. A rescuer can either save the embryos or the girl, and the claim is that almost everyone would choose to rescue the girl. Lovering, however, asserts that the substance view’s claim of equal value entails that five embryos should be saved over one child, and so the argument shows our intuitions contradict the substance view.

The second *reductio* is the problem of spontaneous abortion, also known as the embryo loss or embryo mortality argument. According to Toby Ord, over 60% of pregnancies miscarry, and this equates to over 200 million deaths of humans each year (2008). This dwarfs the 55 million deaths each year of deaths by all causes of post-birth humans and the 73 million deaths from induced abortion (World Health Organization, 2020; Bearak *et al.*, 2020). Consequently, Ord claims substance view proponents are obliged to immediately redirect their efforts away from opposing induced abortion and towards reducing these deaths. If they do not, they are behaving immorally, or alternatively, they do not actually believe that embryos and fetuses have the same value as other human beings.

Finally, Lovering suggests that if the substance view is correct and fetuses and embryos have the same moral standing as other individuals, then the legal penalty for killing a fetus should be equal to the penalty for killing a child or an adult. This entails it should be severe: a pregnant woman and the medical staff carrying out her abortion should be charged with murder. Lovering claims that it is strongly counterintuitive to do so.

## **6. Defending the substance view**

It may seem that there is a strong cumulative case against the substance view based on these claims, but I argue below that this is not so—there is a much broader context to consider. As Trent Dougherty and Alexander Pruss (2014, p. 49) note, we must distinguish between genuine refutation of a theory and ‘anomaly mongering’—in this case, deliberate focusing on difficult cases for one theory without acknowledging difficult cases for the main competing theory, and without considering the theory’s wider explanatory power.

As the substance view places a high value on embryos and fetuses, we should expect that it has difficulty with scenarios where our intuition favours children or adults over embryos and

fetuses. Conversely, in these scenarios, we would expect the psychological view to be more successful, given that it implies that embryos and fetuses are of lesser moral value than children and adults because they lack psychological capacities. However, the psychological view will clearly have difficulties with scenarios involving human beings who do not reach the threshold of personhood and yet who intuitively seem to possess high moral value, whereas the substance view will not.

Before examining intuitions that cause difficulties for the psychological view, I want to briefly examine a defence against Lovering and Simkulet's *reductios* that is also based on considerations regarding our intuitions. Recalling Rawls' advice to filter out intuitions that have a tainted origin, I note that Perry Hendricks has argued that our intuitions in the embryo rescue case are misleading (Hendricks, 2019). He explains that cognitive science suggests that we attribute personhood to agents—and embryos do not have the characteristics that our mental tools use to recognise agency, such as self-propelled movement. Therefore, the embryo rescue case generates exactly the intuitions we should expect—whether or not embryos are persons. This could also explain why we intuitively feel the killing of an embryo or fetus should not be punished as severely as the killing of a child or an adult<sup>28</sup>.

The problem of spontaneous abortion can be undermined by an appeal to moral intuitions. Recall that critics claim substance view proponents do not do enough to prevent the deaths of millions of valuable human beings via miscarriages and that this implies they do not really believe the substance view's claims about the value of human beings prior to birth, or they are acting immorally for not prioritising such a huge loss of life. With my co-authors, I argue that these kinds of arguments fail to account for other beliefs that substance view proponents hold

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<sup>28</sup> It is worth noting that some in the pro-life movement feel strongly that abortion deserves a similar punishment to that given to the murder of developed human beings (Rebussini, 2019).

that could allow them to avoid charges of inconsistency or insincerity (Colgrove *et al.*, 2020). There are two important moral intuitions that do so in this case: the killing/letting die distinction and the control principle.

McMahan states that there is a ‘strong and widespread intuition’ that there is a moral difference between killing and letting die, and this should not be lightly rejected (McMahan, 2002, p. 383). If substance view proponents believe that killing is significantly morally worse than letting die, then they have good reason to prioritise preventing induced abortions over preventing miscarriages<sup>29</sup>. The control principle is an intuition according to which we are morally responsible for our actions only when we are in control of those actions. Blackshaw and Rodger explain that most miscarriages cannot currently be prevented (2019a), and so if the control principle is accepted, substance view proponents cannot be held morally responsible for failing to prevent those deaths. A possible objection to the use of the control principle is that induced abortions cannot be prevented either, which would imply that it does not give reason to prioritise induced abortions. However, the fetal heartbeat laws recently enacted in the United States, especially in Texas, demonstrate that the number of induced abortions can be reduced, at least in the short-term (Cohen, Adashi and Gostin 2021). The upshot is that granting the killing/letting die distinction and the control principle severely weakens the problem of spontaneous abortion for substance view proponents. It is also worth noting that Simkulet, one of the substance view’s most prominent critics, is one of the control principle’s defenders (Simkulet, 2014).

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<sup>29</sup> Amy Berg responds by claiming that substance view proponents are bystanders with respect to induced abortion, and so these are also cases of letting die (Berg, 2017, p. 1222). Blackshaw and Rodger (2019a) counter this by citing Thomas Pogge’s view that in a democratic society, all citizens are responsible for a legal system that permits induced abortions. So all citizens participate to an extent in killing (Pogge, 2010, p.127). Pogge suggests an analogy with slavery, arguing that all citizens were similarly morally responsible for laws permitting slavery. So, for abortion, all citizens are, to some extent, killing rather than letting die.

So, Lovering and Simkulet's three *reductios* can be undermined by the additional moral intuitions I have identified and by Hendricks' explanation of how our intuitions regarding embryos and fetuses can mislead us. I now want to examine five additional intuitions that I believe are widely shared: our identity with a fetus; human exceptionalism; the moral equality of children and adults; the wrongness of infanticide; and the wrongness of deliberate prenatal injury.

### **7. Identity with a fetus**

As Alexander Pruss notes, 'that I was once a fetus seems innocuous and obvious' (Pruss, 2011, p. 19). Biologically, it is clear that an individual organism developed from a zygote through the stages of being an embryo, fetus, infant, child and finally an adult. It seems that I am that same organism, an animal—a view known as animalism.

The substance view is a type of animalist account—we are human substances from fertilisation that maintain identity over time, and this entails that each of us is always numerically identical to an animal. According to the substance view, I was indeed once a fetus, in accordance with our intuitions. The psychological view must deny that I was once a fetus—instead, I only came into existence once psychological connections were able to form in my brain. In fact, the psychological view denies I was once a newborn—as McMahan notes, infants do not have a sufficient degree of psychological connections from day to day, and so on the psychological view, we do not begin to exist until early childhood (McMahan, 2002, p.44). McMahan's alternative embodied mind account entails that I came into existence much earlier, when my brain became capable of consciousness as a late-term fetus at around six months gestation (McMahan, 2002, p.267). This is clearly superior to the psychological view.

There is another related issue with the psychological view—the ‘too many thinkers’ problem. When we look in a mirror, we see ourselves, and so it seems obvious that we are human beings. If I am *not* my human animal, then there must be two conscious, thinking beings present where I am, my animal and I (Olson, 2007, pp. 35-37). This seems absurd—surely, there is only one being thinking my thoughts, not two. And yet, if this is the case, advocates of the psychological view must accept that human organisms, despite having brains, do not think and are not conscious. This is a widely acknowledged issue for the psychological view (Parfit, 2012; Shoemaker, 2011). Derek Parfit argues that this can be solved by what he calls the Embodied Part View, which claims that we are each the thinking part of a human being—the brain or perhaps the cerebrum (Parfit, 2012). Human beings think by using their thinking part, which is what we are. Parfit cites McMahan’s embodied mind account as an example of this view. Olson, however, points out we cannot be identical to our brains, as our brains have different persistence conditions to us (Olson, 2015). Our brains can exist in formaldehyde, but we cannot. We must be what we might call functioning brains, but now we have two physically identical objects, our brains and us, and therefore too many thinkers once more.

## **8. Human exceptionalism**

In his discussion of the wrongness of killing, Jeff McMahan notes that ‘commonsense intuition’ affirms that it is far more serious to kill a human being with similar or lower cognitive and emotional capacities to animals (McMahan, 2002, p. 206). Our intuitions inform us that there is always a significant difference in moral status between humans and animals, no matter what their actual capacities. An objection might be that our intuitions in this regard are merely a product of speciesism—favouring the interests of one’s own species over others. McMahan, however, states that our laws embody this view by legislating far more severe penalties for killing impaired humans compared to animals (McMahan, 2002, p. 206); Christine Korsgaard

notes that legal systems have invariably regarded animals as property (Korsgaard, 2013). Human exceptionalism is deeply embedded in our beliefs.

This is problematic for the psychological view, including McMahan's embodied mind account, as it predicates moral status solely on possession of psychological capacities, requiring that individuals attain a certain minimum level of these capacities to be regarded as a person. Human beings with similar cognitive capacities to certain animals possess a similar moral status to these animals under the psychological account, which implies that killing such human beings is as wrong as killing these animals. For example, Peter Singer is clear that parents should be able to end the lives of disabled infants, stating that 'killing a disabled infant is not morally equivalent to killing a person' (Singer, 2011, p. 167). Singer is also clear that the same reasoning applies to children and adults whose cognitive capacities are equivalent to that of infants (Singer, 2011, p. 160). McMahan suggests that the account could posit a very low threshold of cognitive capacities for a right to life, but this would imply certain animals possessed this right, which is controversial and opposed to our beliefs regarding human exceptionalism (McMahan, 2002, pp. 206-208). Additionally, there would still be human beings that were below this threshold, such as anencephalic infants that have no cognitive capacities at all. If they were to be included, it would imply that even non-sentient animals should be also.

The substance view has no difficulties accounting for our intuitions regarding human exceptionalism. Since human beings are the only species that are rational moral agents by nature, they are exceptional, even those in which this capacity is not fully exercisable. Importantly, this does not make the substance view vulnerable to the charge of speciesism. According to the substance view, any species whose nature includes the capacity for rational moral agency has similar moral value.

## 9. Moral equality

McMahan also observes that we have a ‘vague, intuitive commitment to a fundamental moral equality among all human beings’ (McMahan, 2002, p. 233). For example, the commonsense view is that it is just as wrong to kill severely cognitively impaired human beings as it is to kill normal adults. We also believe the wrongness of killing children and adults does not vary with their cognitive capacities or their age—human beings are regarded as moral equals no matter what their characteristics. As the substance view entails the moral equality of all human beings, it is consistent with these intuitions and beliefs.

As I have explained, the psychological view only grants moral equality to those reaching the threshold of personhood. Human beings who have not reached this threshold do not have the same moral value as those who have. The embryo rescue case can be modified to illustrate how counterintuitive this implication is. Consider a scenario where a choice must be made between rescuing five young children below the personhood threshold (of the psychological view), and an older child who has reached the threshold. Suppose, for example, the five young children are in one room, and there is a 10-year-old child in another, and the circumstances are such that only those in one room can be rescued. Here, I believe our intuition is that we should rescue the five younger children over the older child. On the psychological view, however, the younger children are not persons, and so if we value persons highly, we are obliged to rescue the older child, contrary to our intuition. So, while we can explain why our intuitions are contrary to the implications of the substance view regarding embryo rescue using cognitive science, we have no way to explain why our intuitions are contrary to the implications of the psychological view regarding child rescue.

The personhood threshold also has implications regarding our treatment of those who become cognitively impaired, such as those with severe dementia as a result of Alzheimer’s disease.

Dan Brock argues that as they are no longer persons, they are owed palliative care only, but ominously notes that if this is too expensive, it may need to be limited (Brock, 1988). Given that Brock considers such individuals to be little different to other animals, the implication is that their lives may need to be ended to avoid suffering. Singer also suggests that ending the lives of those who have lost their cognitive capacities is justified (Singer, 2011, p. 167).

An additional concern is the arbitrary nature of the threshold that determines whether an individual is regarded as a person, and beyond which moral worth does not vary. McMahan acknowledges these concerns, noting that ‘most derive from the way that the account attempts to base an all-or-nothing moral framework on characteristics that are matters of degree’ (McMahan, 2008, p. 95). He attempts to resolve these concerns by proposing an account with two thresholds, one beginning at the point where individuals begin to develop higher capacities such as self-consciousness, rationality, and autonomy, and the second at the point where individuals clearly possess these capacities. He assigns an intermediate moral status to those in between the two thresholds but admits that it implies these individuals can be sacrificed for those above the second threshold. This is still problematic, as individuals just below this threshold have psychological capacities that are only slightly below those just above the threshold. In recognition of these difficulties, McMahan suggests a more gradualist account of moral status without thresholds as a possible solution based on the degree of development of psychological capacities. However, this implies all human beings differ in moral status, which he states is ‘profoundly counterintuitive’ (McMahan, 2008, p.102). He concludes that it ‘is hard to avoid the sense that our egalitarian commitments rest on distressingly insecure foundations’ (McMahan, 2008, p.104). On moral equality then, the substance view offers a more consistent and satisfying explanation than the psychological view.

## 10. Infanticide

As the substance view entails moral equality for all human beings, infanticide is considered as immoral as killing children and adults. I have already noted that this is not so under psychological accounts—infants are not considered to possess the requisite cognitive capacities to pass the personhood threshold. As non-persons, they have a similar moral status to severely cognitively disabled human beings and may be sacrificed for the benefit of persons. Of course, there may be instrumental reasons to prohibit infanticide, but as McMahan admits, his and similar accounts imply it is permissible to sacrifice them in order to save persons (2002, p.360-361). In a similar vein, Alberto Giubilini and Francesca Minerva famously argued that if fetuses and infants have a similar moral status that is below that of persons, infanticide is permissible in all cases where abortion is permissible (2013). Others have argued that psychological accounts permit heinous 'pre-personal' actions with infants that go 'beyond infanticide', such as organ harvesting, live experimentation and sexual interference (Rodger *et al.*, 2018).

Attempts have been made to explicate why infanticide should still be regarded as impermissible on the psychological view. For example, Prabhal Singh argues that parental responsibilities confer additional moral value on infants, such that infanticide should not be permitted (Singh, 2020). Certainly, extrinsic factors such as relationships might justify the impermissibility of infanticide for superficial reasons where these relationships exist, but it is still implausible that non-persons cannot be sacrificed for persons, provided the need is great enough. Additionally, if relationships confer moral status, then this surely applies beyond infants. It implies that older children who meet the personhood threshold vary in moral status and that all persons are not moral equals. If it is argued that this additional moral status is insignificant, then it seems unlikely to be sufficient to show that infanticide is immoral. Also, as Rodger and I argue,

maternal-fetal attachment implies that late-term fetuses enjoy a similar moral status to infants (Blackshaw & Rodger, 2020a).

This is the opposite charge to that levied against the substance view in the embryo rescue argument—there, the accusation is that our intuitions tell us embryos can be sacrificed, and therefore embryos cannot have the same moral status as persons, contrary to the substance view. Here, the implication of the psychological view is that infants have less intrinsic moral value than older human beings, which is again contrary to our intuitions. The attempt to rescue these intuitions via extrinsic reasons implies that moral equality must be jettisoned.

### **11. Prenatal injury**

It seems uncontroversial to claim that deliberately inflicting a non-lethal prenatal injury on a fetus is morally wrong. For example, if a pregnant woman knowingly drinks enough alcohol to produce fetal alcohol syndrome in her future child, there seems little doubt that she has wronged her child. Similarly, if third parties inflict prenatal injury, say by negligently supplying a drug such as thalidomide that causes physical disabilities, this is also morally wrong.

Importantly, inflicting a prenatal injury on a fetus seems to be wrong *at the time of the injury*, even though the consequences of the injury do not manifest until after the child is born. On the substance view, it is clear why inflicting prenatal injury is wrong—a person has been harmed, violating their rights. On the psychological view, the individual that will eventually inhabit the fetus does not yet exist, and so this raises the question of why inflicting prenatal injury at this point is immoral. McMahan provides an explanation, giving an example of a person who sets a bomb to go off in 150 years' time to show that actions must take into account the interests of future people—even if they do not exist at the time of the action. According to McMahan,

‘morality requires that we not discount the future interests of others’ (McMahan, 2002, p. 629). This seems plausible—for example, it explains why there is a moral case for combating climate change for the sake of future generations.

Explaining why actions that could affect the interests of future people are wrong becomes more complicated if those future people never exist. On psychological accounts of personal identity and on McMahan’s embodied mind account, an individual does not exist until sometime after fertilisation (or even after birth), and so if prenatal injury is inflicted in this early period, no individual exists to be harmed. However, if an abortion is later performed, also before an individual exists, then no individual is ever harmed by the prenatal injury. In fact, McMahan suggests there might be moral reasons for having an abortion in such a situation, such as preventing a violation of the rights of a future individual (McMahan, 2006, p. 649). In effect, harm to a possible future individual has been prevented by ensuring that they never exist.

As with the case of the bomb set to explode in the future that harms no one, inflicting a prenatal injury in this scenario still seems wrong, but there seems no plausible way of explaining why it is wrong on these accounts of personal identity. One option is to resort to notions of subjective and objective wrong to explain why the prenatal injury is wrong, where subjective wrong is based on the agent’s knowledge at the time of the act, and objective wrong takes into consideration all the facts. Even this becomes problematic if the agent planned to have a later abortion when inflicting the prenatal injury—it implies the agent knew no individual would be harmed.

As I have already explained, on McMahan’s account, an individual does come into existence once the brain is capable of sustaining consciousness. An abortion after this time, therefore, kills an individual that will become a person, not just a human organism. Under McMahan’s account, however, such an individual does not possess the moral value of an adult human being,

as they do not possess the psychological capacities necessary to reach the threshold of personhood. He believes killing such an individual is a less serious wrong than killing a person, although it is a more serious wrong than an abortion before the brain can sustain consciousness. By contrast, the wrong of inflicting prenatal injury is easily explained by the substance view—it harms an individual possessing full moral status at the time of the injury, violating their rights. It cannot be remedied by an abortion, as that also violates that person's rights.

## **12. Conclusion**

Critics of the substance view have focused on a narrow group of problematic cases without acknowledging that competing theories, such as the psychological view, have their own difficulties with counterintuitive implications. Before concluding that the substance view is implausible, as Lovering and others claim, an examination of how it compares to the psychological view regarding a broader range of cases is required. I have shown that the substance view is more consistent with our intuitions regarding the immorality of prenatal injury and infanticide; our identity with the fetus we once were; the moral equality of human beings; and human exceptionalism. I surmise that, far from being discredited, the substance view emerges as a competitive alternative account to the psychological view.

## **PAPER 5: Can pro-life theorists justify an exception for rape?**

### **Context**

The claim that all human beings possess equal moral status under accounts such as the substance view appears to lead to an extreme anti-abortion position—one that admits to no exceptions. If the immorality of abortion is based on the fetus having a right to life, then it seems irrelevant whether the fetus originated by voluntary or involuntary means. The implication is that advocates of the substance view should not support a rape exception in restrictive abortion legislation.

However, as I point out in this paper, public opinion is largely in favour of a rape exception, presenting a significant challenge for pro-life advocates. I investigated this issue in order to determine if there are theoretical grounds for permitting such an exception in order to make the substance view more palatable—a so-called ‘moderate’ pro-life position (Blackshaw, 2021a). Of course, having endorsed a role for intuition, I am committed to accepting that if no way around this problem can be found, the substance view has a strike against it. Yet, that method does not involve simply rejecting views with counterintuitive conclusions: they must be evaluated overall and compared with competing views. And, I have already argued that the substance view has other powerful intuitive attractions.

An obvious starting point is Thomson’s violinist analogy, which argues that abortion can sometimes be permissible even if the fetus has full moral status. I examine this possibility, focusing on the responsibility objection to Thomson to argue that, for consensual sex, the pregnant woman has moral responsibility for the pregnancy (as does the father). However, in cases of non-consensual sex, the pregnant woman has no moral responsibility for the

pregnancy, and this provides support for the claim that she is not obligated to remain connected to the fetus. Therefore, the life support that she is providing to the fetus could be withdrawn, providing the basis for a rape exception.

Crucially, however, this strategy can only be successful if the abortion really is a withdrawal of life support, letting the fetus die instead of killing it. The difficulty that I point out in the paper is that *all* abortions are plausibly acts of killing. As Kate Greasley (2017, pp. 47-51) explains, even using an abortion pill involves deliberately performing an action that results in the death of the fetus. Even if this is justified by self-defence—a dubious claim, according to Greasley—we still cannot distinguish between pregnancies that are consensual and non-consensual. Moreover, since the publication of the paper below, David Hershenov (2024) has contended that abortion pills work by inflicting damage on the embryo or fetus, killing them. This provides further support to the view that all abortions are killing.

However, let's assume that the moderate pro-life advocate still maintains that 'extraction' abortions are cases of letting die rather than killing. It leaves them in the rather absurd position (as a pro-life advocate) of claiming that in the case of rape, abortion is permissible, but only if it is performed in a certain way. It seems more plausible for them to maintain that killing and letting die are morally equivalent. Unfortunately, recalling the first paper in this part of the thesis, this implies that there is no moral difference between spontaneous abortions and induced abortions. It seems difficult for a pro-life advocate to accept that preventing spontaneous abortions is just as important as preventing induced abortions.

I also briefly mention parental responsibilities in the paper below. Elsewhere, I, with my co-author Daniel Rodger, argue that parental responsibilities should extend to fetuses (Blackshaw

& Rodger, 2020a). If they are assumed voluntarily, they have no impact on the permissibility of an abortion. However, if they are assumed without consent and are sufficiently strong to entail that abortion is not permissible in consensual cases of pregnancy, pro-life advocates will find it difficult to argue that they allow abortion in cases of rape.

As a result, I conclude that the so-called moderate pro-life position is in trouble. It causes more difficulties for pro-life advocates than it solves to argue for a rape exception. This being the case, pro-life advocates should readily recognise the horrific circumstances in which rape victims are pregnant and be the strongest advocates for supporting them with all the financial, material and psychological support imaginable, as well as measures to prevent rape from occurring.

I have made numerous minor revisions to this paper for clarity and consistency and to better reflect my current views. One issue I did not address in the paper is whether pro-life advocates should support a rape exception in anti-abortion legislation. If my arguments are accepted, a rape exception is clearly inconsistent with the pro-life position. However, legislation does not need to align perfectly with one's moral beliefs. One reason for allowing a rape exception is the difficulty of passing legislation without it, given its widespread support. A law that prohibits abortion in all other cases would certainly save many lives, and pro-life advocates might have to accept this as a compromise. However, such a law would presumably require verification that a claim of pregnancy by rape was accurate, which seems very problematic. Regardless of whether an exception is provided for in law, pro-life advocates should be the strongest supporters of rape victims in every way possible, as I note above. In terms of legislation, they should strongly support the right of rape victims to obtain the termination of rapists' parental rights easily.

## 1. Introduction

Pro-life theorists typically hold to the claim that all human beings possess equal moral status from conception. An example of such a view is the *substance view of persons*, which states that all human beings are living substances that maintain their identity through time and change, and possess a rational nature (Beckwith, 2004; Lee, 2004). This makes them equally valuable and equivalent in moral status, whether they are zygotes, fetuses, infants, children or adults. Thus, all human beings possess a right to life and cannot be unjustly killed. Consequently, substance view theorists argue that abortion is not permissible under any circumstances.

A key criticism of pro-life theorists who hold to this view regarding abortion is that it is an ‘extreme’ anti-abortion position. This is because it allows for no exceptions, even in cases such as rape. Pro-life theorists agree that pregnancy via rape is horrendous, but they typically maintain that it does not justify violating the fetus’s right to life (Kaczor, 2014, pp. 195-197; Steinbock, 2011). Perhaps they are to be admired for their consistency, but it is an important question whether pro-life theorists can feasibly moderate their position to allow for the permissibility of abortion in cases of rape—while still maintaining that embryos and fetuses possess equal moral status to adults.

Matthew Scarfone argues that pro-life theorists cannot coherently do so by arguing that the right to life overrides the right to bodily autonomy (Scarfone, 2022). However, using Judith Jarvis Thomson’s analysis of rights in her violinist thought experiment (Thomson, 1971), I show that it is possible for pro-life theorists to allow an exception for rape if three conditions are met. Firstly, Thomson’s analysis of rights must be accepted—that a right to life does not include a right to life support. Secondly, they must show that Thomson’s reasoning does not apply to non-rape abortion cases but justifies permitting abortion in cases of rape. Thirdly, they

must explain how abortions can be regarded as withdrawing life support. This last condition, however, carries heavy costs for pro-life theorists.

## **2. Why a moderate pro-life position?**

The so-called ‘extreme’ pro-life position that does not permit exceptions in cases of rape is an uncomfortable view to hold. Kathleen C. Basile *et al.* (2018) estimate that almost 3 million U.S. women become pregnant via rape during their lifetime, and there are also many pregnancies that are a result of child rape, including incest. It is likely that many women will be permanently traumatised by being forced to continue with their pregnancies; it is difficult to imagine the damage this could do to a child.

Unsurprisingly, public opinion is in favour of permitting abortion in cases of rape. For example, Ben Clements and Clive Field explain that since the 1967 Abortion Act in the United Kingdom, it is rare for people to reject abortion in all circumstances (2018). During the period 1983 to 2016, the percentage agreeing that abortion was permissible in the case of rape was between 85% and 93% (Clements & Field, 2018).

So, the pro-life position might be more tenable to the public if such an exception can be made. However, doing so while maintaining the central claim that embryos and fetuses possess equal moral status to adults is not straightforward. As Steinbock notes, many who morally object to abortion ‘wish to make such an exception, but they have been hard-pressed, on their own argument, to account for it’ (Steinbock, 2011, p. 94). Scarfone (2022) has recently argued that such a pro-life position is incoherent.

### 3. Life versus autonomy

Scarfone (2022) frames the pro-life position as a clash between the fetus's right to life and a woman's right to her bodily autonomy. From the pro-life viewpoint, the fetus's right to life trumps a pregnant person's right to bodily autonomy, and so abortion is impermissible. He outlines a moderate pro-life argument as follows:

- (1) A fetus is a human being, a person, from the moment of conception or else at some point during gestation.
- (2) A right to life is stronger than or outweighs, a right to bodily autonomy.
- (3) Abortion is morally permissible for a pregnancy caused by rape.

The difficulty, Scarfone claims, is in (3)—arguing for exceptions in cases of rape and incest. According to Scarfone, the only plausible grounds for rape being an excusing condition is that it is an extreme violation of bodily autonomy. However, if the pro-life position is that the right to life trumps a right to bodily autonomy (2), then a violation of bodily autonomy cannot serve as an excusing condition. Hence, it is incoherent to derive a moderate anti-abortion position from anti-abortion accounts that are predicated on (1) being a person. Therefore, pro-life theorists who maintain that fetuses have a right to life cannot coherently maintain a moderate, anti-abortion position.

### 4. Thomson's violinist

Scarfone's reasoning seems sound, and the combination of (1) and (2) are a fair representation of a commonly held pro-life position based on accounts of fetal personhood. There is, however, an alternative possibility for framing a moderate pro-life position that is not based on a conflict

between the right to life and the right to bodily autonomy. Scarfone does mention this possibility, based on Thomson's violinist analogy, but does not seriously examine it.

Thomson's (1971) analogy is an argument for the permissibility of abortion that grants the fetus is a person. She employs a thought experiment as an analogy to pregnancy: a famous unconscious violinist has been attached to your body while you are sleeping by the Society of Music Lovers because you are the only person whose blood can help him recover from his kidney ailment. His condition requires nine months of treatment, and if you unplug yourself from him, he will die. Intuitively, this seems like an outrageous imposition, and so Thomson argues that no one is obliged to remain plugged into the violinist.

Thomson's violinist is often misconstrued as a conflict of rights. It is common to see her argument characterised as the woman's right to bodily autonomy overriding the fetus' right to life<sup>30</sup>. As David Boonin points out, however, this approach misses Thomson's point entirely. He states that 'Thomson's example is not meant to deny that the violinist's right to life outweighs your right to control your body' (Boonin, 2002, pp. 133-188). In fact, he believes that the right to life always trumps the right to bodily autonomy in a genuine conflict and considers that Thomson would agree. Thomson's argument is intended to clarify our understanding of what the right to life entails. Crucially, Boonin explains that unplugging the violinist *does not violate their right to life*—there is no conflict. Thomson's analogy demonstrates that the right to life does not include the right to be supplied with life support. So, according to Thomson, abortion does not violate the fetus' right to life.

Boonin notes the same difficulty that Scarfone describes—if abortion is a violation of the fetus' right to life, justifying an exception in the case of rape is problematic, as the fetus conceived

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<sup>30</sup> For example, see Fischer, J. (2003).

by rape still has the same right to life. If, however, pro-life theorists avail themselves of Thomson's reasoning, and claim that abortion—in rape cases, at least—does not violate the fetus's right to life to begin with, they do not face the difficulty of explaining why the stronger right is overridden by the seemingly weaker right. Scarfone's complaint of incoherency is not applicable.

As I have outlined earlier, the pro-life theorist taking this approach must satisfy three conditions. Firstly, they must accept Thomson's analysis of rights—that a right to life does not include a right to life support. Secondly, they must show that Thomson's reasoning does not apply to non-rape abortion cases and that it justifies permitting abortion in cases of rape. Thirdly, they must explain how abortions can be regarded as withdrawing life support.

It seems reasonable for a pro-life theorist to accept the first condition: that a right to life does not include a right to life support. In other words, the right to life is primarily a negative right—the right not to be unjustly killed by others. Thomson's thought experiment illustrates that we have a strong intuition that the right to assistance is limited, and therefore we are not required to make significant sacrifices to support another human being's life, *ceteris paribus*.

### **5. The 'extreme' pro-life position**

The so-called 'extreme' pro-life position is free to attack Thomson's argument on the grounds outlined by Kate Greasley. In her view, in the vast majority of cases, abortion is a positive act of killing—it is not merely a withdrawal of life support or a failure to rescue (Greasley, 2017, pp. 47-51). Therefore, it violates the fetus's right to life (if it has one) and is impermissible. Further, she argues that 'extraction' abortions via an abortion pill or hysterotomy still involve an action being performed that results in the death of the fetus and is still killing, just as switching off a patient's life support in an intensive care ward also is an act of killing.

Another approach is to argue that parental responsibilities entail that a pregnant woman cannot abort her fetus, just as these special responsibilities mean parents cannot kill their newborns.

## 6. The ‘moderate’ pro-life position

Clearly, both Greasley’s argument and parental responsibilities are incompatible with a moderate pro-life position—they are equally applicable to all abortions, whether or not the sex was consensual. As McMahan points out, we do not believe a mother can abandon her parental responsibilities for a newborn child, letting it die, even if she did not want the child or consent to sex (McMahan, 2002, pp. 362-378). So, *if* parental responsibilities prevent a woman aborting a fetus that was conceived via consensual sex, they should also prevent a woman aborting a fetus conceived through rape. Similarly, Greasley’s argument offers no way to distinguish between rape and non-rape cases.

So, the task for the moderate pro-life theorist is to explain why a woman is required to make significant sacrifices to support her fetus when her pregnancy results from consensual sex, but not in the case of rape. McMahan states that there is ‘a significant difference in a woman’s responsibility for a pregnancy that results from rape and her responsibility for a pregnancy that results from contraceptive failure’ (McMahan, 2002, p. 365). This suggests differentiating on the basis of responsibility in some way. In the vast Thomson literature, this is known as the *responsibility objection*. It claims that consensual sex generates a responsibility towards the fetus—its parents are responsible for its existence and should, therefore, meet its needs for life support.

David Boonin has examined the responsibility objection in detail. He concedes that being voluntarily responsible for someone’s existence is sufficient to grant them a right to assistance if they require it to survive (Boonin, 2002, p. 184). However, he denies this is the case for a

pregnant woman engaging in consensual sex—she does not voluntarily bring someone into existence. Instead, she voluntarily engages in consensual sex while foreseeing that it *may* result in a fetus requiring her assistance. Boonin illustrates his point with a thought experiment he calls the *hedonist* (Boonin, 2002, pp. 186-187). The hedonist engages in a very pleasurable activity that has a side effect—there is a chance that it will release a gas that gives a few additional months of unconscious life to a comatose violinist who is about to die. Further, after that time, the hedonist will be able to bring the violinist out of the coma by giving him the use of their kidneys for nine months. According to Boonin, this is far more analogous to the woman who becomes pregnant from consensual sex than Thomson’s original violinist, and he argues there is no moral requirement for the hedonist to provide aid.

In his critique of Boonin, Francis Beckwith (2006) suggests another thought experiment. In his scenario, scientists create clones for infertile couples. Unfortunately, the clones have a genetic heart defect that is unavoidable but that is correctable after birth. Beckwith argues that the scientists and the couples have a responsibility to ensure that these heart defects are repaired—as they voluntarily created the clones, they are responsible for their additional neediness. This seems plausible, but it does not necessarily counter Boonin’s claim—scientists are not engaging in an activity that has the side effect that it *may* create or extend life—this is the aim of their work. Beckwith’s analogy does include an aspect that Boonin’s does not, however. In Boonin’s example, the hedonist is not responsible for the initial state of the comatose violinist, whilst, in Beckwith’s scenario, scientists are responsible for the creation of the clones, which are needy.

Along these lines, C’Zar Bernstein and Paul Manata have suggested a spelunking (cave diving) thought experiment (Bernstein & Manata, 2019). In their scenario, whenever a spelunker descends lower than 50 feet in a cave, a non-spelunker contracts a fatal kidney disease. They

can only survive by being connected to someone for 9 months. Spelunking helmets warn spelunkers if they descend below 50 feet, but this warning is not reliable, and some ignore it anyway. When someone contracts the disease, the responsible spelunker is forcibly connected to them by the state. Bernstein and Manata argue that the spelunkers are obliged to remain connected for 9 months and cannot disconnect themselves. This is because they '*knowingly engaged in a risky activity and are morally responsible for the consequences*' (Bernstein & Manata, 2019, p. 246), and this entails an obligation to assist. This seems persuasive—as they note, in such a scenario, there would be a call to abstain from spelunking, and any that do not should remain connected to the affected person until they recover.

As with Boonin's hedonist case, the spelunker's actions affect others only as a foreseeable, possible side effect of their spelunking. However, as with Beckwith's case (and not Boonin's), those affected by the actions of the spelunkers were not initially in need of assistance. Of course, in Beckwith's case, the clones did not exist.

These examples provide a plausible argument that engaging in consensual sex resulting in pregnancy generates an obligation to provide the fetus with the life support that it requires. To obtain an analogy for non-consensual sex, we can modify the spelunker example—a spelunker who is forced by someone else to descend below 50 feet. Clearly, in this scenario, the spelunker is not morally responsible for the consequences. An anonymous reviewer suggests another example: a wicked man attaches a very heavy iron ball to your leg so that your movement is severely restricted. He does this for a few months and informs you that if the ball is removed, an innocent person will immediately die. Again, it seems clear you are not morally responsible for this death if you choose to remove the ball.

These examples imply that for cases of non-consensual sex, no moral responsibility for pregnancy exists—an unsurprising conclusion. However, the crucial question is whether the

absence of moral responsibility entails there is no obligation to assist. Bernstein and Manata imply that our right to bodily autonomy will prevail if it is not weakened by moral responsibility. This seems right—spelunkers forced to descend and those with iron balls forcibly attached to their legs should not have to make enormous sacrifices for someone whose condition they are in no way responsible for. They are not obliged to remain connected.

As a result, pro-life theorists seeking to moderate their position can plausibly claim Thomson shows in the case of rape, there is no requirement to provide assistance to the fetus—the second condition I have identified.

### **7. Abortion as withdrawing life support**

Finally, the ‘moderate’ pro-life theorist must also meet the third condition—they must explain how aborting a fetus that was conceived by rape can be regarded as withdrawing life support rather than killing. This distinction is essential, given that the moderate pro-life theorist believes that the fetus is a person from conception and, therefore, possesses a right to life. As Greasley notes, to directly kill the fetus given its moral status (as claimed by pro-life theorists) requires a strong justification—it is homicide (Greasley, 2017, pp. 59-66). The only available justification for homicide is self-defence. Legitimate self-defence requires that the threat is proportionate to the harm inflicted in self-defence and that this harm is necessary to avert the threat. The fetus is not, in most cases, threatening the woman’s life, and so citing self-defence is dubious. Therefore, abortions that directly kill the fetus should be unacceptable to the consistent pro-life theorist. Clearly, surgical abortions do so. As we have seen, even ‘extraction’ abortions, both surgical and by medication, are arguably killing rather than letting die from withdrawing life support. The moderate pro-life theorist could deny this and maintain that extraction abortions are not killing. However, this entails what seems to be an absurd

position for a pro-life theorist—abortion in the case of rape is permissible, but *only* if the abortion is performed in a certain way.

There is an alternative—they could adopt the view that killing and letting die are equivalent. If this is accepted, then clearly, any abortion method can be used in cases of rape, and their position is far more consistent. Unfortunately, this view leads to further difficulties.

First, the anonymous reviewer suggests a modification to their wicked man example that proves problematic. Instead of letting an innocent person die because of your choosing to disconnect the heavy ball attached to your leg—which we have determined is permissible—you must kill the innocent person yourself. However, we have already argued that killing in self-defence is not proportionate. It is also an unnecessary killing—it is not required to preserve your life, as it is not threatened—and even if it were, in common law, necessity is no defence for murder. In this modified scenario, then, your role in the innocent person's death is clearly not permissible, and yet if killing and letting die are equivalent, we should not be able to distinguish between the two scenarios. If the wicked man scenario is analogous to abortion in the case of rape (and it seems to be), this casts significant doubt on whether killing the fetus can be regarded as morally equivalent to letting the fetus die.

Second, there is the problem of spontaneous abortion. Toby Ord and others argue that if human beings possess full moral status from conception, then the huge number of miscarriages—spontaneous abortions—is a serious public health crisis, and pro-life theorists who hold to this view are obliged to act in ways to reduce these deaths (Ord, 2008). Ord estimates there are over 200 million spontaneous abortions annually, far more than the approximately 56 million abortions each year (Ord, 2008). Therefore, given the comparative seriousness of the problem, pro-life theorists are morally obliged to divert resources away from opposing induced abortion

and towards reducing spontaneous abortions. In response, I, with my co-author Daniel Rodger<sup>31</sup> make two important points—firstly, the majority of spontaneous abortions are not preventable, and secondly, the killing versus letting die distinction explains why participating in induced abortions is far worse than failing to prevent spontaneous abortions (Blackshaw & Rodger, 2019a). Of course, pro-life theorists do not directly participate in abortions themselves, but Blackshaw and Rodger cite Thomas Pogge’s point that all citizens in a democracy that allows legal abortion are participants (Pogge, 2010, p. 127).

If the killing versus letting die distinction is denied, an explanation is required as to why failing to act on the millions of preventable spontaneous abortions is not seriously immoral. However, this is not the only difficulty for pro-life theorists. Millions of children die annually from malnutrition and preventable diseases (UNICEF 2018). If there is no distinction between killing and letting die, they are also morally responsible for these preventable deaths. Alternatively, they will need to explain why the killing versus letting die distinction only holds for embryos and fetuses while maintaining they are owed the same respect and fall under the same moral principles as children and adults.

These new commitments seem to create a much more significant problem for pro-life theorists than the one they solve—the uncomfortable position of maintaining that rape does not justify an exception for the permissibility of abortion.

## **8. Conclusion**

Scarfone has argued persuasively that pro-life theorists cannot justify an exception for the permissibility of abortion in rape cases based on an argument from bodily autonomy. Here, I have examined whether Thomson’s analysis of rights can provide an alternative justification

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<sup>31</sup>Note that the paper referenced is the first paper presented in this part of the thesis.

for allowing abortion in rape cases. I conclude that on the basis of the responsibility objection, a plausible case can be made. However, the cost of doing so for pro-life theorists is very high—they must either accept that the manner in which the abortion is performed is morally relevant, or deny that there is a distinction between killing and letting die. Both options seem unacceptable for a pro-life view. The most consistent path for pro-life theorists is to maintain that abortion is not permissible, irrespective of whether the pregnancy ensued from consensual sex or rape.

## **PART TWO: Defending the substance view**

### **Conclusion**

Having now examined a range of criticisms of the substance view, and rejected them, with one exception, it is worth making some final observations about what these objections tend to have in common.

I have noted that the first two papers in this part were co-authored. After writing them, we noticed that most arguments critical of the substance view share a common structure: they claim that pro-life advocates act inconsistently with their belief that embryos and fetuses have equal moral value to adult human beings. We realised that it was possible to formulate a generic response to what we call *inconsistency arguments*, an idea that we subsequently developed and published. As I noted previously, I have not included this work in this thesis because authorship is shared between the three of us, but I will provide an overview because it is an important progression of the work I have already presented.

Primarily, inconsistency arguments involve accusations of hypocrisy. A familiar example is the claim that if pro-life advocates really believed in the value of embryos and fetuses, they would do more to reduce the number of spontaneous abortions. Because they do not (in the view of the critic), the conclusion is that they are acting hypocritically.

In our initial paper (Colgrove *et al.*, 2021), we described the structure of inconsistency arguments as follows:

1. Were opponents of abortion consistent, they would Z.
2. Opponents of abortion fail to Z.
3. Therefore, opponents of abortion are inconsistent.

We explain that accusations of hypocrisy based on this argument structure are vulnerable to two objections and, even if proven, are not significant. First, opponents of abortion's beliefs regarding the moral value of embryos and fetuses are not held in isolation—they hold many other beliefs that might explain why they act to prioritise reducing rates of induced abortion over other prenatal deaths. We call this the *other beliefs objection*. For example, if someone holds that killing is morally far worse than letting die, then they may reasonably assume that preventing killing is more important than preventing embryos and fetuses from spontaneously aborting.

Second, we argue that there are typically many different options for acting on one's beliefs, which is what we call the *other actions objection*. This recalls the second paper of this thesis part, which is a response to the moral argument for frozen human embryo adoption. In that paper, Nicholas Colgrove and I argue that adopting frozen embryos may not be the best option for saving lives. Finally, we point out that even if charges of hypocrisy are sustained, this does not necessarily discredit pro-life beliefs regarding the moral status of the unborn, even if it reflects poorly on pro-life advocates. For example, the implications of the pro-life position might be difficult to live by consistently. This is a common feature of ethical theories.

William Simkulet criticised our inconsistency argument as 'unconvincing' and claimed that focusing on preventing induced abortions instead of other important needs was 'morally negligent' (Simkulet, 2021). In response, we noted that much of his reply assumes that pro-life

advocates hold that fetuses and other human beings have a strong positive right to life. We point out in our reply that few actually hold this belief (Blackshaw *et al.*, 2022a). We also argue that Simkulet does not offer any empirical evidence for his claims that pro-life advocates fail to feed the hungry and fail to contribute to other important causes that save lives.

Another critic, Joshua Shaw, argued that our claim that inconsistency arguments fail *en masse* is false (Shaw, 2021). We clarified that we were not claiming all possible inconsistency arguments fail because of the objections we have identified but that the arguments we are aware of so far do (Blackshaw *et al.*, 2022b).

Finally, we published an in-depth chapter on inconsistency arguments in an edited volume (Blackshaw *et al.*, 2022c). This chapter draws together much of our work in this area and challenges critics to offer more empirical evidence for their claims of inaction. One important point it addresses is an alternative formulation of inconsistency arguments, as suggested by Gregor Damschen and Dieter Schönecker (2007). Instead of claiming that abortion opponents *should Z but fail to Z* because of their hypocrisy, their argument focuses on abortion opponents' moral theory regarding the moral status of human embryos. They claim that this theory entails Z is obligatory, as does the first premise of our standard structure for inconsistency arguments, but instead of claiming abortion opponents fail to Z, they argue that Z is not actually obligatory. As a result, the theory that embryos have full moral status must be false.

In response, we point out that the other beliefs objection and the other actions objection still apply to the first premise: it is not straightforward to establish that Z is obligatory for abortion opponents. Further, for this argument to succeed, it must then be shown that Z is *not* obligatory, and this is a difficult task. One possibility is to appeal to moral intuitions, but we explain that

our intuitions regarding the value of embryos are unreliable because we recognise agency by self-propelled movement, as Perry Hendricks (2019) explains. Another possibility is an alternative well-supported moral theory that implies it is not obligatory to prioritise embryos. However, this theory would need to be independent of the moral status of embryos. If it were not, then inconsistency arguments would not be required to demonstrate that the pro-life account of embryo moral status is false. We conclude that Damschen and Schönecker's argument does not succeed.

We also make a general point regarding inconsistency arguments, arguing that critics of abortion opponents must do a more thorough job of enumerating the possible reasons for acting in alternative ways and determining whether these reasons are weighty enough. We claim that this is rarely done.

In future work with inconsistency arguments, I plan to examine anti-abortion violence. Jeremy Williams (2022) has recently compared abortion to clinics to death camps and argued that there are no reasonable alternatives to using violence to free their prisoners. However, he concludes that many pro-life advocates believe that anti-abortion violence is fanatical and cannot justify the harm caused by targeting those involved in abortion provision. This casts doubt upon their belief that fetuses enjoy full moral status. I would like to examine this argument further. In particular, I am interested in considering whether the recent overturning of *Roe v Wade* has shown that non-violent means can be effective in limiting abortions. This will involve determining whether abortion numbers have actually decreased since that event. Another approach I would like to investigate is for pro-life proponents to purchase the buildings housing abortion clinics in order to force their closure. It is worth noting, as David Hershenov (2021) suggests, that the demand for abortions is strong, and restricting access through these means

may have little effect on abortion numbers. Further, Hershenov points out that any decrease in surgical abortions might well be countered by a rise in non-surgical abortions. As reliable statistics for non-surgical abortions are difficult to obtain, it may be difficult to reach a firm conclusion regarding the efficacy of these approaches. Of course, it also means that it may be difficult to demonstrate that anti-abortion violence will have any effect in reducing the number of abortions.

### **PART THREE: Developing an alternative to the substance view**

#### **Context**

My research on the substance view has changed direction over time. My earlier work, chronicled in the previous part of this thesis, has defended the substance view against numerous criticisms and produced the Dual-Aspect Account, which takes into account McMahan's time-relative interests when considering the wrongness of killing.

However, as I recount in the sole paper that makes up this part, during the course of my research, I became aware of a number of important additional challenges that the substance view faces and that opponents of abortion should consider before appropriating it as their 'person-at-conception' account of choice. As a result, I concluded that pro-life advocates require an alternative plausible 'person-at-conception' account that, if possible, avoids these challenges. The following paper develops this alternative account, which I call the *rational animal account*.

Fortunately, despite coming to this conclusion regarding the substance view, the work I have completed in its defence in part two of this thesis is not specifically tied to that view but rather is applicable to any 'person-at-conception' account, including the rational animal account. This includes the Dual-Aspect Account and my more recent work on inconsistency arguments. Of course, the difficulties pro-life advocates encounter with rape exceptions are also equally applicable to any 'person-at-conception' account, including the rational animal account. At the time of writing, this paper is unpublished.

## 1. Introduction

Opponents of abortion rely heavily on a ‘person-at-conception’ view of the moral status of human beings. On this view, all human beings are moral persons, meaning they possess equal moral status and thus deserve equal consideration, whether they are embryos, fetuses, children or adults. As persons possess certain rights, on the ‘person-at-conception’ view, it is difficult (although not impossible) to justify killing prenatal human beings for the benefit of other human beings. If prenatal human beings are not persons and consequently have lower moral status than other human beings, killing them is much easier to justify, such as in the case of abortion. The rights and needs of persons take priority over the needs of entities with lower moral status. So, a ‘person-at-conception’ view is a necessity for opposing the permissibility of abortion<sup>32</sup>.

Surprisingly, there are few ‘person-at-conception’ accounts of the moral status of human beings. The most widely referenced example is the *substance view of persons* (Beckwith, 2004; Lee, 2004; George & Tollefsen, 2011; Eberl, 2020; Playford, 2022). However, the substance view faces some important challenges. First, it is predicated on complicated and controversial metaphysics that ultimately trace back to the Aristotelian conception of substance. While this does not disqualify the substance view from consideration, it is important to be aware of the metaphysical baggage that it carries, and that ultimately must be defended. Second, the substance view is also subtly reliant on certain religious beliefs, which is obviously problematic for those who do not share these beliefs. Third, the substance view itself is ambiguous regarding

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<sup>32</sup> A ‘person-at-conception’ view is not sufficient, however, to argue against the permissibility of abortion. Judith Jarvis Thomson’s (1971) well-known violinist analogy argues that pregnant women are not obliged to continue to offer life support to their fetus, even if it is a moral person. With my co-author Daniel Rodger, I address Thomson’s argument in Part 5.

whether it is a ‘person-at-conception’ view, which is clearly problematic if it is appropriated for this purpose. Finally, there are some specific concerns with the notion of a rational soul, an entity posited by Aristotle that confers personhood upon us.

Given these difficulties with the substance view, and the paucity of alternative ‘person-at-conception’ accounts, opponents of abortion clearly require an account with similar implications for the moral status of all human beings, but without the substance view’s shortcomings. Developing such an account is the task I undertake here.

To begin with, I present a comprehensive exposition of the traditional substance view, including its origins and its moral claims. I explore its contemporary usage and explain in detail the challenges it presents for opponents of abortion.

I then develop an alternative view that I call the *rational animal account*, which is also a ‘person-at-conception’ account but avoids the shortcomings of the substance view that I have recounted. Importantly, the rational animal account is not ambiguous with respect to personhood at conception. I explain why it provides a credible account of the moral status of human beings. Finally, I consider various objections to the rational animal account and offer a defence against them.

## **2. The traditional substance view**

In this section, I will explain the traditional substance view—its origin in Aristotelian metaphysics, its development by Thomas Aquinas, and its implications for the moral status of

human beings. I begin by explaining the two most important Aristotelian concepts: substance, and the rational soul.

## 2.1. Aristotelian substance

In Aristotle's ontology, substances are basic entities that are capable of existing in their own right (*Metaphysics*, V.8, 1017b13-14; Lear 1988, pp. 24-26). A frequently used example of a substance is Socrates, an individual human being. Central to Aristotle's account of substance is his theory of *hylomorphism*, which states that ordinary physical objects consist of a compound of *form* and *matter* (*Metaphysics*, V.8, 1017b15-25; Shields 2014, p.65). Aristotle developed the theory to deal with the reality of change in response to the Parmenidean denial of the existence of change (*Physics*, I.7, 191a25-30). He distinguished two types of change—coming into existence and qualitative change (*Physics*, I.7, 191b1-30). For example, when a builder uses bricks and mortar to build a house, a house has come into existence. When a red house is painted white, it is still a house—it has merely experienced qualitative change.

Aristotle argued that change can be explained by matter gaining or losing form (*Physics*, III.2, 202a9-12). Form is what makes matter exist as a particular physical object. When the builder builds a house, they make bricks and mortar acquire the form of a house—it has been *informed*. There are two sorts of forms—substantial forms and accidental forms. Substantial forms make something what it is—the form of a house is what makes the bricks and mortar a house. If a substantial form is lost, the entity will no longer exist—substances only have one substantial form. Accidental forms allow a being to take on or lose non-essential qualities—when a red house is painted white, it loses the quality of being red but gains the quality of being white. Its colour is an accidental form—it is not what makes it a house. Aristotle describes the substantial form as the 'account of the essence' of a thing (*Physics* II.3 194b27), or as Lear explains, the

cause of an entity's nature—the properties that make it what it is (Lear, 1988, pp. 28-29). For example, being human is a substantial form, while having an odd number of hairs on one's head is an accidental form. Changing the number of hairs on one's head does not change what we are. However, if we lost our human form, we would lose the set of properties that define our nature, and we would no longer be human. Closely related to matter and form are Aristotle's concepts of *potentiality* and *actuality*. He says that change, whether substantial or accidental, is making something that is potentially F actually F (*Physics*, III.1, 201a10-11). Bricks and mortar are potentially a house; the builder actualises this potential by imposing the form of a house on the bricks and mortar as they build (Lear, 1998, pp. 60-62).

Living things are a special case of form and matter composition. Artefacts such as houses have their form imposed on them by an external agent, but living things have an internal principle that determines their nature: the soul. The soul, Aristotle declares, 'is the form of a natural body that is potentially alive', and thus its actuality (*De Anima*, II.1, 412a20-25). It is the body's 'cause and principle' (*De Anima*, II.4, 415b10). He states that 'living is what distinguishes things with souls from things without souls' (*De Anima*, II.2, 413a20-25). Aristotle's ontology of souls is tripartite and hierarchical—plants, as well as animals, have souls (*De Anima*, II.3, 413a25-30). Plants have a nutritive (or vegetative) soul, which gives them the ability to live, grow and reproduce, while the animal soul adds movement and sensation (the sensitive soul) (*De Anima*, II.3, 414a30-415a10).

## 2.2. The rational soul

The rational (or intellective) soul adds the power of reason (*De Anima*, II.3, 415a10). So, according to Aristotle, the form of human beings is the rational soul—it is both the internal principle that determines our nature, and it is responsible for rational thought. Ensoulment is

also known as *animation* (from the Latin *anima*, meaning soul). In other words, if an entity possesses a rational soul, it has a rational nature.

Thomas Aquinas was heavily influenced by Aristotle, and he adopted Aristotelian commentator Boethius' definition of a person as 'an individual substance of a rational nature' (Ebbesen, 1990; Boethius, 1918). As an Aristotelian, Boethius understood a person's rational nature to be provided by the rational soul. Consequently, Aquinas agreed with Aristotle that the rational soul is the substantial form of human beings (*Summa Theologiae I*, Questions 75, 76). He is clear that the rational soul is immaterial and that it comes into existence with the particular body that it is the form for (*Summa Theologiae I*, Questions 75, 90).

It is important to note that for Aquinas, as for Aristotle, the rational soul is more than an organising principle for the body. He is clear that the capacity for human intellect resides in the soul (*Summa Theologiae I*, Question 75 A5). The body provides the other necessary capacities that the intellect requires, such as sense perception (*Summa Theologiae I*, Question 101 A2). This means that Aquinas believed the human mind cannot be reduced solely to brain function—in terms of philosophy of mind, he held to a version of mind-body dualism. However, Aquinas did believe that the soul could survive the death of the body it is united with (*Summa Theologiae I*, Question 89). It can continue to exercise its intellectual capacities, and retains its knowledge (*Summa Theologiae I*, Question 89).

### **2.3. The substance view and moral status**

The substance view, as explained so far, is a claim about the metaphysical nature of human beings. However, Aquinas also makes a moral claim via his use of the term 'person'. According to Aquinas, the term 'person' was originally 'given to signify those who held high dignity'

(*Summa Theologiae* I, Question 29 A3). Aquinas argued that God's divine nature has a dignity exceeding all others, and so 'the name "person" pre-eminently belongs to God' (*Summa Theologiae* I, Question 29, A3). What is the basis of this dignity? Aquinas concludes that 'subsistence in a rational nature is of high dignity. Therefore, every individual of the rational nature is called a "person"', including angels and human beings (*Summa Theologiae* I, Question 29 A3). So, for Aquinas, being a substance with a rational nature confers 'high dignity' and an entity possessing that nature is designated a 'person'. What did Aquinas mean by dignity? Gilles Emery translates Aquinas' characterisation of the dignity of persons as 'most worthy, most exalted' and that to have dignity is to have intrinsic goodness that grounds a person's moral worth (Emery, 2011, p. 991).

So, according to the substance view, our rational nature grounds our moral status. Human souls, which are responsible for our rational nature, are directly created by God, while animal souls are not (*Summa Theologiae* I, Question 75 A6). Therefore, the substance view implies that our moral value as persons is directly due to God.

There is an important caveat regarding our possession of a rational nature, and consequently our moral status. Substance view proponents often assume that all human beings have a rational nature, and that therefore the substance view is a 'person-from-conception' account. However, this is not what Aquinas believed, and in the context of abortion ethics, this is clearly highly relevant for those who wish to utilise the substance view for an anti-abortion position.

Aquinas held to Aristotle's tripartite view of the soul. Aristotle did not believe the rational soul informs a developing human being immediately after fertilisation. Instead, he held that developing human beings are first informed by a vegetative soul, followed by a sensitive soul,

and finally the rational soul, a process known as *delayed hominization* (or *delayed animation*) (*De Generatione Animalium*, 2, 1-4). Aquinas similarly held that developing human beings do not receive a rational soul until the body is properly disposed for it (*Summa Theologiae III*, Question 33). He did not consider developing human beings to be rational substances (and therefore persons) until many days after fertilisation: 40 days for males and 90 days for females (*Commentary on the Sentences III d. 3, q. 5, a. 2*). Aquinas used this distinction when he described the killing of a pregnant woman or her ‘animated foetus’ as homicide (*Summa Theologiae II*, Question 64, A8).

This is problematic for opponents of abortion who utilise the substance view as a ‘person-from-conception’ account. If delayed hominization is held to, then the developing human being prior to hominization is not a rational substance and therefore not a person, and Aquinas’ claim regarding the dignity of persons does not hold. Consequently, early embryos and fetuses have lesser moral status than more developed human beings, and can be sacrificed for their benefit. Opponents of abortion who wish to utilise the substance view will need to justify their rejection of delayed hominization. This is one of several challenges that the substance view faces.

### **3. Contemporary substance view**

The substance view today is utilised in two quite different academic domains. The contemporary school of philosophical and theological thought based on Aquinas’ work consists primarily of Roman Catholic philosophers, known as *Thomists*. Aquinas is known as the ‘Angelic Doctor’ within the Church, and has been and continues to be extremely influential

(Pope Pius X, 1914; John Paul II, 1998). Thomists continue to research various aspects of Aquinas' thought, including the substance view<sup>33</sup>.

As I have noted, the substance view is also utilised in bioethics, primarily by opponents of abortion (and, as a result, their critics). This includes Thomist philosophers who also publish in this domain, as well as numerous non-Catholic abortion opponents. Interestingly, the nature of the substance view itself is rarely explored in bioethics<sup>34</sup>. It serves as a 'person-at-conception' account of human beings with little or no justification.

Opponents of abortion typically derive three theses from the substance view that ground their arguments. First, that living substances maintain their identity through change; second, that all human beings are rational substances; and third, that rational substances are moral persons with equal moral value. Together, these points are used to construct a case against the permissibility of abortion. The basic argument is along these lines: embryos and fetuses, as persons, enjoy the rights of persons, including the right to life. Killing persons is only permissible in very limited circumstances, such as in cases of self-defence, or perhaps by capital punishment or during combat. Abortion does not qualify as one of these cases, and so if embryos and fetuses are persons, abortion is *prima facie* impermissible<sup>35</sup>.

One example of this usage of the substance view in bioethics is the exchange between Rob Lovering (2013, 2014, 2017, 2018) and William Simkulet (2016), who are critics of the substance view, and Henrik Friberg-Fernros (2015, 2018a), who is a substance view proponent.

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<sup>33</sup> Examples of contemporary Thomists include Eleonore Stump, Brian Davies and Edward Feser.

<sup>34</sup> An exception is Jason Eberl (2020).

<sup>35</sup> I have already noted that Judith Jarvis Thomson (1971) argues that even if the fetus is a person, abortion is still permissible in many or most cases.

Christopher Kaczor has also contributed to this debate (2016). There is no mention of Aristotle, Aquinas or even Boethius in these discussions. Rather, the discussion proceeds on the basis that the substance view is a plausible ‘person-at-conception’ view, and none of its nuances feature.

Similarly, Francis Beckwith defends the substance view in his book *Defending Life* and elsewhere without any mention of its metaphysical underpinnings (Beckwith, 2004; Beckwith, 2007). Christopher Kaczor refers to the *endowment account*, a broad term encompassing all ‘person-at-conception’ views that claim every human being is a person ‘by virtue of the kind of being it is’ (Kaczor, 2014, pp. 102-106). He suggests several specific endowment accounts, such as S. Matthew Liao’s genetic basis for moral agency account (Liao, 2010, p.168) and a ‘rational animal’ account that appears to be derived from the substance view (Kaczor, 2014, pp. 106-111). According to Kaczor, all human beings are rational beings, but his discussion is brief. I examine Liao’s genetic account and Kaczor’s rational animal account in more detail prior to developing my rational animal account. Kaczor (2014, pp. 141-143) also briefly mentions the substance view, noting that it involves the possession of a rational soul.

#### **4. Substance view challenges**

I have claimed that the substance view faces some important challenges, and stated that these challenges motivated the development of an alternative ‘person-at-conception’ account that I call the rational animal account. I explore these challenges below, and explain why they render the substance view as broadly unsuitable in the domain of bioethics.

##### **4.1. Aristotelian metaphysics**

First, the substance view cannot be dissociated from its foundations in Aristotle's theories of substance and the rational soul. These concepts are complex and controversial, and as a result, the substance view itself is necessarily complex and controversial, even if it is presented as a straightforward 'person-at-conception' view. For example, Aristotelian forms are foundational to the substance view, but their nature as the essence of a substance is mysterious. A number of proposals for explicating forms have been made, but there is no consensus on how they should be understood (Fine, 1999; Koslicki, 2008; Pruss, 2013). If the substance view is to be adopted, these concepts must also be accepted, which has implications far beyond the substance view. Pro-life advocates must consider whether they are willing to embrace the Aristotelian metaphysical system. This is not a judgement of the veracity of Aristotelian metaphysics, but it is important that when the substance view is invoked in philosophical debate, these implications are acknowledged.

#### **4.2. Divine assistance**

Second, the substance view's account of moral status is predicated on Aquinas' and Boethius' definition of a person as a substance with a rational nature. As I have explained, Aquinas argued that possession of a rational nature confers dignity upon an entity, which implies high moral value. It is plausible to assume that Aquinas' concept of 'person' roughly corresponds to the contemporary meaning of moral person. However, possession of a rational nature requires a rational soul, and Aquinas argued that rational souls are created by God. This is obviously problematic if the substance view is to be used as a secular 'person-at-conception' view in bioethics. Further, Aquinas does not state this explicitly, but presumably, the rational soul's creation by God is one of the grounds for the dignity of substances with rational natures. Therefore, the substance view grounds moral status on the soul being created by God, at least in part.

### 4.3. Delayed hominization

Third, I have described the issue of delayed hominization, which entails that the substance view, as Aquinas understood it, is not strictly a ‘person-at-conception’ view. We do not receive a rational soul until at least 40 days after fertilisation, implying that we do not have the moral status of persons for the first month or more of our existence. This issue is still a matter of ongoing debate amongst Catholic philosophers (Donceel, 1970; Toner, 2014; Haldane & Lee, 2003; Pasnau, 2003; Amerini & Henninger, 2013; Amerini, 2015). This is a major difficulty for opponents of abortion if they wish to utilise the substance view as a ‘person-at-conception’ account of human beings.

### 4.4. The rational soul

Fourth, there are some more specific concerns regarding the nature of the rational soul, apart from its creation by God. It seems possible that some kind of immaterial configurator is responsible for guiding the development of the human body. For instance, we could regard the rational soul as the information represented in a newly formed embryo’s DNA, sourced from the DNA of its parents. However, both Aquinas and contemporary proponents of the substance view claim the human soul is far more than this—it is responsible for our rational thought. Moreover, it can exercise these capacities when separated from the body. As Eric Olson points out in his critique of what he calls Thomistic hylomorphism, it is difficult to see how an immaterial principle that has been separated from its body (and is not a substance in its own right) is able to think (Olson, 2007, p. 175). This seems more like traditional substance dualism, not hylomorphism. According to Aquinas, the separated soul receives divine help to do so

(*Summa Theologiae I*, Question 89), so the rational soul is not only divinely created but is eventually dependent on divine assistance after the body's death.

There are further difficulties with the concept of the rational soul, which, according to the substance view, is responsible for rational thought. Both Aristotle and Aquinas argued that animals do not have a rational soul, and so any thinking they do must be performed by their brain. However, there is increasing evidence that some animal species are capable of simple rational decision-making (Buckner, 2019). It seems untenable to argue that the brains of other primates (which lack a rational soul) are capable of simple rationality, but human brains are not (as this is performed by the rational soul). The implication is that the human brain must also think; therefore, it seems that humans have two thinking parts. One possible solution is offered by Eleonore Stump (1995), who argues that Aquinas can be interpreted as claiming that the brain is responsible for *all* cognitive functions. It does so with the help of the soul, which configures the brain to be capable of rational thought. This still leaves the issue of how the soul can think when separated from the body when it cannot do so independently while embodied. Stump opts for Aquinas' solution of divine help.

These difficulties suggest that a more plausible option would be to eschew cognitive capabilities altogether in the rational soul, embodied or separated, and regard it solely as a configurator or organising principle for the body. Of course, if the rational soul is to be regarded merely as a configurator of the body, this is a significant departure from Aquinas' (and Aristotle's) view and such a position is no longer the traditional substance view. Also, taking this approach still leaves the question of how the rational soul achieves this configuration. An obvious alternative is to regard the rational soul as superfluous, and this is the approach I take in what I call the *rational animal account*, which I begin developing below.

## **5. The rational animal account**

The rational animal account is a ‘person-at-conception’ account that attempts to avoid the difficulties with the substance view that I have discussed above, primarily by avoiding the use of Aristotelian metaphysics. I will outline the features that this view will require, and develop the account with these requirements in mind. In doing so, I will draw upon accounts provided by Christopher Kaczor and S. Matthew Liao. I will then address various challenges that the rational animal account faces.

### **5.1. Requirements**

Earlier, I identified several theses that substance view proponents derive from the substance view for its use in contemporary bioethics. The rational animal account will need to support these theses if it is to serve as a plausible replacement for the substance view.

First, it will need to entail that identity is maintained from conception, a necessary requirement for a ‘person-at-conception’ view to be coherent. Second, the rational animal account must be applicable to all humans, including prenatal human beings. This is a direct consequence of the first requirement, but I mention it explicitly as it corresponds with the second thesis derived from the substance view that I identified. Third, the account needs to have a plausible basis for moral value, and this must also apply to all human beings.

As I have explained, the substance view also has religious connotations—it relies on God for the creation of the rational soul, and God ultimately provides the basis for moral worth. I have also noted the difficulties associated with the concept of a rational soul. Consequently, a final

requirement for a secular replacement for the substance view for use in bioethics is to eschew the notion of immaterial souls and prefer a materialist account of human beings.

## 5.2. Developing the account

The first requirement I identified for the proposed account was that identity must be maintained from conception. This immediately suggests a biological view of personal identity, which claims we are essentially human animals (DeGrazia, 2005, p. 48). According to this view, a human being X at one time is identical to Y at another time if X's biological organism is continuous with Y's biological organism (DeGrazia, 2005, p. 50). This view is also known as the organism view (Liao, 2006) and as *animalism* (Olson, 2007, p. 24). According to animalism, we are fundamentally human animals, and each of us is numerically identical to our human animal (Olson 2007, p. 24, 39-44). Interestingly, the substance view also concludes that we are animals—Aquinas states that “‘animal’ is predicated of a human being essentially ... of necessity by the same form a thing is animal and man’ (*Summa Theologiae I*, Question 76, A3). So, the substance view could be regarded as a version of animalism, as Eric Olson suggests (Olson, 2007, p. 172).

Animalism has a strong intuitive appeal. As Paul F. Snowdon states, animalism ‘represents the default conception of ourselves’ and should be considered the default view of what human beings are (Snowdon, 2014, p. 106). Further, it has a straightforward solution to what is known as the ‘two thinkers problem’ that faces psychological accounts of identity. If we are not animals, then there is a human animal occupying the space where we are, and it has our brain. However, if the animal has a brain, it should be conscious, and so if we, too, are conscious, then there are two thinkers occupying the same space. Interestingly, the substance view has a

similar two thinkers problem: it must deal with the thinking rational soul and the thinking brain (Olson, 2007, p. 169).

Olson's animalism differs from the animalism of the substance view in that it is a physicalist account, making no reference to immaterial souls. This is another requirement that I have identified. So, Olson's animalist account meets several of the requirements for an alternative account so far. However, Olson argues that the metaphysics of what we are is unrelated to the personhood question—the properties required for an entity to possess moral status equivalent to adult human beings (Olson, 2007, p. 16). His point is that if we take, say, Locke's definition of a person as a thinking, intelligent being (Locke, 1975, p. 335), that does not imply all human animals are persons, and it does not imply all persons are human animals. He claims that human beings are persons contingently, not essentially (Olson, 2007, p. 45). Clearly, if moral personhood is equated with Locke's definition or similar accounts, Olson is correct.

Locke's definition of a person is intuitive, as it aligns with our common usage of 'person' as a man, woman or child. However, this does not imply that a moral person—an individual possessing full moral status—necessarily has the properties Locke suggests. There are a variety of accounts of moral status, both for its grounding and for the requirements for full moral status. For example, there are numerous accounts of Locke that require an advanced level of cognitive or psychological capacities for full moral status. Examples include accounts proposed by Kant (2012), Mary Anne Warren (1973), Jeff McMahan (2003), Peter Singer (2011), and Giubilini and Minerva (2013). They generally reference properties such as self-awareness and rationality. Other accounts predicate moral status on the *potential* to develop these properties rather than the properties themselves. One example is Jim Stone's potentiality account (1987). Utilitarianism is based on an entity's interests in obtaining pleasure and avoiding pain, and so

moral considerability is based on sentience<sup>36</sup>. Finally, the substance view is an example of an account that grounds moral status on the dignity of being a rational substance created by God.

Accounts of moral status can be justified in at least two different ways. First, an explanation can be given as to why an account's proposed properties for grounding moral status are plausible. For example, Kant argues autonomy of the will is the basis of moral status because it can set its own ends and legislate its own law (Kant, 2012, 4:437). Singer (2011, p. 50) argues that sentience grounds moral status because only sentient beings have the capacity to suffer.

The second approach is abductive. We consider our moral intuitions and determine how plausibly the proposed account deals with these intuitions (Liao, 2010). For example, it is common to hold that young children have equal moral status to adults. However, Lockean accounts generally concede that infants, young children, and human beings who are severely cognitively impaired do not meet the threshold for personhood. As they possess lesser (or even no) moral value according to these accounts, this implies that they might be sacrificed for the benefit of human beings with full moral status, which is obviously problematic. Ethicists have grappled with this issue: one proposed solution to this problem is to base moral status partly on relational properties, such as the parent-child relation (Singh, 2020), an approach I have criticised (Blackshaw & Rodger, 2020a). Person-at-conception accounts such as the substance view have no difficulty with this scenario, as they hold that infants, small children, reversibly comatose adult human beings, and ordinary adult human beings share equal moral status. And,

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<sup>36</sup> Singer (2011) argues that under utilitarianism, persons may have additional rights over other sentient beings. This is because they have desires for the future, and their happiness will be higher if there is a prohibition on killing persons.

while person-at-conception views have been seen to struggle with certain other cases, I have argued elsewhere that these charges can largely be rebutted<sup>37</sup>.

The upshot is that we are not compelled to accept the Lockean account of a person as a requirement for moral personhood—each account of moral status and personhood must be assessed on its own merits and failings. However, we must decide upon a plausible alternative grounding of moral status.

As the aim is to provide a replacement for the substance view, a starting point is to consider the substance view's grounding for moral status and consider similar approaches that are not entangled in Aristotelian metaphysics, which is one of the goals of the alternative account. Ultimately, moral status according to the substance view can be traced to possession of a rational nature. In Thomistic parlance, this means possession of an immaterial rational soul, but it could also be construed as being the kind of thing that, in the right environment, can either develop rationality or already possess it.

In the former case, such a rational nature would be a *potential for rationality*. Clearly, possessing the potential to be F is not the same as actually being F, and if actual possession of rationality is required for full moral status (as in Lockean accounts), then human beings with the potential for rationality are not persons. However, I will deal with this objection later, and for now, I will suggest that possession of a rational nature might be used as the grounding for full moral status in an animalist account to replace the substance view.

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<sup>37</sup> See Blackshaw & Rodger (2019); Blackshaw & Colgrove (2020); Colgrove, Blackshaw and Rodger (2021); Blackshaw, Colgrove and Rodger (2022a); Blackshaw, Colgrove and Rodger (2022b); Blackshaw, Colgrove and Rodger (2022c).

As this account is a form of animalism that predicates moral status on our rational nature, I refer to it as the *rational animal account*. In summary, it states that human beings are essentially rational human animals, possessing a rational nature, and are not merely animals as in Olson's account. It does not claim all human beings currently possess rationality, but rather they have the potential for rationality. I will argue that this account can provide a basis for the moral equality of all human beings, no matter what their stage of development.

Before proceeding to develop the rational animal account, I will describe two accounts that make helpful proposals that I draw upon and mention a third that has an element in common with my proposed account. First, Christopher Kaczor describes human beings as rational animals based on our natural capacity for rationality, much as I have described (Kaczor, 2014, pp. 106-111, 118-119). Second, S. Matthew Liao proposes that possession of the genetic basis for moral agency allows all human beings to qualify as rightsholders, by which he means moral persons (2010). Finally, Sivert Thomas Ellingsen, in a master's thesis (2018), proposes a similar account to Liao's as a lightweight 'simulation' of the substance view.

### **5.3. Kaczor's account**

As a philosopher in the Catholic tradition, Kaczor (2016) has explicitly defended the substance view. However, in his popular work on the ethics of abortion, Kaczor presents what he calls the *endowment account*, which claims that all human beings have moral worth based on the kind of thing they are: rational beings possessing a natural capacity for rationality (Kaczor, 2014, p. 107). In Kaczor's view, although immature human beings are not yet able to function rationally, they are still members of a 'natural kind' of being that is rational when it is fully flourishing (Kaczor, 2014, p. 108). This recalls the rational nature claim of the substance view.

Kaczor briefly mentions Boethius' definition of a person but does not delve into its details (Kaczor, 2014, p. 119).

Kaczor uses the term 'human dignity' to refer to why our natural kind is morally relevant and equates this dignity to intrinsic moral worth (Kaczor, 2013, p. 5). Again, this recalls the substance view's claim regarding our rational nature being the basis for our dignity. Kaczor provides two reasons why our dignity confers moral value. First, we have an orientation towards the moral goods of rationality and freedom (Kaczor, 2013, p. 9). As a result, it is immoral to inhibit our flourishing (Kaczor, 2013, p. 9). Kaczor describes his account as being 'a species-specific form of flourishing ordered to the goods of rationality and freedom' (Kaczor, 2014, p. 110).

Second, Kaczor argues that if we are to secure equal basic rights, we require an inclusive account based on the kind of being we are, rather than an account based on actual possession of certain capabilities such as rationality. Because such capabilities are not possessed by all in equal quantities, capabilities accounts usually postulate a threshold above which all human beings who possess a certain level of capability are regarded as having full moral status, implying they are moral equals. For example, McMahan calls this the 'threshold of equal worth' in his account of persons: the level of psychological capacities above which everyone has equal worth, even though their psychological capacities will vary (McMahan, 2002, p. 249). However, such accounts must contend with marginal cases which fall beneath these thresholds, such as infants, small children and those with severe cognitive disabilities. They imply that human beings in marginal cases do not enjoy equality with the majority of human beings who do exceed the threshold. So, a species membership account such as Kaczor's has

an advantage over these other accounts in that it supports many of our intuitions regarding human equality<sup>38</sup>.

In principle, although Kaczor's account is based on human species membership, it does allow for other species to have similar intrinsic moral value if they too have an orientation towards moral goods such as rationality and freedom. The substance view does not have this option, as it attributes our dignity as God-given.

Having considered Kaczor's account, it seems a viable candidate for an alternative to the substance view. However, it has some important drawbacks. First, Kaczor's use of human dignity as the basis for our moral worth seems superfluous. It would be less confusing to avoid the term and contend that our orientation towards the moral goods of rationality and freedom is the basis of our moral value. Second, Kaczor also appeals to a grab-bag of other accounts, which makes it difficult to ascertain what his own account consists of. For example, he appeals to Don Marquis' (1989) 'future like ours' argument to argue that it is immoral to take away our flourishing (Kaczor, 2013, p. 124) and cites Liao's genetic basis for moral agency as another basis for the intrinsic dignity of human beings (Kaczor, 2013, p. 124).

#### 5.4. Liao's account

Liao (2010) notes that it is widely agreed that accounts of moral value should avoid the charge of speciesism by meeting what he calls the Species Neutrality Requirement: they should provide an objective criterion for moral status that does not *a priori* exclude any species. As an objective criterion, Liao proposes possession of the genetic basis for moral agency, where he

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<sup>38</sup> Of course, it is also important to recall that a species membership account is also subject to the criticisms of the substance view detailed in part two of this thesis.

understands moral agency as ‘the capacity to act in light of moral reasons’ (Liao, 2010, p. 164). Liao defines this genetic basis as ‘the set of physical codes that generate moral agency’, which, for human beings, is found in their genome (Liao, 2010, p. 164). In addition to possession of these genes, he requires that they must be activated and coordinated with each other.

Clearly, all healthy human beings possess the genetic basis for moral agency, no matter what stage of development they are at. Liao also contends that most causes of conditions such as anencephaly are due to environmental factors, not genetic factors. For human beings who do have severe genetic defects that result in their lacking moral agency, he distinguishes between ‘genetic defects of the genes that make up an attribute and genetic defects that undermine the development of an attribute’ (Liao, 2010, p. 166). Liao considers genetic disorders such as Tay-Sachs and argues that these conditions typically affect a gene responsible for producing proteins or enzymes that help prevent the buildup of amino acids that affect brain development. In his view, human beings with these conditions still possess the genetic basis for moral agency.

While Liao’s account concerns moral status, not a metaphysical account of what human beings are, it does suggest a possible approach to grounding equal moral status for a rational animal account. However, in an effort to replicate as closely as possible the substance view’s concept of a rational nature, I base moral status on the genetic basis for rationality rather than moral agency. I will elaborate on the reasons for this choice when I present the account. Sivert Ellingsen takes a similar approach, as I explain below.

### **5.5. Ellingsen’s account**

Ellingsen’s (2018) account, which I discovered after developing the rational animal account, has a similar motivation, which is to develop a ‘person-at-conception’ account that avoids the

substance view's controversial metaphysics. It does not replace the substance view in its entirety, but provides an alternative basis for human moral equality.

Ellingsen takes as inspiration Liao's genetic basis for moral agency, and the substance view's concept of a rational nature. Accordingly, he modifies Liao's account to base moral status on the genetic basis for rationality. He argues that rationality is an intrinsic good and, therefore, it can serve as a grounding for moral status. Ellingsen distinguishes between first-order rationality, which is the actual possession of rationality, and second-order rationality, which is the disposition to develop first-order rationality. An example of second-order rationality is the genetic basis for rationality in a fetus that is yet to develop actual rationality. In Ellingsen's view, second-order rationality is also an intrinsic good, not an instrumental good. He argues that this is because it is the cause of first-order rationality and so indirectly produces its goods and that it produces the good of first-order rationality itself (Ellingsen, 2018, p. 72). This is a dubious claim, given that an instrumental good is one that facilitates an intrinsic good. Ellingsen notes that his account solves the problem of moral equality, as all human beings are (relatively) equally endowed with second-order rationality in their genetic code.

While Ellingsen's modification of Liao's account is a logical move given his desire to replace the substance view, it remains an account of moral status only. It cannot serve as a substance view replacement without providing a metaphysical account of what human beings are. This is the goal of the rational animal account that I present below.

## **5.6. The rational animal account**

The *rational animal account* states that we, human beings like ourselves, are rational animals. Like animalism, the claim that we are animals means that each of us is numerically identical to

a human organism. The claim that we are rational animals is reflected in the name of our species, *Homo sapiens*, which means ‘wise man’ or ‘wise human’. To be a rational animal is to be an animal that possesses what I call a *rational nature*. To possess a rational nature means that, under normal conditions, we either possess or will develop the actual capacity for rationality. The rational animal account interprets this to mean that we possess the genetic basis for rationality. This contrasts with the substance view’s claim that our rational nature is our possession of a rational soul created by God.

Like the substance view, the rational animal account also makes a moral claim: our moral value is based on our rational nature. In the case of the substance view, it claims that this moral value is itself grounded on the dignity of the rational soul, which is responsible for our rational nature. By contrast, the rational animal account justifies the moral relevance of the potential for rationality in two different ways. First, it argues that possession of a rational nature makes an entity intrinsically valuable. Second, it utilises the abductive approach I described earlier, arguing that it best fits our moral intuitions.

Before exploring these arguments, we need to have a grasp on what it means to be rational, and why non-human animals are generally not considered to be rational. Central to rationality is abstract thought: concepts, ideas, and normative reasons to believe and act (Oderberg, 2020, p. 102; Audi, 2002, p. 4; Korsgaard, 2018). This allows us to distinguish between non-human animals and human beings, as although animals may have reasons for their actions, they do not think about their reasons. Further, rationality underpins our capacity for self-consciousness, as it requires the abstract concept of self and the ability to make judgments about self (Oderberg, 2020, p. 102). It is possible that some primates are also self-conscious and even possess a degree of rationality, but I will set aside the question of whether they are characterised by

sufficient rationality to warrant high moral status. I will assume, however, that their moral status is less than the full moral status of human beings.

Currently, we cannot determine the genes required for the development of rationality. As I have explained, rationality involves self-consciousness, speech, intelligence, reasoning, and the ability to evaluate reasons. Each of these traits is likely to involve many genes. For example, researchers have identified over 1,000 genes associated with intelligence in human beings (Savage *et al.*, 2018). There are also specific genes that are crucial for human brain development that distinguish human beings from other primates<sup>39</sup>. Therefore, the genetic basis for rationality is likely to be the interaction of thousands of genes.

### **5.7. Moral status of rational animals**

To develop his account of moral status, Liao notes several widely held moral intuitions that such accounts should aim to support (2010). First, that all human beings share the same moral status. Second, that the criterion for moral status is neutral with respect to species: it should not automatically exclude any species, and should be able to be assessed empirically. As I have noted, Liao calls this the Species Neutrality Requirement. Finally, that moral status should be granted to ‘the kind of being that is typically characterized by moral agency’ (Liao, 2010, p. 168). He frames his account as an abductive argument that attempts to find a criterion for moral status that best matches these intuitions. He argues that the genetic basis for moral agency captures that intuitive appeal whilst being grounded in an ‘identifiable, actual, physical attribute’ (Liao, 2010, p. 168).

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<sup>39</sup> For example, see Charrier C., *et al.* (2012).

Rather than use Liao's criterion, I have chosen the genetic basis of rationality as the criterion for moral status, primarily because of the substance view's reliance on our rational nature and my aim to provide a replacement for the view. Rationality can play a similar role to moral agency. Like Liao's account, the genetic basis for rationality is not speciesist. It allows that other species could also possess it, and, as Liao suggests, could even allow for the moral status of aliens with something functionally equivalent to a genetic basis for rationality. It supports the intuition that all human beings possess equal moral status. Further, Liao regards rationality as an essential component of moral agency, while the definitions of rationality I provided earlier imply that moral agency might also be considered a component of rationality in that it involves normative reasoning about reasons. Like moral agency, rationality is also often thought to be strongly associated with moral personhood. For example, Carol Rovane argues that 'reflective rational agency' is central to the concept of personhood in the theories of Kant and social contract theorists such as Hobbes, Locke and Rawls (Rovane, 2004, p. 327). Locke himself described a person as a 'thinking, intelligent being that has reason and reflection' (Locke, 1975, p. 335). So, the genetic basis for rationality is a plausible alternative to the genetic basis for moral agency for grounding moral status.

One pertinent question is why the genetic basis for rationality should be preferred over the genetic basis for moral agency. One reason is the existence of psychopaths, who have diminished moral responsibility and are unable to function as moral agents (Ramplin & Ayob, 2017). This does not necessarily mean that psychopaths lack the genetic basis for moral agency. A recent review suggests that both genetic and environmental factors influence the development of psychopathy (Mariz *et al.*, 2022). It might be that the genes responsible are blocking the expression of moral agency rather than the basis for moral agency being absent, as Liao suggests. However, it certainly seems possible that there are rational psychopaths who

lack the genetic basis for moral agency, and yet we would still want to grant that they possess full moral status. Conversely, given Liao's definition of moral agency as 'the capacity to act in light of moral reasons', it is difficult to see how moral agency could be exercised without using rationality to evaluate these moral reasons (Liao, 2010, p. 164). The genetic basis for rationality is more foundational and provides a more inclusive grounding for moral status than does the genetic basis for moral agency.

There is also precedent in Kantian ethics for using rationality as the basis for moral status. According to Kant, to have dignity is to possess a rational nature, which, by its autonomy, is able to legislate the moral law (Kant, *Groundwork*, 4:437). So, Kant directly linked possession of a rational nature to dignity and moral worth.

Finally, as I first noted, since the substance view also regards our rational nature as central to our moral value via the rational soul, and this account is intended as a replacement for the substance view, it is logical to prefer rationality over moral agency.

### **5.8. Justifying moral status**

I stated earlier that I use two different approaches to justify the moral relevance of the genetic basis for rationality. In this section, I will explain these approaches.

First, I argue that possession of a rational nature makes an entity intrinsically valuable. This claim is derived from McMahan's argument that Lockean persons are intrinsically valuable (McMahan, 2002, pp. 232-265). The foundation of McMahan's reasoning is what he calls the *Equal Wrongness Thesis*, which states that the wrongness of killing Lockean persons does not vary with their circumstances, age, and other characteristics but is equally wrong for all

Lockean persons (McMahan, 2002, p. 235). This is, he argues, a widely held view. The reason *why* killing Lockean persons is wrong is because all persons have equal worth based on their intrinsic nature—what McMahan calls the *Intrinsic Worth Account* (2002, p. 243). According to McMahan, the intrinsic properties that are the basis for the worth of persons are their psychological capacities (McMahan, 2002, p. 242). Killing persons is, McMahan believes, a failure of respect for this worth (McMahan, 2002, p. 243). He bases this on the Kantian principle of respect for persons (McMahan, 2002, p. 245).

There are two difficulties that McMahan acknowledges with the Equal Wrongness Thesis and his claim that psychological capacities are the basis of intrinsic worth. First, it only seems to apply to Lockean persons—beneath this level of psychological capacities, such as for other animals, the wrongness of killing seems to vary with the degree of harm caused (McMahan, 2002, p. 244). As a result, McMahan proposes a ‘threshold of respect’ that distinguishes persons from animals. Second, he acknowledges that the ‘traditional view’ is that it is seriously wrong to kill an anencephalic infant which lacks the capacity for consciousness (McMahan, 2002, p. 230). However, anencephalic infants are not Lockean persons; moreover, many other animals have higher psychological capacities than they do. In McMahan’s view, we have to revise our views on the wrongness of killing anencephalic infants and accept that it is less serious than we have supposed.

These difficulties can be avoided by basing our intrinsic worth on our rational nature<sup>40</sup>. That is, all organisms with a rational nature are considered to be moral persons with very high intrinsic worth and worthy of respect. No threshold of respect is required (although a decision

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<sup>40</sup> It might be thought that anencephalic infants do not have a rational nature. I defend against this objection later in this part.

must still be made as to which species have a rational nature). Some Kantian scholars argue that this is what Kant meant by person. For example, Patrick Kain argues that Kant concluded that ‘moral status ought to be ascribed to an organism from its point of biological origin’ because he regarded moral status as grounded on the ‘predisposition to personality’ (Kain, 2009, p. 96). ‘Predisposition to personality’ can easily be construed as the genetic basis for rationality. Taking a slightly different approach, Allen Wood argues that as well as respecting Kantian persons as actually rational beings, we should respect beings that show glimpses of a rational nature, such as young children (Wood, 1998, p. 198).

My second argument is an abductive argument that claims that basing moral status on our rational nature provides the best explanation for a broad range of widely held moral intuitions. Elsewhere, I have explained that the substance view accounts for intuitions such as our identity with a fetus, human exceptionalism, the moral equality of all human beings, and the wrongness of infanticide and prenatal injury ((Blackshaw, 2022b)<sup>41</sup>. This applies to all ‘person-at-conception’ accounts, not just the substance view. As almost all human beings possess the genetic basis for rationality, the rational animal account is a ‘person-at-conception’ account.

## **6. Objections**

As I have explained, one motivation for developing an alternative to the substance view is its reliance on Aristotelian metaphysics. The rational animal account replaces this with animalism, and therefore inherits animalism's strengths and weaknesses. It is important to consider whether there are objections to animalism of similar weight. There is little point in replacing one account with another if the latter has little or no advantage over the former. I examine the most serious

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<sup>41</sup> See the fourth paper of part two of this thesis.

objection below and conclude that it does not pose a significant obstacle to its use in the rational animal account. I also anticipate several likely objections to using the genetic basis for rationality as the grounds for moral status and argue that these can be resolved.

### 6.1. Reliance on animalism

Earlier, I noted that animalism has a strong intuitive appeal. However, there is a significant challenge to animalism, also grounded in intuition, known as the transplant objection (Parfit, 2012, pp. 9-12). If my brain was removed and placed into someone else's head, and their brain was destroyed, the human being that results would retain all my memories and beliefs. According to animalism, it seems that this is not me—it is still the other person, and they have merely received an organ transplant from me, even though they have a new brain and new memories. I am still my body, which is missing my cerebrum. This is strongly counter-intuitive to most people—we feel that psychological continuity is important to our identity, and therefore we should go with our cerebrum. A related objection is the 'remnant-person problem' (Olson, 2016, p. 148). If our body is whittled away, finally leaving our brain, which is placed in a vat, what Olson refers to as a 'remnant person', our intuition tells us that we go with our cerebrum, even though our body is missing.

Rory Madden (2016) contends that animalism actually strongly supports the intuition that we go with our cerebrum. He argues that our persistence as animals requires the continual preservation of a sufficient number of our capacities. The cerebrum meets this requirement, and so cerebrum transplants and the resulting psychological continuity mean that we go with our cerebrum. However, Madden's proposal does not require that psychological continuity is *necessary* for our persistence—the remaining body also has sufficient capacities to be considered a human animal. It does, however, have fewer capacities than the cerebrum. The

separation of a person's cerebrum from their body is, therefore, a fission event—it results in two human organisms. This fission is asymmetric, so the original human organism goes with the cerebrum, leaving a new human organism. When our cerebrum is transplanted into another body, Madden argues that this is a case of asymmetric fusion. Because the cerebrum has so many of our capacities, it dominates the capacities provided by the body, and the body is absorbed into us, resulting in one human organism.

Madden does not deal with split-brain scenarios, where the brain is separated into two cerebral hemispheres and each hemisphere is transplanted into a different body. In my view, each hemisphere would still preserve sufficient capacities for our persistence, and the fusion of each hemisphere with a new body would produce two new human animals, each somewhat different from the original animal. On the psychological account, each individual would be psychologically continuous with the original person, and yet they cannot each be that person, which is problematic. The substance view, too, has difficulties with a split-brain scenario: it is unclear which part of the brain the rational soul will go with. So, animalism has an advantage over these two accounts when dealing with split-brain transplant scenarios.

To summarise, animalism is concordant with our intuition that we are animals, and it can deal with the transplant objection. It is better able to explain the split-brain transplant scenario than the psychological view and the substance view. Compared to the substance view, it also has the advantage of avoiding reliance on Aristotelian metaphysics, and it does not resort to the intervention of God as the source for its most important element, which, for the substance view, is the rational soul.

## **6.2. Moral relevance of potential rationality**

I noted earlier that possession of a rational nature means having the ability to either develop rationality or already possessing rationality, in both cases via the genetic basis for rationality. In the first case, a rational nature means a potential for rationality, not actual rationality. If rationality itself is thought to be the morally relevant property, then having the potential for rationality seems to imply that pre-rational human beings do not have the same moral status as more developed human beings. Christopher Grau (2010) makes a similar criticism of Liao's account. He suggests that the genetic basis for moral agency is only of instrumental value because it enables the possession of moral agency, which is intrinsically and morally valuable. Obviously, this applies to the genetic basis for rationality as well.

First, it is worth noting that it is difficult to provide an independent argument that any proposed criterion for moral status is a genuine basis of worth or value. The best we can do is show that the proposal performs well intuitively (Liao, 2010; Floris, 2021).

Second, I have outlined a case for the moral relevance of a rational nature, using McMahan's case for a threshold of psychological capacities for moral personhood as a starting point but arguing that possession of a rational nature better explains a broad range of widely held moral intuitions.

Third, when we give preference to infants and very young children in some rescue situations (Liao, 2010), we implicitly concede that actual possession of properties such as moral agency and rationality are not required for moral status. John Rawls also makes this point, arguing that since infants and children have rights, 'the minimal requirements defining moral personality refer to a capacity and not to the realization of it' (Rawls, 1999, pp. 445-446).

Fourth, as Ellingsen (2018) explains, an argument can be made that second-order rationality (which is his term for the potential for rationality) is morally relevant because it is responsible for rationality: without it, rationality would not be possible. In addition, Liao (2010) points out that even moral agents do not necessarily *act* morally, implying that moral agency itself could be criticised as being of only instrumental value: it makes moral behaviour possible. Clearly, the same point can be made for the genetic basis for rationality: actual possession of rationality is no guarantee that an individual will act rationally.

### **6.3. Non-rational human beings**

The qualification that ‘almost’ all human beings possess the genetic basis for rationality raises a number of questions. Clearly, a number of human beings never develop rationality due to developmental disorders or through injury. Do the human beings who never become rational possess the genetic basis for rationality?

Clearly, those human beings who are not rational because of disease or accidental injury still have the genetic basis for rationality. Under different circumstances, they would be rational beings. For example, consider those suffering from advanced Alzheimer’s disease. Clearly, having been rational, these human beings do possess the genetic basis for rationality, and so they are regarded as having equal moral status with all other human beings.

There are also cases of those who never developed rationality, and because of a condition such as anencephaly, in which major portions of the brain fail to develop, never will. Environmental factors are largely responsible; it is estimated that 96% of spina bifida and anencephaly cases in Ethiopia could be eliminated by fortifying foods with folic acid (Oakley, 2020). This implies most cases of anencephaly do possess the genetic basis for rationality.

There are many other conditions that cause intellectual disabilities, and one of the most recent and largest studies of its kind confirms that heritability is the most important factor (Lichtenstein *et al.*, 2022). This implies that human beings suffering from these conditions lack the genetic basis for rationality. Interestingly, though, it has been shown that the cause of extremely severe intellectual disability is quite different to mild intellectual disability (Plomin, 2022). Of course, the most severe cases of intellectual disability are the most likely candidates for individuals lacking a rational nature. As it happens, mild cases are inherited, while extremely severe intellectual disability is primarily due to mutations that arise spontaneously and chromosomal abnormalities (Reichenberg *et al.*, 2016). Given that many genes are likely to be associated with a rational nature, each making a small contribution, and that it only takes one type of chromosomal abnormality to result in severe cases of intellectual disability, it seems likely that these abnormalities block the expression of our rational nature. This means the genetic basis of rationality is still present, something Liao (2010) also suggests regarding moral agency. Further, maternal infections such as rubella and hypoxia at birth are also associated with severe intellectual disability (Reichenberg *et al.*, 2016). In these cases, individuals clearly possess the genetic basis for rationality.

Of course, it is possible that there are human beings who do not possess the genetic basis for rationality. Assuming that many genes are likely to be involved, we would need to estimate how many would need to be deleted or mutated before the potential for rationality is erased. Given the small contribution typically made by each gene in complex traits, it is probable that a substantial number would need to be modified, and this is extremely unlikely to be compatible with survival. As Liao (2010) concedes, it is theoretically possible that such human beings

could exist or be created artificially, but it may be that these individuals are not actually human beings at all, depending upon our definition of human beings.

#### **6.4. Rational non-human animals**

McMahan poses an interesting challenge for accounts based on the genetic basis for rationality. He imagines that we discover that dogs have the intrinsic potential for rationality, but it requires years of intensive therapy to realise this potential (McMahan, 2002, pp. 315-316). Perhaps, like an anencephalic infant, the expression of the genetic basis for rationality has been blocked in some way. McMahan argues that dogs who do acquire actual rationality would indeed be moral persons, but those that do not would not be, which is contra the rational animal account.

One issue for McMahan's argument is that rationality is highly dependent on the physical structure of the brain, particularly the prefrontal cortex (Fuster, 2002). We know that dogs do not have a well-developed prefrontal cortex, and no amount of training would be able to compensate for this. Years of intensive physical therapy will not produce rational dogs. However, perhaps dogs do have the genetic basis for rationality, but the development of the necessary brain structures has been blocked by epigenetic factors—environmental influences that affect gene expression without modifying the underlying DNA sequence. The difficulty here is that, as I noted earlier, our rationality (and brain structures) is likely to be due to the interactions of thousands of genes. If there is no evidence that the necessary brain structures are present in any individual of the species, then many genes must have their expression blocked, which seems extremely unlikely. It is far more plausible that the genetic basis for rationality is not present. If, for a given species, the necessary brain structures are absent and we have never observed an individual exhibiting rationality, it is reasonable to assume that members of that species do not possess the genetic basis for rationality.

## 6.5. Inclusiveness

The genetic basis for rationality is in our genome, which raises the question of whether this criterion is too inclusive. As every cell of a human being has a copy of our genome, every cell has the genetic basis for rationality and would seem to have equivalent moral status to human beings. This seems absurd.

Liao anticipates this objection to his account, and argues that ‘human cells are not beings; they are parts of beings’ (2010). They cannot develop into a human being because they are not self-contained organisms, and the genes are not activated and coordinated with each other. This latter reason also explains why merely integrating the human genes for rationality into a cabbage does not endow the cabbage with moral status. For the cabbage to be granted moral status, the genes must be activated and coordinated to the extent that they produce rationality in the cabbage. Presumably, this is dependent on the cabbage also possessing the genetic basis for the development of a brain complex enough and large enough to support rational thought. However, by the time a cabbage is modified to this extent, it would no longer be a cabbage and might indeed be the kind of entity that we would grant moral status to—something like a highly advanced brain organoid that happens to grow cabbage leaves.

Cloning is an example of a case where the genes for rationality will be activated and coordinated. Cloning involves extracting the DNA of a cell and transferring it into an egg cell that has had its nucleus removed. The embryo is cultivated *in vitro* before being transferred into an adult female for gestation and eventual birth. While the cell containing the DNA that is

used is not a self-contained organism, the embryo that is produced is, and the genes for rationality are at work to produce rationality in the developing human being.

## **6.6. Species membership**

I claimed earlier that the rational animal account is not speciesist, as the criterion for moral status is not specific to human beings. For example, it allows an alien species to possess the genetic basis for rationality, although this is likely to be encoded using something other than DNA. There is, however, a well-known case advanced by McMahan (2013) against the moral significance of species membership, which he calls the ‘transgenic spectrum’ argument. If the rational animal account is not speciesist, this argument should pose no difficulties for it.

McMahan begins with the assumption that as we share 94% of our genes with chimpanzees, the remaining 6% must be responsible for the differences between humans and chimpanzees. McMahan imagines a spectrum of individuals with the relevant 6% of chimpanzee genes gradually being replaced by human genes and suggests we consider two individuals in the spectrum. The first individual has 99.7% chimpanzee genes, with only 0.3% replaced by human genes, which in this case are the genes that code for a human brain. This individual is biologically a chimpanzee but with human intelligence. The second individual has 99.7% human genes, but 0.3% has been replaced by the genes that code for a chimpanzee brain. This individual is biologically a human being but with chimpanzee intelligence. If species membership is morally significant, then the second individual has full moral status, despite having chimpanzee intelligence. The first individual does not have full moral status, despite having human intelligence.

This is clearly a problematic result for the claim that species membership is relevant to moral status. However, it poses no difficulties for the rational animal account. The only consideration for full moral status is whether an individual possesses the genetic basis for a rational nature. The chimpanzee with a human brain clearly does have this basis (assuming that this is synonymous with a rational nature), while the human being with a chimpanzee brain does not<sup>42</sup>. Therefore, the chimpanzee with a human brain has full moral status, while the human being with a chimpanzee brain does not, as we would expect. McMahan's transgenic spectrum produces the same expected result when used in reverse when certain human genes are gradually removed and replaced with chimpanzee genes. I conclude that the argument does not present a challenge to the rational animal account.

## **7. Conclusion**

In this part, I have outlined the traditional substance view, which is predicated on Aristotelian metaphysics and the ideas of Boethius and Aquinas, and noted some of the challenges it faces. I have drawn attention to the use of the substance view in modern bioethics, where it serves as a 'person-at-conception' view, entailing that all human beings share the same high moral status. However, I explained that the substance view is often utilised in this way without an awareness of the underlying metaphysics and the challenges the account faces.

In response, I have developed what I call the rational animal account of human beings. It draws on animalism, Kaczor's rational animal account, Liao's genetic basis for moral agency, and Ellingsen's account. It states that human beings are rational animals. Rational animals possess

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<sup>42</sup> Recall my earlier note that primates, whatever their moral status as possibly rational beings, have a lesser moral status than human beings.

a rational nature, meaning they have the potential to develop rationality. This can be formulated as a claim that human beings are animals with the genetic basis for rationality.

The genetic basis for rationality is likely to be based on hundreds, possibly thousands, of genes. It is unlikely that human beings lacking this basis would be regarded as human beings at all. Common genetic conditions that do result in a lack of rationality are likely to be the result of mutations that block the proper development and expression of the genetic basis for rationality. Therefore, even human beings with severe cognitive disabilities will still possess a rational nature. Human beings that have lost their capacity for rationality due to disease or accident also still have a rational nature and, therefore, the same moral status as every other human being.

The rational animal account avoids the difficulties associated with the substance view's reliance on Aristotelian metaphysics. As a variety of animalism, it does inherit its weaknesses, but these are not decisive, and animalism's main claim is strongly intuitive. The rational animal account also supports our widely shared intuition regarding the moral equality of human beings, particularly infants and those who have lost their capacity for rationality. It is not subject to the difficulties of threshold accounts that require actual rationality or similar properties for moral value. McMahan's transgenic spectrum argument, which is aimed at speciesist accounts, does not pose any obstacles for the account.

I conclude by suggesting that those who utilise the substance view as a 'person-at-conception' account should seriously consider the rational animal account. In particular, they should gauge their commitment to Aristotelian metaphysics, ponder the specific challenges faced by the substance view, and weigh this against the advantages of the rational animal account over the substance view that I have explained above.



## **PART FOUR: The impairment argument**

### **Context**

As well as working with the substance view, which argues that fetuses possess full moral status, I have engaged with numerous other arguments in support of the pro-life position. Two of these arguments eschew references to personhood and argue for the immorality of abortion in ways that ostensibly do not appeal to the moral status of the fetus. The first is Marquis' (1989) 'future like ours' argument, in which Marquis argues that abortion is immoral because it deprives a fetus of a future filled with valuable goods. The second is Perry Hendricks' (2018) impairment argument for the immorality of abortion.

I have engaged with Marquis' reasoning elsewhere (Blackshaw, 2019a; Blackshaw, 2023a) and have chosen not to include this work in this thesis. In this part, I examine Perry Hendricks' impairment argument, which is far more recent. My main interests in this thesis are personal identity and moral personhood. Hendricks' argument purports to get by without commitments on each of these concepts, and so it is important to examine whether it succeeds. Further, it will be helpful to determine if it makes implicit appeals to personal identity and moral personhood that are not readily apparent.

I have critiqued Hendricks' reasoning in several papers (Blackshaw, 2019c; Blackshaw, 2019d). Together with Perry Hendricks, I have attempted to modify the argument to overcome its deficiencies and to defend it (Blackshaw & Hendricks, 2021a; Blackshaw & Hendricks, 2021b; Blackshaw, 2021b; Blackshaw, 2024a; Blackshaw, 2024b). Many of these papers are short responses that require an explanation of the paper they are responding to, and I have also

subsequently decided that our modification of the impairment argument is unsuccessful. As a result, I have chosen to draw selectively from my work to produce a single, coherent paper that represents my current thinking on the impairment argument. This paper goes well beyond my published work on the impairment argument and, at the time of writing, is unpublished. It does not use material from papers co-authored with Hendricks (although it cites them) or a single-author paper that defends the modification I have mentioned (Blackshaw, 2021b). Numerous paragraphs are drawn from the following papers (Blackshaw, 2019c; Blackshaw, 2019d; Blackshaw, 2024a; Blackshaw, 2024b). I footnote these where they occur.

#### **4.1 Introduction**

The impairment argument for the immorality of abortion appeals to logical consistency in moral reasoning. It is based on the idea that if performing action A is immoral, then performing action B that encompasses or includes action A is also immoral. For example, if it is immoral to harm someone, then it is also immoral to harm someone while robbing them.

Importantly, the context of both A and B must be morally equivalent. Let us say it is immoral to chop off someone's finger. It may not be immoral to chop off someone's arm (including their finger) if chopping off their arm is a medical procedure intended to save their life.

Several ethicists have noted that this reasoning suggests a problem for pro-choice advocates regarding prenatal injury and abortion (Gensler, 1986; McMahan, 2002, pp. 280-281). Clearly, it is more seriously wrong to kill a person than to non-lethally injure them. Since it also seems seriously wrong to inflict prenatal injury, it raises the question as to why it is also not wrong to kill the fetus via abortion.

The impairment argument is a more formal presentation of this reasoning, using the concept of impairment, which Hendricks defines as limiting an ability of an organism to any degree (Hendricks, 2018, p. 247). An example of impairment is cutting off someone's arm: their ability to use their arm has been impaired. For prenatal injury, the impairment argument uses the example of fetal alcohol syndrome (FAS), which results in numerous physical and intellectual impairments after birth. It is caused by maternal consumption of alcohol while pregnant, and there is no known safe exposure level (Thomas *et al.*, 2010). The argument contends that if it is immoral to give a fetus FAS, then it is immoral to impair the fetus to a higher degree than FAS does. Since abortion impairs the fetus to a higher degree than FAS, abortion is immoral.

In this paper, I will explain the impairment argument in detail and examine the numerous challenges it faces. I conclude that while it possesses considerable intuitive appeal, a closer look reveals it is heavily dependent on our pre-existing beliefs regarding the moral status of the fetus. As a result, it is unpersuasive for those holding pro-choice views, and for pro-life advocates, it is superfluous.

#### **4.2 The impairment argument explained**

Hendricks' most recent presentation of the impairment argument is as follows (Hendricks, 2022a, p. 163):

1. If it is immoral to impair the fetus by giving it FAS, then, *ceteris paribus*, it is immoral to kill the fetus.
2. It is immoral to impair the fetus by giving it FAS.

3. *Ceteris paribus*, it is immoral to kill the fetus.
4. Aborting a fetus (in most cases) kills the fetus.
5. *Ceteris paribus*, aborting a fetus (in most cases) is immoral.

The first and most important premise is based on what Hendricks calls *the impairment principle*. It purports to be an appeal to logical consistency in moral reasoning, as I noted earlier:

if it is immoral to impair an organism O to the n degree, then *ceteris paribus*, it is also immoral to impair an organism O to the n + 1 degree (Hendricks 2018, p. 247).

To illustrate the principle, Hendricks suggests an example: if it is immoral to cut off someone's hand, it is also immoral to cut off someone's hand and foot. The impairment principle has intuitive appeal: if a certain impairment is immoral, it is natural to assume that a more severe (n+1) impairment is also immoral.

The crucial caveat of the impairment principle is the *ceteris paribus* clause, which Hendricks explains requires the morally relevant details of the first impairment to be sufficiently similar to those of the more severe impairment (Hendricks, 2018, p. 247). It is clear why this is required: impairments, in themselves, are not necessarily immoral. For example, as I noted earlier, it is not immoral to cut off someone's arm if it is diseased and doing so is a medical necessity. Rather, we need to ensure that the morally relevant circumstances associated with each impairment are equivalent. Only then can we claim that if the first impairment is immoral, it follows that the second and greater impairment is also immoral. For clarity, I will refer to this requirement as *morally relevant uniformity* in preference to Hendricks' use of *ceteris paribus*.

In addition to the impairment principle, the first premise also requires that killing a fetus impairs it to a higher degree than giving it FAS. According to Hendricks, FAS limits a fetus's ability to develop properly, but killing a fetus completely limits its ability to develop properly (Hendricks, 2022a, p. 165). Therefore, killing a fetus impairs it more than giving it FAS does. Importantly, Hendricks argues that the impairment associated with FAS occurs *at the time alcohol is consumed*<sup>43</sup>, even though the effects are not experienced until after birth.

Hendricks argues that the second premise is self-evident: it is always immoral to impair a fetus by giving it FAS. Therefore, if the first premise is also true (and the impairment principle is valid), it is immoral to kill the fetus, provided there is not a sufficiently valuable good obtained by doing so. Since abortion kills the fetus in most cases<sup>44</sup>, it follows that abortion is immoral in those cases. Of course, in cases where abortion does not kill the fetus, it will also follow that abortion is immoral if it results in a greater impairment than that resulting from giving the fetus FAS.

### 4.3. Comparing impairments

Some examples will help illustrate the idea of impairment and how impairments can be compared with each other<sup>45</sup>.

**Eyesight 1:** causing someone to have blurry sight limits their ability to see properly.

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<sup>43</sup> In fact, at the time it chemically interacts with the brain, sometime after consumption by the mother.

<sup>44</sup> It is not clear whether Hendricks is referring to cases where late-term fetuses have survived abortions or whether he is allowing for the possibility that some abortions could be a case of letting the fetus die. In the latter case, it could be that he is claiming that letting the fetus die is just as immoral as an abortion that kills the fetus, as each method causes the same impairments.

<sup>45</sup> The examples in this section are taken from Blackshaw (2024b).

**Eyesight 2:** causing someone to lose their sight completely limits their ability to see properly.

In Eyesight 1 and 2, the ability being impaired (limited) is the ability to see. The impairment in Eyesight 2 is a greater impairment than that of Eyesight 1, because the same ability is impaired, but to a higher degree. If the impairment in Eyesight 1 is considered to be an  $n$  degree impairment, the impairment in Eyesight 2 can be considered an  $n+1$  degree impairment. I'll refer to this as the *higher degree account of impairment comparison*.

There is another way to compare impairments, as shown in examples 3 and 4.

**Injection 1:** injecting someone with a drug that impairs their memory.

**Injection 2:** injecting someone with a drug that impairs their memory and also causes them to have blurry sight.

The impairment in Injection 2 concerns an impairment that is greater than the impairment in Injection 1, because it includes exactly the same impairment as in Injection 1, as well as an additional impairment. Again, if it is immoral to cause the impairment in Injection 1, the impairment principle tells us it is also immoral to cause the greater impairment in Injection 2. I'll refer to this as the *superset account of impairment comparison*: the greater impairment is a superset of the lesser impairments.

Both of these impairment comparisons are encapsulated in Hendricks' formal definition:

‘I will take O being impaired to the  $n+1$  degree to mean that O has been impaired in all the ways included in the  $n$ th degree and that O has at least one additional impairment, or O has all and only the impairments to the  $n$ th degree, but at least one of her impairments is more severe’ (Hendricks, 2018, p. 247).

Returning to FAS and abortion, I have noted that FAS inflicts numerous impairments on the fetus. Let us say that FAS impairs the fetus to the  $n$ th degree. Killing the fetus impairs it to the  $n+1$  degree because this results in all of its abilities being impaired, including those impaired by inflicting FAS. If the impairment principle is valid, and we grant Hendricks’ claim that inflicting FAS is immoral, then it follows that it is immoral to kill the fetus, provided that all other relevant moral factors are held constant between the two cases of inflicting FAS, and killing the fetus. This provision is encapsulated in the *ceteris paribus* clause of the impairment principle, and as we will soon discover, it is the central arena for disputes about the impairment argument. The argument’s premises make no reference to moral personhood and do not explicitly rely on a particular account of personal identity. Therefore, the impairment argument, if sound, is a seemingly important challenge to those holding to a pro-choice position.

### **4.3. Critiquing the argument**

In this section, I will discuss some important critiques of the impairment argument and assess their validity. First, I consider the claim that impairing a fetus with FAS is not immoral a contradiction of a key premise of the argument. Next, I consider Alex Gillham’s (2023) claim that the concept of greater impairment is not clear enough to be useful. I then consider the claim that death is not an impairment but something else.

After rejecting the claims above, I then consider what I believe to be the more problematic aspects of the impairment argument: the weighing of the goods and harms associated with lesser and greater impairments. This is necessary to demonstrate that morally relevant uniformity holds between the cases of FAS and abortion, a requirement of the impairment principle. I show that these cannot be assessed without taking into account our pre-existing beliefs regarding the good, harm and the moral status of the fetus. When we do, it turns out that the impairment argument only holds if the fetus is held to have high moral value and if Thomson's reasoning regarding the importance of bodily integrity is rejected.

#### **4.3.1 Is causing FAS immoral?**

The first important challenge for the impairment argument is the claim that causing prenatal injury is not actually immoral. Since the impairment argument is seemingly predicated on the intuition that prenatal injury caused by FAS is immoral, this claim must be dealt with for the argument to proceed.

One ethicist who asserts this is Jessica Flanigan (2020), who argues that prenatal injury is not necessarily immoral, even if the fetus has a high moral status. She bases her argument on two premises. First, she accepts Thomson's claim that pregnancy is a Samaritan act: good for the fetus but not morally required. Second, that abortion is permissible. Flanigan then contends that a pregnant woman is not obliged to provide an unborn child with the best possible life as long as their life is worth living. Therefore, they may make choices that risk prenatal injury for the fetus. However, Flanigan's argument is not a challenge to the impairment argument, as it is predicated on the permissibility of abortion. Therefore, Flanigan's position is assuming what the impairment argument is claiming to disprove.

Van Oosterum and Curran (2023) take a different approach, arguing that in some cases, inflicting prenatal injury might be permissible, depending on the burdens on the woman that it alleviates. They provide the example of a woman who has been raped and has the fetus removed and gestated *ex utero*. Van Oosterum and Curran believe this is permissible, even if the process of doing so causes impairments similar to FAS. Their point is that the immorality of impairment is dependent on the circumstances surrounding the impairment.

However, van Oosterum and Curran do not seem to realise that the impairment argument uses FAS merely as an example of impairment<sup>46</sup>. My assumption is that Hendricks chose FAS because it is a relatively common condition known to be caused by alcohol consumption during pregnancy, and it seems uncontroversial to claim it is immoral to deliberately cause it. If our intuitions regarding the immorality of FAS are thought to be unclear, then we can consider other, more severe impairments to use with the impairment principle. Hendricks (2018) is clear that death is a maximal impairment of the fetus, and so any other impairment that does not cause death is a lesser impairment and can, therefore, be utilised in the impairment argument as an  $n$  degree impairment (compared to death's  $n+1$  degree impairment).

There are other teratogenic drugs that cause far more severe impairments than FAS that we could consider, such as thalidomide. Thalidomide was used in the 1950s and 1960s to treat nausea in pregnant women (Kim & Scialli 2011). It was later found to cause severe birth defects, including phocomelia, a condition where limbs are extremely shortened or absent. Prescribing thalidomide was described as a tragedy and resulted in substantial changes in toxicity testing of pharmaceuticals. Would it be permissible to inflict such severe birth defects

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<sup>46</sup> I responded to van Oosterum and Curran, and the following three paragraphs are taken from that response (Blackshaw, 2024a).

on a developing fetus in order to avoid continuing a normal pregnancy? In my view, this is unlikely.

If it is contended that even inflicting phocomelia is not immoral, more severe impairments can be examined since they are still  $n$  degree impairments in comparison to the  $n+1$  degree impairment inflicted by abortion. For example, impairing a fetus such that it will suffer severe, unbearable pain for the duration of its very long life is something most people would conclude is not a life worth living. I doubt that pro-choice advocates would consider it permissible to do so.

More generally, even if it is contended that inflicting FAS is not immoral in order to avoid a normal pregnancy, we can always find a severe enough impairment that is uncontroversially immoral and that will serve as a replacement for FAS in the impairment argument. Accordingly, the claim that inflicting FAS is not immoral does not present a challenge to the impairment argument.

#### **4.3.2 Greater impairment is poorly defined**

Alex Gillham (2023) has recently identified what he believes to be an important gap in the impairment argument literature: its proponents have not clearly explained what it means for one impairment to be greater than another. As this concept is the foundation of the impairment argument, he argues it needs clarification if the argument is to succeed<sup>47</sup>.

Gillham contends that Hendricks' account of greater impairment is quantitative, citing various examples from Hendricks' work to demonstrate this. Gillham describes quantitative comparisons of impairments in two ways: one impairment is greater than another if it impairs

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<sup>47</sup> I responded to Gillham, and the remainder of this section is taken from that response (Blackshaw, 2024b).

a larger number of abilities (no matter what those abilities might be, or if it impairs the same number of abilities but for a longer time or more severely). He argues that this understanding of greater impairment is problematic because it is open to counterexamples, which undermine the impairment argument. Consider the example Gillham presents for the first kind of impairment comparison, below:

**Quantitative 1:** impairing someone's ability to communicate.

**Quantitative 2:** impairing someone's ability to tip toe and to walk backwards.

Gillham argues that a quantitative account of greater impairment implies that Quantitative 2 is a greater impairment than Quantitative 1, because more abilities are impaired. However, this seems false.

For his second kind of quantitative impairment comparison, Gillham provides this example:

**Quantitative 3:** partially impairing someone's sight.

**Quantitative 4:** completely impairing someone's ability to moonwalk.

Gillham's understanding of impairment comparison implies Quantitative 4 is a greater impairment than Quantitative 3, because the impairment in Quantitative 4 is of a higher degree. This comparison also seems false, and so Gillham concludes that the quantitative account of greater impairment is severely flawed. Further, he also argues that a comparison will be difficult to make when multiple different abilities are being impaired to different degrees, as it will be unclear how to weigh them against each other.

I agree that Gillham is correct in his assessment of these examples. Therefore, his *interpretation* of Hendricks' account of greater impairment fails, as it produces results contrary to our intuitions.

However, this is not necessarily problematic for Hendricks. Earlier, I presented Hendricks' formal definition of greater impairment and explained that it contained two different accounts of greater impairment: the higher degree account of impairment comparison and the superset account of impairment comparison. These two accounts of impairment comparison cannot be applied to Gillham's examples, as they involve completely different abilities being impaired. However, Hendricks is well aware of this. Although he believes different impairments are commensurable, he does not commit to this for the purposes of the impairment argument (Hendricks, 2018, p. 247). In Hendricks' view, his definition of greater impairment is sufficient for the needs of the impairment argument, even though its applicability has some restrictions.

If the most crucial premise of the impairment argument—the impairment principle—is considered, it becomes obvious why Hendricks has avoided such a commitment. The superset account and the greater degree account match our intuitions regarding the comparison of impairments. As soon as different abilities are compared, judgments of greater impairment become much more subjective. If the impairment principle broadened its scope to include these more subjective comparisons, it would lose its intuitive appeal.

There is one suggestion of Gillham's that the impairment argument could readily adapt: the impairment of the same ability for a longer period of time. This is another variation on the severity of an impairment, which I will call the *longer duration account of impairment comparison*. If an impairment of an ability is imposed for a time  $t_1$ , and the same impairment of the same ability is imposed for  $t_2$ , the first impairment is more severe than the second if  $t_1 > t_2$ .

Because of what he sees as the inadequacies of the quantitative account he outlines, Gillham then explores an alternative account of greater impairment to determine if it provides a more suitable basis for impairment comparisons. His qualitative account states that one impairment

is greater than another because it is qualitatively worse. Although Gillham provides no examples, he identifies two different ways this could occur: a more severe quality of impairment, or the ability impaired in the greater impairment is qualitatively superior to the ability impaired in the lesser impairment. He argues that it is likely to be difficult to obtain a consensus regarding which impairments are qualitatively worse than others and which abilities are qualitatively superior than others. He also suggests that the qualitative account will encounter difficulties explaining why abortion is a greater impairment than giving a fetus FAS.

I think Gillham is also correct in his belief that a qualitative account will be controversial. For this reason, it is unsuitable for use in the impairment argument, as it will again undermine the plausibility of the impairment principle.

Gillham concedes that if Hendricks' account of greater impairment is taken strictly as written, using the superset account and higher degree account of impairment comparison, it is less vulnerable to counterexamples. However, he suggests a scenario where he believes it still fails: comparing a very early abortion with excessive alcohol consumption late in pregnancy. Gillham believes that a very early abortion impairs only a few abilities because the embryo or fetus has very few abilities at the time of the abortion. The consumption of alcohol late in pregnancy, however, might cause many abilities to be impaired. Therefore, according to Gillham, 'it would not be true that aborting is a greater impairment than causing fetal alcohol syndrome' (Gillham, 2023, p. 222).

There are two points to make in response to this argument. First, Gillham's conclusion is not specific enough. If abortion and fetal alcohol syndrome do work in the way he describes, his conclusion should be that an early abortion is not a greater impairment than causing fetal alcohol syndrome late in pregnancy. This, however, is compatible with the conclusion that an early abortion is a greater impairment than causing fetal alcohol syndrome early in pregnancy.

Since we know that causing fetal alcohol syndrome early in pregnancy is immoral, early abortion is also immoral.

Second, as I mentioned earlier, the impairment argument does not only reference the immediate abilities possessed by a fetus—it is concerned with the ability to develop abilities. So, when a fetus is impaired early in pregnancy, it is not just its immediately exercisable abilities that are impaired, but its ability to develop abilities is impaired. For example, even though an embryo cannot see, its ability to develop sight can be impaired. For every later ability that a fetus develops, there is a corresponding ability to develop that ability properly. This does raise the question regarding which is the greater impairment: impairing the ability to develop an ability (call this the secondary ability), or directly impairing an ability (the primary ability). Ultimately, the effect on the organism is the same: the limiting of the primary ability. This means the primary and secondary impairments are commensurable. The greater impairment is the one that limits the organism's primary ability the most. Early abortions completely limit all secondary abilities, and so they are always a greater impairment than causing fetal alcohol syndrome at any stage of pregnancy.

To summarise, Gillham's main criticism is that the proponents of the impairment argument have not clearly defined greater impairment, which is necessary for the impairment argument to succeed. Further, he argues that clarifying greater impairment will be problematic. I have argued that although Hendricks' definition of greater impairment is quite narrow in scope, it is sufficient to agree that the lethal impairment of abortion is greater than the sublethal impairment of FAS—and that is all Hendricks requires for his argument. Attempting to widen its scope to more subjective (and therefore controversial) comparisons of impairment, such as

comparing impairments of different abilities, will undermine the intuitive appeal of the impairment principle and is not necessary for the argument to succeed<sup>48</sup>.

### 4.3.3 Is killing a greater impairment?

This does raise an important question: is an organism actually impaired by being killed? In my first response to the impairment argument, I questioned whether abortion impairs a fetus, as the end result is that the fetus no longer exists (Blackshaw, 2019c). I suggested that if it does impair the fetus, it is impaired in a manner very different to the impairment of FAS. Hendricks (2019) responded by suggesting that my argument is analogous to claiming a person who was killed cannot be a victim because they no longer exist. This analogy is doubtful. If one person is robbed and another killed, the second person is not robbed (unless we claim they were robbed of their life), even though they are both victims. The harms they suffer are clearly very different.

Nonetheless, Hendricks (2019) grants my objection for the sake of argument and proposes what he calls ‘the bridge of death’: the point just before death when an organism is alive but its abilities have been maximally impaired. By appealing to this point, when the victim is at ‘the bridge of death’, it might seem that we can say that killing a fetus is a greater impairment than inflicting FAS (Blackshaw, 2019d). I am no longer sure that all an organism’s abilities are necessarily maximally impaired just prior to its death, but I am willing to grant that death itself does impair all of an organism’s abilities. An organism can no longer feel, hear, nor develop abilities when it is dead, and I think that this is sufficient for Hendricks’ claim. After all, lesser impairments may be inflicted in very different ways. Chopping off an arm has little in common

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<sup>48</sup> Although as I later argue in this paper, the impairment argument fails for other reasons.

with drinking alcohol and impairing a fetus via FAS. Therefore, the fact that death, if an impairment, would be a very different kind of impairment to that inflicted by FAS does not suggest that it is not an impairment of some kind.

#### 4.3.4 The problem of valuable goods

Recall the impairment principle: if it is immoral to impair the fetus by giving it FAS, then, *ceteris paribus*, it is immoral to kill the fetus. Earlier, I described the *ceteris paribus* clause as a requirement for morally relevant uniformity between the lesser and greater impairments. A difficulty that Hendricks considers at length is the problem of valuable goods (Hendricks, 2018, p. 250). Even though an impairment impairs an ability, it is also possible that it obtains a valuable good. Since valuable goods are morally relevant, we must examine the goods obtained from inflicting FAS and from killing the fetus and determine if they are equivalent. If they are not, the impairment principle does not hold, and the impairment argument fails. An example of this would be if abortion obtained valuable goods that do not obtain from giving the fetus FAS.

In his discussion of valuable goods, Hendricks focuses on the valuable goods that *others* obtain from the impairment, not the fetus (Hendricks, 2018, pp. 250-251). This is important, as the impairment argument purports to avoid appealing to the moral status of the fetus. If the value of goods the fetus might obtain from impairment are taken into consideration, this implies that the interests of the fetus matter, and consequently that it has moral status.

In his most recent work, Hendricks (2022) has given a more precise definition of the *ceteris paribus* clause of the impairment principle and its relationship to valuable goods, one that was lacking in his earlier work. He states that the clause holds ‘only if there is no sufficiently

valuable good that obtains from impairing O to the  $n+1$  degree that does not obtain from impairing O to the  $n$ th degree' (Hendricks, 2022a, p. 165). In the case of FAS and abortion, this means the impairment principle does not apply if there are sufficiently valuable goods that obtain from abortion that do not obtain from inflicting FAS, and the impairment argument fails. Hendricks states that 'sufficiently valuable' equates to being able to justify the greater impairment.

First, *if* there are sufficiently valuable goods that obtain from abortion that justify it, then abortion is permissible. There seems to be no need to consider whether these goods obtain from the lesser impairment. In effect, Hendricks seems to have conceded that if this is the case, the impairment argument is superfluous. Numerous critics have contended that sufficiently valuable goods obtain from abortion (Pickard, 2020, Räsänen, 2020).

Second, Hendricks' own comparison of the valuable goods obtained from abortion and FAS is not convincing. For example, he states that abortion obtains the good of avoiding the suffering of childbirth but also argues that abortion causes suffering and implies that there is no net good obtained (Hendricks, 2018, p. 250). This is a contentious claim—an early abortion is likely to cause far less physical suffering than pregnancy and childbirth, and mental suffering will be dependent on the individual involved. Further, there is almost certainly considerable suffering involved in giving birth to and raising a child with severe FAS, and so it is unlikely we can demonstrate equivalent goods obtaining between FAS and abortion with regard to suffering. This problem seems intractable when we start considering all the possible goods that might obtain from an abortion that do not obtain from FAS (and no abortion). As a result, it is doubtful that morally relevant uniformity between FAS and abortion can be demonstrated. As a result, the impairment principle does not hold for FAS and abortion.

Finally, this problem worsens when we consider that there are competing theories of value or the good, including those which understand the good in simple hedonistic terms and those which give more complex, plural accounts of what is of value. A claimed advantage of the impairment argument is that it avoids the debate about fetal personhood, but if sufficiently valuable goods can justify abortion, then depending on the theory of value being used, one contentious ethical debate is replaced with another.

#### **4.3.5 The problem of harms**

Clearly, demonstrating that the valuable goods obtained from lesser and greater impairments are equivalent is problematic, but as the following example demonstrates, the impairment argument must also consider the harms brought about by impairment (Blackshaw, 2023).

Let us suppose that Robin is competing in an archery contest and realises that impairing her ability to blink will help her focus on the target. This gives her an unfair advantage, and so the organisers allow her to compete only if she incurs an additional impairment: temporarily removing her ability to see. Consider two scenarios:

**Archery 1:** Robin impairs her ability to blink for the duration of the archery contest.

**Archery 2:** Robin impairs her ability to blink and her ability to see for the duration of the archery contest.

Robin's actions in Archery 1 seem immoral, but in Archery 2, the combination of impairments actually disadvantages Robin and, as a result, does not seem immoral. However, there is no

valuable good obtained in Archery 2 that is not obtained in Archery 1, and so on Hendricks' understanding of morally relevant uniformity, the impairment principle applies. As a result, it entails Archery 2 is immoral, contradicting our belief that it is not. Therefore, this is a counterexample to the impairment principle.

Of course, Archery 1 and Archery 2 are different in morally relevant ways: in Archery 1, Robin has an unfair advantage over other competitors, and in Archery 2, she does not. In Archery 1, the impairment results in harm (to others in the competition), not a valuable good, and that harm is lacking in Archery 2. This suggests that in addition to valuable goods, the harms caused by impairment must also be considered. Hendricks does implicitly accept that harm must be accounted for, even though it does not appear in his formal definitions. For example, in considering the valuable goods obtained by impairment, he claims that abortion obtains the valuable good of avoiding the suffering of childbirth, which is a harm. However, it is clear that harms must be considered directly, not just the lack of harm as a valuable good.

To account for harm, I suggest an additional stipulation to satisfy morally relevant uniformity: that there must be no *harms* that are caused by impairing O to the nth degree that are not also caused by impairing O to the n+1 degree. This accounts for the intuition that if the nth degree impairment is immoral because of a particular harm, then the n+1 degree impairment should also cause that harm if it is to be immoral. Applying this to Robin, the harm that exists in Archery 1—an unfair advantage—does not exist in Archery 2, and so the two cases do not satisfy morally relevant uniformity. Consequently, Archery is no longer a counterexample to the impairment principle.

Michael Tooley, in anticipating something like the impairment argument, also suggests a possible counterexample. He argues that while it is not seriously wrong to kill a kitten, it is seriously wrong to torture a kitten for an hour (Tooley, 1972, p. 40). If Tooley is correct, the lesser impairment of kitten torture is seriously immoral, and the greater impairment resulting from killing the kitten is not, which violates the impairment principle. Hendricks addresses Tooley's argument, arguing that torturing a kitten inflicts pain while killing a kitten can be done painlessly (Hendricks, 2018, p. 250). If the immorality of torturing a kitten is primarily due to the pain that is being inflicted, then morally relevant uniformity is not satisfied, and the impairment principle does not apply, so Tooley's kitten is not a counterexample.

This example raises an important issue, however, which I noted when discussing the valuable goods obtained by impairment. For the impairment argument to succeed, it cannot consider the harm suffered by the organism itself, as this presupposes a degree of moral status. If the pain suffered by the kitten is morally relevant, then the kitten must have moral status. Further, it implies that the harm of death for the organism must also be taken into consideration, a controversial issue that will depend on the particular theory of harm that is subscribed to. Hendricks, however, does not consider the harm of death when examining Tooley's kitten, only the pain the kitten experiences when being tortured. The difficulty for the impairment argument is that if harm for the organism is not taken into account, Tooley's kitten is a counterexample to the impairment principle. If it *is* taken into account, then this implies the organism has moral status, rendering the impairment argument incapable of performing its intended function of demonstrating the wrongness of abortion without reliance on any particular account of moral status.

Leaving aside Tooley's kitten and harm to the organism, the necessity of considering harm to demonstrate morally relevant uniformity between lesser and greater impairments introduces a problem similar to that of valuable goods—it shifts the debate to which of the many theories of harm is correct.

#### 4.3.6 Reasons

Unfortunately, more difficulties of a similar nature lie ahead. The impairment principle requires an  $n$ th degree impairment to be immoral, and states that an  $n+1$  degree impairment is also immoral, provided the two impairments are uniform in their morally relevant details. As I have discussed, both the valuable goods and the harms obtained from each impairment must be considered to assess if morally relevant uniformity holds, and this requires examining the theory of value and the theory of harm that is subscribed to.

However, this may not be sufficient to ensure moral uniformity, as harms and goods are not the only consideration for determining if an act is immoral. For example, in deontological ethics, the morality of an action is assessed by whether it adheres to certain rules or duties. In some cases, following a rule such as telling the truth might even cause harm. Similarly, in virtue ethics, it is possible that acting with honesty, a virtue, could result in harm. For example, a virtuous whistleblower could harm other employees, owners and shareholders if the company was bankrupted by their actions. Therefore, we must understand the wrong-making feature of the action that impairs immorally. We need to ask *why* the  $n$ th degree impairment is considered immoral to determine if the same reasons are applicable for the  $n+1$  degree impairment.

This recognition of the importance of examining the reason why the lesser impairment is immoral motivated a suggested revision of what was meant by morally relevant uniformity in a paper I co-authored with Hendricks:

If it is immoral to impair an organism *O* to the *n*th degree for reason *R*, then, provided *R* continues to hold (or is present) and there are no overriding reasons, it is immoral to impair *O* to the *n*+1 degree (Blackshaw & Hendricks, 2021b).

This requires that the reason for the immorality of the lesser impairment holds for the greater impairment. The reason might be the harm that is inflicted by the lesser impairment, but it is not limited to harm. It also acknowledges that there can be overriding reasons, such as valuable goods or harm, that must be taken into account. An overriding reason will justify the greater impairment, overriding the reason why the lesser impairment is immoral (assuming that reason is still present, of course).

I mentioned earlier that Hendricks placed an additional condition on sufficiently valuable goods, stating that if they justify the higher degree impairment, they must also justify the lesser impairment. I concluded that this was an unnecessary condition that was not substantiated and that it also begs the question. In the paper I co-authored with Hendricks, we added a similar condition on overriding reasons:

If the overriding reason *R*\* overrides *R* when impairing *O* to the *n*+1 degree, then it will also override *R* when impairing *O* to a lesser degree (Blackshaw & Hendricks, 2021b).

Again, in hindsight, this is unnecessary and also begs the question with regard to morally relevant uniformity. If the overriding reason  $R^*$  overrides  $R$  for the greater impairment, then this impairment is permissible. There is no need for  $R^*$  to also override  $R$  for the lesser impairment (even though it does seem intuitive that it should do so).

Let's check this revised understanding of moral uniformity against the Robin archery example. The reason  $R$  why Archery 1 is immoral is because Robin's impairment gives an unfair advantage to her. In Archery 2, reason  $R$  no longer holds, and so the two cases are not morally uniform. As a result, this is not a counterexample to the impairment principle, contrary to the conclusion reached solely on consideration of valuable goods that are obtained.

Having established the importance of considering the reasons for the lesser impairment, and determining if they apply to the greater impairment, I now turn to the cases central to the impairment argument: impairing a fetus with FAS, and aborting a fetus. For the impairment argument to succeed, we must examine the reasons why impairing a fetus with FAS is immoral, and demonstrate that these reasons also apply to aborting a fetus. Further, there must be no overriding reasons, such as valuable goods obtained by abortion that are not also obtained from FAS.

#### **4.3.7 Reasons, FAS and abortion**

Before I examine some of the possible reasons why inflicting FAS on a fetus is immoral, we must note another important claim made by Hendricks: that giving a fetus FAS is *always immoral at the time FAS is inflicted*. This is irrespective of the future intentions of the mother or the eventual fate of the fetus. Hendricks argues that if the fetus is deliberately given FAS and later accidentally killed, the former is still an immoral act. If the mother intended to abort

her fetus, but the abortion was not carried out for some reason, the earlier impairment is also clearly an immoral act. However, Hendricks also argues that if a mother changes her mind several times regarding an abortion, it is implausible that her action in giving FAS to her fetus oscillates from immoral to permissible, depending on her changing intentions. Therefore, Hendricks concludes that the immorality of FAS is not dependent on her intentions at all. Accounts that explain the immorality of giving FAS must be compatible with this claim, or provide an explanation as to why it is false.

There are two broad approaches to explaining the immorality of giving FAS to a fetus (and, more generally, the immorality of inflicting any prenatal injury) that I will examine here. In the first approach, the fetus is assumed to have high moral status, such that it has rights or morally relevant interests. These rights or interests could rule out deliberately causing prenatal injury. This is a position commonly held by pro-life advocates. In the second approach, the fetus is assumed to have low moral status, possessing very limited rights (if any) and limited morally relevant interests. It does have, however, the potential to develop into a person possessing high moral status, and consequently rights and morally relevant interests. These future interests will be harmed by causing the fetus prenatal injury in the present. This position is common amongst pro-choice advocates.

I will examine each approach to assess how well they explain the immorality of FAS, and whether they are capable of satisfying Hendricks' claim that inflicting FAS is always immoral at the time alcohol consumption occurs. I will then consider whether there are any overriding reasons in favour of an abortion. If there are, then FAS and abortion are not morally uniform, and as a result the impairment principle will not be applicable.

#### 4.3.8 High moral status

If the fetus is considered to possess high moral status sufficient for possession of rights or morally relevant interests, then this seems sufficient to conclude that it is immoral to impair it by inflicting FAS. One relevant right is the fetus's right to bodily integrity. For pre-autonomous children, FAS must be understood as either a physically serious encroachment on their body or as a bodily intervention that is not in their best interests (Mazor, 2021). The most severe cases of FAS certainly qualify as an infringement of the fetus' right to bodily integrity. Similarly, inflicting FAS will damage the fetus's interests, and if they are considered morally relevant, this implies that inflicting FAS is immoral. So, granting the fetus high moral status is sufficient to ground the immorality of giving it FAS. It also satisfies Hendricks' condition that causing the fetus to develop FAS is immoral at the time of alcohol consumption, as the fetus's interests are immediately damaged.

There is one scenario where it is not as intuitive that consuming alcohol and thereby causing FAS is immoral: if this occurs shortly before a planned abortion. This is particularly so if alcohol is being used as, say, a mechanism to cope with the decision to abort the pregnancy, which is, in many cases, an emotional and difficult decision to make. If the fetus is believed to have high moral status, this is still an infringement of its right to bodily integrity and still damages its interests.

Next, we must consider whether the reason why impairment by FAS is immoral—its high moral status—is also applicable to abortion. As the fetus's moral status is unchanged, this condition for moral uniformity is satisfied thus far.

Finally, we must consider if there are any reasons present for abortion that are sufficient to override the reason for the immorality of FAS—that is, the reason given by the fetus’s moral status. One possible reason is bodily integrity. Judith Jarvis Thomson (1971) argues that the fetus does not have the right to use its mother’s body without consent, even if it does have the moral status of a person.

For pro-life advocates who hold that the fetus has a high moral value and who reject Thomson’s reasoning, morally relevant uniformity is satisfied, and the impairment argument succeeds in showing abortion is immoral. However, these premises entail abortion is immoral without requiring the impairment argument, and so it is superfluous. For those who accept Thomson’s reasoning, a woman’s right to her bodily integrity is an overriding reason, and moral relevant uniformity does not hold. Consequently, the impairment argument fails to show abortion is immoral. Therefore, if the fetus is held to have high moral value, the immorality of abortion is still dependent on the success or failure of the Thomson argument.

Instead, perhaps Hendricks’ principle that valuable goods that justify a greater impairment should also justify a lesser impairment could be used to undermine Thomson’s reasoning. The idea would be that if abortion is justified because a woman has a right to her bodily autonomy, then this should also justify inflicting FAS. However, inflicting FAS does not seem justified by bodily autonomy, as it does not free the woman from her connection to the fetus. Therefore, this argument fails, as there is no morally relevant uniformity between the lesser and greater impairments, which the impairment argument requires.

#### **4.3.9 Potential high moral status**

The second approach to arguing for the immorality of FAS is predicated on the potential of the fetus to develop into a moral person with rights and morally relevant interests. It has two basic assumptions. First, that the fetus has no or limited morally relevant interests (and low moral status), and second, that the future interests of persons are morally relevant in the present. Given these assumptions, it is immoral to deliberately give FAS to a fetus that will develop into a person who will suffer the symptoms of FAS, because giving the fetus FAS damages the future interests of the person it will become.

The first assumption is commonly held by pro-choice advocates, who argue that consciousness and self-awareness are necessary for an entity to possess a high moral status and morally relevant interests. Accordingly, since the fetus lacks one or more of these properties, depending on its stage of development, it has a low moral status. However, its low moral status in the present does not mean that we can ignore its future interests. For example, we have a strong intuition that it is wrong to plant a bomb that detonates 150 years later, even though the affected persons do not exist at the time the bomb is planted (McMahan, 2006, p. 629). This demonstrates that our present actions must take into account the future interests they might harm.

There are some scenarios where the relevance of future interests is contentious. If our actions in the present *change* which persons exist in the future, then it becomes difficult to explain why these actions are immoral, an issue known as the non-identity problem. The future individual seems to have no basis for complaint, because if the action that caused them harm did not occur, they would not have come to exist. For adherents to the psychological account of personal identity, which bases our personal identity over time on psychological continuity, very severe prenatal injury can raise the non-identity problem. This is because a severe enough injury will

result in a different psychological individual from that which would have developed without the injury. Severe FAS could result in this occurring, and I explore the issue elsewhere (Blackshaw, 2022a)<sup>49</sup>. For those who hold to a form of animalism, which identifies us with our bodies, the non-identity problem will not be an issue: prenatal injury is unable to change our identity.

The reliance on future interests for the immorality of causing FAS does raise an important difficulty. If the fetus is never born, then its future interests will never arise, and the basis for the immorality of causing FAS is absent. The immorality of FAS seems to depend on the fate of the fetus, which is contrary to our intuition that causing a fetus to have FAS is immoral (or at least almost always so—see the next paragraph for a potential qualification). There are plausible explanations, however. One is that causing a fetus to have FAS is morally risky: we cannot be sure that the fetus will not be born and subsequently develop future interests that will be damaged by FAS. This might be the case even if the fetus is diagnosed with a supposedly lethal condition. As I and my co-author Perry Hendricks point out, diagnosis of such conditions can be highly uncertain, both in terms of severity and survival prospects (Blackshaw & Hendricks, 2021b). We also note that even if an abortion is planned in the near future, it is still possible that it may not take place due to unforeseen circumstances, a pertinent example being a pandemic that restricts available medical services.

There is one scenario where there might be a plausible case for it not being immoral to cause FAS: consuming alcohol a very short time before a planned abortion. Because there is a high confidence that the abortion will take place, this minimises any moral risk that future interests

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<sup>49</sup> Blackshaw 2022a appears in part five of this thesis.

will eventuate. Here this account has a slight advantage over the account based on high moral status, which has more difficulty accounting for this scenario.

In almost all cases then, we can account for the immorality of inflicting FAS based on the view that we must cater for the future interests of the person the fetus will become. To determine if the impairment argument succeeds on this view, we must now assess whether morally relevant uniformity holds between FAS and abortion. Clearly, abortion prevents those future interests from ever arising. Therefore, there is no morally relevant uniformity between the cases of causing a fetus to develop FAS and aborting the fetus, and the impairment principle is inapplicable. As a result, the impairment argument for the immorality of abortion fails for those who hold that the fetus has low moral status.

#### **4.4. Assessing the impairment argument**

In this section, I have defended the impairment argument against the claims that causing FAS is not immoral and that Hendricks' account of greater impairment is insufficient. I have also accepted Hendricks' argument that death is a greater impairment for a fetus than FAS.

However, on examination, it has become clear that the impairment principle's requirement for morally relevant uniformity between the lesser and greater impairments, which Hendricks calls the *ceteris paribus* clause, is dependent on our pre-existing beliefs regarding the good, harm, and the moral status of the fetus.

For those who hold a pro-choice position based on the low moral status of the fetus, this entails morally relevant uniformity fails to hold, as in the case of abortion, there are no future interests to be harmed. Consequently, the impairment principle does not apply.

For those who hold that the fetus has a high moral status, morally relevant uniformity depends on whether Thomson's reasoning regarding the importance of bodily integrity is accepted or rejected. If it is accepted, then there is an overriding reason for abortion that does not hold for FAS, and the impairment principle fails to apply.

If Thomson's reasoning is rejected, which most pro-life advocates do, then there is morally relevant uniformity between FAS and abortion, and the impairment argument succeeds. However, the combination of the rejection of Thomson and holding that the fetus has a high moral status is sufficient to show that abortion is seriously immoral. This renders the impairment argument superfluous.

## **PART FIVE: Examining pro-choice arguments**

### **5.1. Introduction to part five**

Prior to introducing the papers presented in this final part of the thesis, I will review what has been accomplished so far towards achieving my main objective, a critical examination of the substance view of persons.

Part one provided an introduction and overview of each part and explained the foundational concepts used throughout the thesis: personal identity and moral status.

Part two was primarily a defence of the substance view of persons, the account of human beings most commonly cited by pro-life advocates in their arguments. The substance view is a ‘person-at-conception’ account that claims that all human beings have equal moral status, irrespective of their stage of development. If the substance view is accepted, it implies that all human beings possess a right to life, which *prima facie* implies abortion is impermissible. However, the substance view has been heavily criticised for what critics claim are counterintuitive implications. In part two, I presented a series of papers defending the substance view against these claims. In addition, the final paper in part two examined whether person-at-conception views, such as the substance view, could consistently allow an exception for rape. I concluded that they cannot.

In part three, I provided some substantial criticisms of my own of the substance view and presented what I called the *rational animal account*, an alternative account that attempts to address these criticisms. Rather than being predicated on Aristotelian metaphysics, the rational

animal account is based on animalism, an account that claims we are fundamentally human animals and we are identical to our bodies. Further, the rational animal account argues that each human being possesses the genetic basis for rationality, and this gives us high intrinsic worth that makes us worthy of respect. In effect, all human beings, unborn and born, are moral persons. I suggest that pro-life advocates adopt the rational animal account in preference to the substance view.

Part four of this thesis examined a recent pro-life argument that I have both criticised and defended in a series of publications: the impairment argument. This argument is attractive to pro-life proponents because it purports to demonstrate that abortion is immoral *without* requiring a stance on the moral status of the fetus. After an extensive investigation, I concluded that the impairment argument is too problematic to be persuasive, even though it does have intuitive appeal. The importance of part four is this: it shows there is no avoiding grappling with the moral status of the fetus in the abortion debate. For pro-life advocates, there is no avoiding defending a person-at-conception view in detail.

During the course of my analysis of the pro-life position, I have naturally engaged with various pro-choice views, and in earlier parts of this thesis, I have, at times, made some critical comments. In this final part of this thesis, I more directly challenge pro-choice views.

The first paper in this part deals with the metaphysics of personal identity<sup>50</sup>. In this paper, I argue that the psychological account of personal identity has difficulty accounting for the wrongness of severe prenatal injury, which is capable of altering our psychological identity. This undermines the account's plausibility. It also provides an additional reason to consider

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<sup>50</sup> This paper is a revised version of the original paper (Blackshaw 2022a).

alternatives such as the rational animal account, which bases our identity primarily on physiological continuity and, as a result, is not vulnerable to this issue.

The second paper in this part<sup>51</sup> engages with an argument for the permissibility of abortion, which I have already cited numerous times in this thesis, from Judith Jarvis Thomson (1971). Thomson's highly influential argument contends that pregnancy is analogous to having an unconscious violinist forcibly connected to us and that our intuition is that we can permissibly detach the violinist, even if this results in the violinist's death. The main point she makes is that even if someone has a right to life, such as the violinist, that right does not entail a right to use someone else's body against their wishes. Consequently, even if the fetus is a moral person, her argument implies it is permissible to detach the fetus via an abortion. Therefore, if Thomson's reasoning succeeds, acceptance of the substance view or the rational animal account does not entail abortion is impermissible. It is, therefore, crucial that pro-life advocates respond to Thomson. In this second paper, my co-author Daniel Rodger and I present a novel argument against Thomson's reasoning (Blackshaw & Rodger, 2021b). We contend that if fetuses are considered persons, then abortion would be a severe public health crisis that health authorities would be obliged to curtail. In effect, this means the state would be compelled to infringe upon an individual's right to bodily autonomy, as advocated by Thomson.

Finally, the third paper in this part considers the social justice issue of genetic selective abortion (Blackshaw, 2020c)<sup>52</sup>. Jeremy Williams (2012) has written a paper which argues that a liberal pro-choice stance with regard to selective abortion for disability entails that we will be unable

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<sup>51</sup> This paper is a revised version of the original paper (Blackshaw & Rodger 2021b), and also includes material from an invited reply (Blackshaw & Rodger 2022) from the journal *Bioethics* to a critical response by William Simkulet (2021). As the paper has been revised by myself alone, my co-author Daniel Rodger bears no responsibility for the changes I have made.

<sup>52</sup> This paper is a revised version of the original paper (Blackshaw, 2022c).

to justify the prohibition of sex-selective abortion. This is, for most people, a problematic position to hold. In the last paper of this part, I extend his reasoning to selective abortion based on any genetic traits pregnant women may decide are undesirable. In other words, a liberal pro-choice stance on selective abortion for disability implies that there is no basis for prohibiting selective abortion based on characteristics such as height, intelligence or sexual orientation. This means that all kinds of selective abortion must stand or fall together, no matter how objectionable some may seem. Of course, liberal pro-choicer advocates could opt to oppose all selective abortion, but this stance is difficult to reconcile with their position regarding individual rights, particularly the right of women to control their own bodies.

Each of these three papers highlights a difficult choice that pro-choice advocates must make in an area of key significance to their overall position: the metaphysics of personal identity, the issue of bodily autonomy, and social justice. Collectively, these papers help to strengthen the case for the pro-life position presented earlier in this thesis, effectively rounding out the discussion to encompass criticisms of the pro-choice position.

## **PAPER 1: The non-identity problem, brain essentialism and the psychological account of personal identity**

### **Context**

In terms of the metaphysics of personal identity, a competing account to both the substance view and the rational animal account is the psychological account of personal identity. As I have explained previously, on the psychological account, we begin to exist when we develop a sufficient number of psychological connections, which, it has been argued, must occur sometime after conception—or even not until after birth. Further, we are not necessarily persons when we begin to exist, depending on our definition of ‘person’—we may need to reach a certain threshold of capabilities, such as moral agency or rationality. Jeff McMahan’s Embodied Mind Account of Identity has similar implications because it too implies that we begin to exist after conception, at the point when our brain develops to the extent that consciousness can be supported (McMahan, 2002, pp. 267-269).

A difficulty for these accounts arises when explaining the wrongness of deliberate prenatal injury in certain cases. As we saw in part four, this wrongness is attributed to the injury’s effect on the future person, who may suffer various cognitive deficits or physical disabilities as a result. However, there are two scenarios where it appears that no future person will be harmed. The first case is where the fetus will not survive. In part four, I suggested that injury in these cases still strikes us as immoral and that pro-choice views will struggle to return that verdict. More important here, however, is the second case, in which the injury is identity-determining. The second case is based on what is known as the non-identity problem, and this paper focuses on this issue.

The non-identity problem was popularised by Derek Parfit (1987, pp. 351-379) and is a puzzle regarding the creation of people. It is natural to think that acts that involve changing who will exist are wrong only when they are worse for some current or future individual—that harm must be comparative. However, consider a couple that suffers a temporary medical condition that will result in a child with a serious disability. It seems wrong for them to deliberately conceive while they have this condition. Nevertheless, if they do go ahead and conceive, it is difficult to explain how that child has been harmed by their condition. This is because if the parents conceived a child a few months later after they have become healthy, it would be a completely different child. The disabled child either exists with the disability or does not exist at all. The act that seems wrong is responsible for the child's existence, and so it has not made them worse off.

There have been many attempts to resolve this conundrum. For example, Elizabeth Harman (2004) argues that an act that causes someone to be in a certain kind of bad state harms them, even if that act was responsible for their existence. The difficulty for Harman is that, intuitively, harm needs a comparison to a better state, which is the very reason why the non-identity problem exists. In a similar approach, Seana Shiffrin (1999) argues that harming someone while benefiting them without their consent (including by creating them) is morally wrong. Her account is more demanding than Harman's, as it implies that all procreation 'involves serious moral hazards' (Shiffrin, 1999, p. 136). Another approach is to embrace consequentialism, basing the wrongness of an action on its consequences for total well-being rather than an individual's well-being. Finally, some ethicists deny that non-identity cases involve wrong actions, despite our intuitions, an approach taken by David Hedt (2009) and David Boonin (Boonin, 2014, p. 189). There is no widely accepted solution to the non-identity problem, and the debate continues.

Prenatal injury is a special non-identity case, as most of us are confident that deliberate prenatal injury is very wrong. As a result, it causes considerable difficulties for certain accounts of personal identity that entail we do not exist until sometime after conception, such as the psychological account of personal identity and McMahan's Embodied Mind Account. If a prenatal injury can produce a different identity from what would have ensued from an uninjured fetus or embryo, then the injury has not made that person worse off, just as in the disabled child example. This means that the wrongness of deliberate, identity-affecting prenatal injury will be determined by our general view of the ethics of identity-determining choices. Depending on how the debate is resolved, that might well mean that these acts are either not wrong or not as wrong as usually thought. This is an unattractive result, given our confidence that the relevant acts are very wrong.

Nicola Williams, recognising this issue for the psychological account of identity, proposes using David Lewis' modal realism to define a trans-world psychological account of identity, with the intent of preserving identity when these types of prenatal injuries are inflicted (Williams, 2013).

I thought of this issue independently of Williams, although I soon became aware of her approach. My paper below contributes to the discussion of this issue in several ways. Firstly, I examine what it means to have a different psychological identity. This has received little attention in the literature so far; most discussion relates to branching psychologies, not the conditions that produce entirely different psychological identities. I identify the physical characteristics that are the main contributors to psychological identity: our perceptual abilities, such as visual and auditory capacities, etc, and our cognitive abilities, such as visual memory,

verbal memory, problem-solving, etc. I suggest that if these are sufficiently damaged prior to psychological connections forming, a different psychological individual will ensue.

Second, I critique Williams' trans-world psychological account, arguing that it fails to solve the issue. Third, I consider the impact of the non-identity problem on McMahan's Embodied Mind Account of identity. I conclude that it is better equipped to deal with prenatal injury than the psychological account of identity, as it is dependent on the structural continuity of the brain. Identity-determining injuries would need to be far more severe on McMahan's account, as it would require a radical restructuring of the brain. They are still possible, however, in a way that still generates a problem: on McMahan's account, most prenatal injuries are person-affecting, while the most serious ones are not. My conclusion is that biological or genetic accounts of identity, such as animalism, are the only accounts that have no difficulty accounting for the wrongness of prenatal injury, as no matter what injury is inflicted, the same individual remains<sup>53</sup>.

## 1. Introduction

According to the psychological account of personal identity, our identity is based on the continuity of psychological connections, and we do not begin to exist until these are possible, some months after conception. This delay in fixing our identity exposes the psychological account to a challenge from the non-identity problem—a paradox about future individuals,

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<sup>53</sup> Subsequently, I have become aware of Jessica Flanagan's (2020) argument for the permissibility of prenatal injury, which I referenced in the previous section of this thesis. In this paper, Flanagan argues that if abortion is permissible, then it is also permissible for pregnant women to take risks that result in comparatively lesser well-being for the unborn child. I do not have space here to engage her arguments, but it seems doubtful that they are applicable to deliberate, malicious infliction of prenatal injury.

which questions the intuitive assumption that harming those we create requires that they be made worse off.

Traditionally, the non-identity problem is discussed in relation to preconception harms that, if they did not occur, would mean the person they seemed to harm would not exist—for example, parents who choose to conceive a child that will inherit a serious genetic disorder. The psychological account of personal identity, because it claims we come into existence sometime *after* our physical organism begins to exist, creates a new category of non-identity problems: scenarios involving prenatal injury that is *identity-determining*. If such an injury causes a *different* psychological individual to exist than would have if the injury had not occurred, then the non-identity problem comes into play. The implication is that such an individual cannot have been wronged, as without the injury, they would not have come into existence. However, our intuition that it is wrong to deliberately injure a fetus is strong and not dissimilar to the strength of our intuition regarding the wrong of deliberately harming persons—and it seems stronger than our intuitions regarding the wrongs involved in more traditional non-identity cases such as that described above. If such injuries are possible, this undermines the cogency of the psychological account of personal identity.

Here, I argue that identity-determining prenatal and neonatal injury can and does occur on the psychological account of personal identity. I show that Nicola Williams' proposal to salvage the psychological account based on a trans-world account of personal identity is unsuccessful. Finally, I briefly examine Jeff McMahan's embodied mind account of personal identity, showing that although such identity-determining injuries are less likely to occur, the account remains susceptible to the same problem. I conclude that identity-determining prenatal and neonatal injury is a significant weakness for the psychological account of personal identity and

its variants and provides support for alternative accounts that fix personal identity from conception.

## 2. The non-identity problem

The non-identity problem is widely known by its presentation by Derek Parfit in *Reasons and Persons* (1987) and is best explained by illustration. Suppose a couple has been advised that because of a temporary medical condition, if they conceive a child now, their baby will be born with a serious disability, but if they delay it by a few months, their baby will not have this disability. Intuitively, to conceive now seems wrong because the parents would be choosing for their child to be seriously disabled. However, if taken, this choice will be responsible for this particular child's existence. In later years, the disabled child could not claim that if her parents had waited, she would not be disabled. If the parents had done so, she would not exist. The non-disabled child would be a different person. This is the paradox of the non-identity problem: a comparison cannot be made between the life of a person with the disability, and the *same* person without the disability: without the actions that resulted in the disability, that person would not exist. Intuitively, it seems that the person with the disability has been harmed, but because our conception of harm is comparative and there are no circumstances under which she would exist without the disability, it seems that no one is harmed.

The non-identity problem, then, is a puzzle arising in our moral reasoning about acts that cause people to exist. It is unclear how procreative acts can be wrong if they are not what Parfit calls person-affecting—making an individual worse off (Parfit, 1987, p. 370). Yet it seems that acts that confer existence on persons cannot make things worse for those persons, as the alternative to such an act is non-existence. However, certain acts, such as Parfit's example above, seem

intuitively wrong, even though they do not make things worse for specific people. To solve the non-identity problem, these intuitions must somehow be reconciled.

Various solutions to the non-identity problem have been proposed. One is to reject person-affecting moral principles of harm in favour of a new moral principle that Parfit refers to as Theory X (Parfit 1987, pp. 370-371,378). For example, classical utilitarians can avoid the non-identity problem because they judge acts based on their contribution to well-being, aggregated across populations. Parfit rejects this approach because it is difficult to avoid what he calls the *repugnant conclusion*: it implies that for any given population with a very high quality of life, there is always a much larger population that would have greater aggregated well-being, even though each member would have a life barely worth living (Parfit, 1987, pp. 381-390). Another option is to offer a non-comparative person-affecting principle that regards bringing a person into a suboptimal existence as harmful, even though no other existence is possible (Boonin, 2014, p. 72). Each offered solution to the non-identity problem has difficulties, and there is no widely accepted solution. In his book on the non-identity problem, David Boonin considers these and other options in considerable detail and rejects them all (Boonin, 2014, p. 189). He embraces what he calls the *implausible conclusion*—that these acts in non-identity scenarios are *not* morally wrong, despite our intuitions to the contrary (Boonin, 2014, p. 189).

The problem is clear for identity-determining cases of prenatal injury. Even though these cases seem clearly immoral, our moral reasoning to reach this conclusion is subject to the outcome of what so far has been an intractable debate. If we adopt Boonin's position, these cases are not wrong at all. This is a highly unsatisfactory result and casts doubt on accounts of personal identity that give rise to this problem.

### 3. The psychological account of personal identity

Clearly, the central aspect of the non-identity problem is the concept of personal identity. Since the non-identity problem involves changing which future person will exist, then it is crucial to know what determines the identity of future persons, and how sensitive personal identity is to changes in preconditions.

The psychological account of personal identity is widely supported<sup>54</sup>. According to the psychological account, we are essentially psychological beings, and we do not come into existence until a considerable time after conception. Derek Parfit (1987, pp.199-217) provides the most widely accepted psychological account, defining identity as *psychological continuity*. He defines two important relations: *psychological connectedness* is ‘the holding of particular direct psychological connections’, while *psychological continuity* is ‘the holding of overlapping chains of strong connectedness’. Strong connectedness is defined to be when the number of direct connections that hold is at least half of the number of direct connections that hold for every actual person.

In his description of the psychological account, Jeff McMahan provides some examples of psychological connections: ‘the relation between an experience and a memory of it, the relation between the formation of a desire and the experience of satisfaction or frustration of that desire, and the relation between an earlier and a later manifestation of a belief, value, intention, or character trait’ (2002, p.39). The requirement for strong psychological connections from day to day implies that self-consciousness is a requirement for us to exist, and so on the

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<sup>54</sup> According to the PhilPapers survey, a third of respondents nominated the psychological view of personal identity, almost double the number who chose the biological view (Bourget & Chalmers 2014).

psychological account, we do not come into existence until we become self-conscious, some months or years after birth. Prior to this point, fetuses and infants lack sufficient psychological connections to be strongly connected from day to day. Put another way, on this account we are essentially persons, where a person is a self-conscious entity. In terms of persons, Parfit's account of identity states that a person X today is the same person as Y at a past time if and only if X is psychologically continuous with Y and the continuity is *non-branching* (Parfit, 1987, p. 216). The non-branching restriction is required for the identity relation to prevent replication cases and, consequently, a person being identical to several persons. Also, Parfit stipulates that psychological continuity must have the right *kind* of cause (Parfit, 1987, p. 216). For example, a memory of an experience that is actually the result of someone else recounting the experience would not be regarded as the right kind of cause. Parfit's 'narrow' version of his psychological account requires the continued existence and functioning of the same brain as the normal cause of psychological connections.

#### **4. Identity-determining injury**

If we are essentially psychological beings, coming into existence sometime after our human organisms begin to exist, then clearly there is the possibility of identity-determining prenatal (and even postnatal) injury being inflicted on the human organism that we will eventually occupy. All deliberately inflicted prenatal injury seems indubitably wrong. It has long been recognised that children have the right to compensation for prenatal injuries inflicted upon them. In the United Kingdom, the *Congenital Disabilities (Civil Liability) Act 1976* enables a child to sue for damages for prenatal injury caused by someone other than their mother (1976). However, the non-identity problem challenges this view. It seems untenable to consign the immorality of identity-determining prenatal injury to the uncertain outcome of this debate

while accepting that lesser prenatal injuries that are not identity-determining are clearly immoral.

This raises the question of what prenatal and neonatal injuries are potentially identity-determining. For Parfit's psychological account, this is not clear, as personal identity is framed in terms of *continuity* of psychological connections. This approach is taken to answer the *persistence* questions of personal identity—how an individual can remain the same entity from one time to another. However, psychological continuity is of no value when evaluating if contingent future persons should be regarded as being the same person—it is impossible for different contingent future persons to be psychologically connected in any way. Instead, we need to know what characteristics are essential to our identities. Clark Wolf captures this in his *Identity Principle (IP)*:

If characteristics C are identity-determining for person P, then any child born with characteristics different from C would have been a different person from P (even if all other characteristics were the same) (Wolf, 2009, p. 102).

Parfit discusses identity-determining scenarios, acknowledging our identity's dependence on our biological origins in his revised Time-Dependence Claim (TDC): 'if any particular person had not been conceived within a month of the time when he was in fact conceived, he would in fact never have existed' (Parfit, 1987, p. 352). In Parfit's view, then, a zygote produced from different germ cells (both ovum and sperm) will result in a different person. This seems an uncontroversial claim, but presumably, this holds on the psychological account of identity because different psychologies are generated by different brains. In turn, this suggests prenatal injury that produces comparable differences in the brain to that produced by a significantly

different genome may also be identity-determining. The TDC also suggests the possibility of prenatal injury involving significant genetic manipulation, altering our biological origins and giving rise to a different person.

Nicola Williams suggests that there are other possibilities for identity-determining changes under psychological accounts. She claims that our genetic code is the ‘origin of a potential myriad of other potential persons who may or may not have come to exist had things turned out differently, depending upon how the genetic determinants of their identities were shaped and influenced by environmental factors’ (Williams, 2013, p. 367). Williams gives some examples of potential Nicolas that she believes would be different persons: Russian Nicola (raised in Russia), Actual Nicola and Intellectually Disabled Nicola, who is disabled by injury (Williams, 2013).

It is doubtful whether all of Williams’ examples constitute different possible persons under Parfit’s account. Parfit explicitly states that if he had moved to Italy when he was three years old, although his life would have been very different, this could still be regarded as an identity-preserving change (Parfit, 1987, p. 522, note 6 to Part 4). Clearly, however, Parfit’s TDC implies prenatal identity-determining injury is certainly a realistic possibility on the psychological account of identity.

If we utilise Wolf’s IP, what characteristics C are likely to be identity-determining? Wolf (2009, p. 103) reasonably claims that ‘minor perturbations’ in C are unlikely to change our identities: our identities may be *vague*, and quite radical changes in C may be required to conclude that a different person exists from the person that would have existed. Given the central importance of psychological connections to personal identity under the psychological

account, it is clear that the characteristics C that determine our psychological identities are whatever psychological preconditions determine our chains of psychological connections. Consequently, physical changes (PC) that result in radically different C (and thus very different chains of psychological connections) will be identity-determining.

We have already listed McMahan's examples of psychological connections, which I repeat once more for reference: 'the relation between an experience and a memory of it, the relation between the formation of a desire and the experience of satisfaction or frustration of that desire, and the relation between an earlier and a later manifestation of a belief, value, intention, or character trait' (McMahan, 2002, p. 39).

If we take a conservative view such as Parfit's and assume that being brought up in a different country (say Italy rather than the United Kingdom) does not change someone's personal identity, we are conceding that developing different memories does not necessarily entail a change of identity. Such a person's family will be the same, but they will live in a different environment and culture, and speak a different language. It might even be that they are living with a relative rather than their immediate family, and so their experiences will be almost entirely different. Our memories, therefore, are contingent on our circumstances and can vary a great deal without apparently changing our identity. This, however, makes it difficult to decide what characteristics are identity-determining. It seems that *all* of our memories could be different, and yet we could be regarded as the same individual. Moreover, twins, at least for a time, will accrue almost identical memories and yet are clearly different individuals.

At the most fundamental level, we could distinguish different individuals by their different brains, and yet it seems inconsistent to solely do so on the psychological account—if continuity

of psychological connections defines an existing individual, they must be relevant to the formation of an individual. I propose, therefore, that identity-determining characteristics are those characteristics that bear on the formation process for the psychological entities that participate in our psychological connections—our memories, experiences, desires and beliefs. If these characteristics are damaged or altered to the extent that they are no longer capable of producing the same psychological entities, then the damage is identity-determining. Primarily, these characteristics are our perceptual abilities (visual, auditory, motor skills, etc.) and our cognitive abilities (use of learned knowledge, problem-solving, verbal memory, visual memory, processing speed etc.). These two groups of abilities are closely linked—cognitive processes rely on perceptual information, while cognitive information influences perception processes (Tacca, 2011).

Any PC that modifies our perceptual and cognitive abilities to a substantial extent is *potentially* an identity-determining change. For an adult with many established psychological connections, PC is not likely to change their identity, but if PC occurs prior to any psychological connections being formed, very different connections will develop. These cannot be the connections that would have formed had PC not occurred, and hence a different psychological individual will result. For example, if, prior to birth, PC caused profound intellectual disability to a fetus, they would be unable to have the same experiences, would not be capable of forming the same beliefs and values, and would have a completely different set of memories. They would likely be a different psychological individual compared to what they would have been without PC. Of course, the boundary between physical changes that are not identity-determining and those that are is undoubtedly vague, and many changes may be indeterminate with regard to their effect on identity. Nonetheless, it is clear that certain changes will result in a change of identity.

Finally, the most important cognitive faculty is self-consciousness. If, instead of developing self-consciousness, we attained only a minimally conscious state with extremely limited awareness, under the psychological account, a person has been prevented from existing. This is also the case if consciousness is prevented from arising altogether. This is no longer a non-identity problem, but it is still a *reductio* for the psychological account: I and my co-authors argue that it entails that it would be permissible to prevent consciousness from arising in infants in order to provide a supply of transplant organs in order to benefit persons, as well as other heinous actions (Rodger *et al.*, 2018).

We now can suggest some realistic scenarios that could result in identity-determining changes inflicted upon fetuses and infants. *Fetal alcohol syndrome* is one example. It causes permanent brain damage, resulting in intellectual impairment and learning and behaviour disabilities (Wilhoit *et al.*, 2017). Another possibility for neonates is *abusive head trauma*—a follow-up of infants some years after their injuries found that 40% suffered severe neurological impairment, and 30% required special education services (Lind *et al.*, 2016). Severe cases of fetal alcohol syndrome and abusive head trauma can, therefore, result in significant intellectual impairment, resulting in the formation of very different memories and beliefs. I conclude that on the psychological account of personal identity, identity-determining injuries on fetuses and neonates are not only possible but occur relatively frequently.

### **5. Possible responses to identity-determining injury**

If we accept that the immorality of identity-determining prenatal injury should not be left to the uncertain outcome of the continuing debate regarding the non-identity problem (particularly if the only ‘solution’ that ensues is Boonin’s conclusion that such acts are not morally wrong), we must look to other solutions to this issue. The obvious approach is to consider modifications

to the psychological account or alternative accounts that are better able to cope with identity-determining prenatal and postnatal injuries. I will now examine two alternative accounts of personal identity. The first is offered by Nicola Williams and is based on counterpart theory; the second is McMahan's embodied mind account of personal identity.

## 6. Trans-world psychological identity

In an attempt to avoid the non-identity issues associated with prenatal injury, Williams (2013) proposes an account of trans-world identity based on the psychological account of personal identity. It involves a relaxation of the criteria for identity across possible worlds, with the intention of preserving identity in cases of prenatal injury. If this can be shown to be viable, then we can preserve our person-affecting moral principle. Williams' proposal involves the use of David Lewis' modal realism to define trans-world identity via counterpart relations, as explored by Wrigley (2012) and Meacham (2012) as a potential pathway to solutions for traditional non-identity problems.

Lewis (1986, p. 2) holds that all possible worlds are real in the way our world is real. He believed that these worlds are isolated—individuals can exist only in one world, and there is no such thing as trans-world identity. Modal predications about an individual are made using *counterparts* in other possible worlds. Our counterparts closely resemble us—they are as we would have been if the world had been otherwise. The counterpart relation is a relation of *similarity* and serves as a substitute for identity across possible worlds. A crucial requirement of any account of linking individuals with their counterparts is to determine what similarity relations are to be employed. Lewis explains that *context* is the primary consideration for choosing counterpart relations: 'the limits of the range are subject to pressures of context. Two things may be counterparts in one context, but not in another' (Lewis, 1986, p. 254).

Williams distinguishes identity within worlds from identity across worlds but maintains that trans-world identity is meaningful and can be used to explain the wrongness of prenatal injury on the psychological account of personal identity. Using Lewis' idea of counterpart relations, Williams suggests two similarity relations be employed for what I have called her trans-world psychological account of personal identity. The first, which she calls 'branching counterpart relations', is based on sharing a common psychology: an individual's counterparts are all the persons across possible worlds that have branched from their psychology (Williams, 2013, p. 370). The second similarity relation is that of sharing a distinct genome, which Williams calls 'genetic counterpart relations' (Williams, 2013, p. 371). Using these two relations, Williams believes we can account for prenatal injury in terms of harm under a psychological account of persons: 'where it is the case that two numerical persons (x and y) share a branching/genetic counterpart relation and x is better off than y as a result of a particular course of action taken by another, we can state that in being x's counterpart y is harmed by this action' (Williams, 2013, p. 371). Williams clarifies subsequently that this means either a branching *or* a genetic counterpart relation is required (Williams, 2013, p. 372).

Let us consider Williams' trans-world account in the scenarios described above—fetal alcohol syndrome and severe abusive head trauma. Clearly, the genetic counterpart relation holds across possible worlds, as in all cases, whether prenatal injury has been inflicted or not, the fetus shares the same genome. Therefore, prenatal injury does not generate a non-identity problem for her account, which seems promising.

There is a difficulty with this approach, however. In the two scenarios I have proposed—severe cases of fetal alcohol syndrome and abusive head trauma—I have concluded that there is no

shared psychological history between the two counterparts. A fetus in these scenarios will develop a radically different set of psychological connections than it would have otherwise, as they are lacking a common point of origin. Accordingly, the branching counterpart relation will not hold in these scenarios. Since Williams only requires the genetic counterpart relation *or* the branching counterpart relation, she avoids the non-identity problem in these scenarios, as I have noted. However, if the branching counterpart relation plays no part here, it seems largely superfluous to Williams' account, which is puzzling for an account that purports to be based on psychological connections and continuity. True, the branching counterpart relation is required for cases of fission and transporter cases, as Williams notes (Williams, 2013, p. 371, footnote 4). Primarily, though, her account has collapsed into a biological account of personal identity, specifically one based on our genome.

There is a related issue with Williams' account. In Boonin's examination of the non-identity problem, he identifies a number of constraints that a reason should satisfy for rejecting one of the premises of the non-identity problem. One of these constraints is the *independence requirement*—there should be a justification for adopting this reason that is independent of its ability to avoid the non-identity problem (Boonin, 2014, p. 20). Williams' use of the genetic counterpart relation (and indeed the notion of trans-world identity) violates Boonin's independence requirement—there is no reason to adopt it other than its potential usefulness in solving the non-identity problem.

Given both of these issues, it is clear that Williams' account is not successful in resolving the non-identity problem for severe cases of prenatal and neonatal injury.

## **7. The embodied mind account**

There is an alternative account of personal identity that maintains that continuity of consciousness should be the criterion for personal identity, which requires physical and functional continuity of our brains (McMahan, 2002, p. 67). Importantly, McMahan stresses that his account does not require continuity of psychological connections—we can survive both the deprogramming of our brains and the progression of Alzheimer’s disease until our capacity for consciousness disappears. This means the scope for identity-determining prenatal injury is significantly more limited than with the psychological account. However, McMahan speculates that identity-determining changes are possible, stating that ‘a radical alteration of the structures of the developing embryonic brain might cause a different child to exist from the one who would have existed in the absence of the alteration’ (McMahan, 2005, p. 94). Presumably, the alterations must be sufficient to disrupt the development of the functional integrity of the brain, particularly the regions that realise consciousness, but it is unclear the extent of alterations required.

McMahan does directly address the issue of prenatal injury, citing the scenario of a pregnant woman taking a drug that will make the fetus infertile in later life, and noting that it is widely believed such actions are seriously wrong (McMahan, 2002, p. 280). A central element of McMahan’s account is the concept of *time-relative interests*: an individual’s interests at a particular time relativised by the degree of *psychological unity* they possess. Psychological unity of a mind between two different times is a function of the degree of psychological connectedness that is maintained over the period, including the number of psychological connections and the richness of mental life. Time-relative interests diverge from actual interests when an entity’s psychological unity is weak, so a fetus, whilst having a strong interest in continuing to live, has a weak time-relative interest in continuing to live because of its non-existent or low degree of psychological unity. McMahan argues that the wrongness of killing,

at least for non-persons, is based on the degree to which it thwarts the victim's time-relative interest in living (McMahan, 2002, p. 275). The weaker the time-relative interests, the less wrong the killing. As a result, McMahan argues that an early abortion is not wrong because the early fetus has no time-relative interests to frustrate.

How does this work with prenatal injury, given a fetus also has a weak time-relative interest in avoiding injury? McMahan explains that *all* time-relative interests must be taken into account, both present and future (McMahan, 2002, p. 282). The fetus has much stronger time-relative interests as an adult, and so this entails prenatal injury is wrong because it damages these future interests. By contrast, the aborted fetus has no future interests as they are prevented from arising, and its overall weak time-relative interests are easily overridden by the interests of actual persons.

However, McMahan does not address cases of identity-determining prenatal injury. Because McMahan's account is based on continuity of consciousness, not psychological continuity, it requires very serious injuries that radically change the structure of the brain for them to be identity-determining—but they still seem possible. Examples might include the most severe cases of fetal alcohol syndrome and abusive head trauma that occur as the fetal brain structures are developing in the second trimester of pregnancy. Although the fetus's future time-relative interests are clearly affected compared to what they would have been, without such injuries the ensuing individual would not exist. McMahan believes that acts that confer existence on people are less morally objectionable than acts that are worse for people (McMahan, 2020, pp. 237-238). He is left in the difficult position of arguing that the most serious forms of prenatal injury—identity-determining injuries—are less morally objectionable than less serious forms of prenatal injury. This is an implausible result for his account of personal identity.

## 8. Other alternative accounts

There are alternatives to psychological accounts of personal identity that are not susceptible to the non-identity problem for prenatal injury. These include all accounts of personal identity where an individual's identity is fixed at conception, meaning there is no possibility of prior prenatal injury. Examples include *animalism*—the view that we are essentially human organisms—and the *substance view of persons*, which regards human beings as Aristotelian substances that maintain their identity through change. The rational animal account that I have proposed elsewhere<sup>55</sup> is also not susceptible to this issue, as are views that we are essentially souls, such as *substance dualism*. In all these accounts, the individual's identity is already determined before prenatal injury can be inflicted.

I am not arguing for a particular account here, but rather am highlighting an important issue for the psychological account of personal identity and McMahan's embodied mind account. It is a puzzle explaining identity-determining injuries on these accounts, and having to leave the wrongness of inflicting such injuries to the outcome of a continuing debate is an undesirable outcome for actions that intuitively seem very wrong. The puzzle is easily resolved by adopting an account that fixes our identity at conception. Therefore, this issue should be considered a strong point in favour of such accounts and a significant point of weakness for psychological accounts and McMahan's account.

## 9. Conclusion

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<sup>55</sup> In part three of this thesis.

The non-identity problem challenges our intuitions about what it means for a person to be harmed. Traditional non-identity scenarios involve preconception identity-determining changes, but I have shown that under the psychological account of personal identity and McMahan's embodied mind account, certain severe prenatal injuries can also be identity-determining. It is extremely implausible to accept that deliberately inflicting such injuries is not deeply wrong, especially when less serious prenatal injuries are uncontroversially regarded as wrong, but the non-identity problem casts doubt upon the moral objectionability of such acts.

I first examined Williams' proposal to use Lewis' modal realism to come to grips with the non-identity problem for prenatal injury by employing counterpart relations to construct a trans-world account of personal identity. I have shown that this does not succeed: if prenatal injury is identity-determining according to standard psychological accounts, it will also be identity-determining if it relies upon Williams' branching counterpart relation that utilises a shared psychological history. This cannot be avoided if the account of personal identity is to continue to be broadly described as a psychological account.

On McMahan's embodied mind account, identity-determining prenatal injuries are far less likely to occur, but they are still possible. As McMahan holds that acts that confer existence are less wrong than acts that make people worse off, this implies that the most serious prenatal injuries are less objectionable than those that are less serious do, which seems absurd.

I conclude that the non-identity problem for prenatal injury poses considerable difficulties for the standard psychological account of personal identity, Williams' account and variants such as McMahan's embodied mind account. When comparing accounts of personal identity, this

should be considered an important factor that weighs against the plausibility of psychological accounts and supports accounts that fix identity at conception.

**PAPER 2: If fetuses are persons, abortion is a public health crisis****Context**

Judith Jarvis Thomson's (1971) violinist analogy is widely employed in abortion ethics. Thomson proposes the scenario of waking up to find yourself connected to a famous violinist who is unconscious and suffering from a fatal kidney ailment. You were kidnapped by the Society of Music Lovers because yours is the only blood type able to save the violinist. It will require nine months of continuous treatment with your blood. Thomson's claim is that this is an outrageous imposition, and it is permissible to disconnect oneself from the violinist. The scenario is supposedly an analogy to pregnancy, and the claim is that the fetus, like the violinist, does not have the right to use a woman's body: no one is obligated to make great sacrifices to keep another person alive, such as offering their body as life support.

Thomson's argument has generated an immense amount of discussion for several reasons. First, it is one of the few pro-choice arguments that assumes the fetus has full moral status, which challenges pro-life 'person-at-conception' accounts such as the substance view and the rational animal account by suggesting their claim that the fetus is a person is not enough to demonstrate the wrongness of abortion. Second, the intuition generated by the analogy is persuasive, and if the analogy is apt, it presents a strong argument for the permissibility of abortion.

Most responses to the Thomson argument focus on whether the analogy between being a Good Samaritan and being pregnant holds up. For example, they suggest that the pregnant woman, as the fetus's genetic parent, owes more to the fetus than a Samaritan does to a stranger, or that (in most cases) the pregnant woman consented to the presence of the fetus, unlike Thomson's

Samaritan. In a paper written with my co-author Daniel Rodger, meanwhile, I have taken a very different approach based on public health ethics (Blackshaw & Rodger, 2021b; Blackshaw & Rodger, 2022)<sup>56</sup>.

We<sup>57</sup> contend that public health ethics is primarily concerned with maximising the health of populations, not individuals, and therefore at times, this may justify overriding the rights of individuals. As a pertinent example, we discuss the COVID-19 pandemic, which resulted in a significant curtailment of individual rights (such as those imposed by lockdowns) in order to minimise harm to public health. We note the United Nation's Siracusa Principles, which provide guidance for what measures can be imposed during public health emergencies. Roughly speaking, the more potential harm to a population in a public health crisis, the more significant incursions on human rights can be justified.

The next move is to argue that if the fetus is a person, as Thomson assumes, then fetuses deserve equal consideration as part of the population whose health should be protected. Further, we argue that the number of human lives lost to induced abortions represents a public health crisis of immense proportions, far outweighing the COVID-19 pandemic. At the time of writing, the World Health Organization estimated that almost 7 million lives had been lost to COVID-19 over approximately two and a half years (World Health Organization, 2022a). However, the

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<sup>56</sup> This paper is a revised version of the original paper (Blackshaw & Rodger, 2021b). In the original paper, we over-simplified by claiming that public health ethics is solely utilitarian. While some approaches to public health may be utilitarian, others, as the text suggests, apply threshold deontological reasoning, arguing that population-level effects can justify abrogating individual rights and freedoms when they reach a certain level of severity. I clarify this in the revised version, for which Daniel Rodger bears no responsibility. This paper also includes additional material that replies to a critical response from William Simkulet (2021) to the original paper. We also wrote an invited reply published in *Bioethics* (Blackshaw & Rodger, 2022), but I have not included any of this material here.

<sup>57</sup> As this paper is revised, as per the previous footnote I take full responsibility for its contents. When referring to it here, however, I retain 'we' as I wish to continue to acknowledge the contribution of my co-author.

annual number of induced abortions is estimated to be around 73 million, which on an annual basis is approximately 20 times as many deaths (World Health Organization, 2022b).

We conclude that the vast scale of the abortion crisis (assuming the fetus is a person) justifies imposing abortion restrictions to reduce the number of deaths. Instead of lockdowns that affect entire populations, abortion restrictions affect far fewer people—only those who are pregnant and want an abortion. Importantly, this holds even if we conclude that there is a right to abortion, as public health crises may override individual rights if necessary.

There are several possible objections that we address, including the effectiveness of abortion restrictions, a claim that fetuses are not Kantian persons, and the claim that this would cause a rise in maternal mortality due to illegal abortions. We also consider the objection that there would be large numbers of unwanted children being born. Upon examination, we argue that these objections are relatively weak and do not rebut our argument.

One interesting intersection with my other work is the problem of spontaneous abortion, which I addressed earlier in my section defending the substance view<sup>58</sup>. Critics of the substance view have argued that spontaneous abortion is a public health crisis, which pro-life advocates must address. Here, we turn this argument around to claim that if spontaneous abortion is a public health crisis, induced abortion must be also. Having established that most spontaneous abortions are *not* preventable, this implies that reducing induced abortions is a public health priority.

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<sup>58</sup> See also Blackshaw & Rodger, 2019a.



## 1. Introduction

This paper was originally written during the COVID-19 pandemic<sup>59</sup>. Amidst fears of an exponential spread of the virus, hundreds of millions of individuals were required to endure periods of strict lockdowns restricting their free movement. People in non-essential jobs could only leave their house for very limited reasons such as food, medical care, and exercise, and compliance was enforced by law. Schools were temporarily closed, and millions of people have lost their jobs. Many businesses were forced to close permanently.

It is widely believed that governments are obliged to protect public health, and control of infectious diseases is clearly part of this remit. This is at times in tension with individual rights, exemplified by lockdown restrictions intended to protect vulnerable populations such as the elderly and immunocompromised, and to slow or halt the spread of the virus. It may be that when a vaccine is available, its use is made compulsory in certain contexts to prevent resurgences of the virus, again overriding individual autonomy<sup>60</sup>.

This raises the question of what other public health crises might require the abrogation of certain individual rights. With regard to the abortion debate, pro-life advocates commonly argue for the immorality of abortion based on the fetus<sup>61</sup> possessing the same moral status as children and adults—they are persons. However, Judith Jarvis Thomson's (1971) violinist analogy purports to show that even if fetuses are persons, abortion is nonetheless permissible in many instances. She also implies that women should not be legally required to continue with

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<sup>59</sup> During 2020.

<sup>60</sup> For a detailed ethical discussion of compulsory vaccination, see: Giubilini (2019).

<sup>61</sup> For ease of use, we use the term 'fetus' to refer to all stages of development after fertilisation. Technically, fertilisation begins with a zygote, which divides to become a blastocyst. From the second to the eighth week after fertilization, it is referred to as an embryo, and thereafter until birth, the fetus.

pregnancy in these cases. This severely undermines the pro-life argument predicated on the personhood of the fetus. While there are cogent replies to Thomson<sup>62</sup>, we<sup>63</sup> do not take a position on her argument here. Instead, we argue that irrespective of her argument's success, if fetuses are persons and a society values public health, then the vast scale of abortion entails fetuses must be protected from its harm. This implies implementation of an abortion prohibition. It follows that abortion can only be tolerated in a society that considers fetuses to be of lesser moral value than children and adults, or that does not value public health.

## 2. Public Health Ethics

According to Ronald Bayer and Amy L. Fairchild (2004), modern bioethics developed with a strong commitment to individual autonomy and rights. Both they and Nancy Kass (2001) attribute this emphasis to the context in which bioethics emerged—medical care and human research. Public health ethics, however, is primarily concerned with ‘protecting and promoting population health’, not individuals (Holland, 2014, p. 20). Bayer, Fairchild, and Holland suggest that achieving the goals of public health ethics may sometimes come at a cost to individual rights.

This raises the question of what moral theory grounds public health ethics. Given its emphasis on populations rather than individuals, it is unsurprising that many ethicists argue it should be based on some form of utilitarianism. For example, Holland states that utilitarianism is ‘the moral theory at the heart of public health’ (2014, p. 56). Julian Savulescu, Ingmar Persson, and Dominic Wilkinson (2020) argue that utilitarianism's emphasis on our well-being makes it well

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<sup>62</sup> For example, see Greasley (2017).

<sup>63</sup> As in the context section, I retain the ‘we’ in this paper to acknowledge my coauthor's contribution, while taking full responsibility for the revised paper.

suited to setting public health priorities. Bayer and Fairchild (2016) claim that utilitarian considerations are central to public health policymakers. Broadly speaking, utility in the public health context equates to population health, which Kass (2001) translates as reducing target population morbidity and mortality.

However, public health ethics is often understood in a way that encompasses more than just utilitarian considerations. The four principles of *principialism* are influential in public health: autonomy, beneficence, non-maleficence and justice (Lee, 2012; Beauchamp & Childress, 2019). Autonomy refers to individuals' right to make their own decisions about their health; beneficence and non-maleficence emphasise acting in ways that promote the well-being of individuals and populations. Justice is concerned with ensuring equal access to healthcare across populations. The first three principles highlight the role of individual rights. As we will see, though, there is broad agreement that preventing a sufficiently large decrease (or enabling a sufficiently large increase) in population health may justify overriding some individual rights. That is, while individual rights are important considerations in public health, there is a threshold of ill effects on which population utility should take precedence.

### **3. Public Health and COVID-19**

The current COVID-19 pandemic is a striking example of public health considerations being used as justification for abrogating certain individual rights. It recalls the case of Mary Mallon, also known as 'Typhoid Mary', an asymptomatic spreader of typhoid fever whose autonomy had to be curtailed in order to protect public health. Mary was forcibly quarantined on two separate occasions totalling 26 years<sup>64</sup>. In the case of COVID-19, governments were prompted

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<sup>64</sup> See Marineli, Tsoucalas, Karamanou & Androutsos (2013).

into action by Imperial College's epidemiological modelling that predicted if left unchecked, the virus would result in 40 million deaths worldwide (Walker *et al.*, 2020). Even moderate interventions such as isolation of cases and quarantine of those considered high-risk would still result in 250,000 deaths in the United Kingdom and over 1 million in the United States; lockdowns, however, were predicted to prevent most of these deaths (Ferguson *et al.*, 2020). Many countries chose to implement stringent lockdowns for several months. These lockdowns entailed significant incursions on individual liberty rights—people could not freely leave their homes and could not associate. As a result, millions lost their jobs and businesses, and many are likely to suffer mental health issues (Pfefferbaum & North, 2020). Governments justified these considerable sacrifices of individual rights by the prevention of significant harm to others, primarily their deaths from COVID-19. Lockdowns were thought to slow the spread of the virus, reducing infections and preventing hospitals from being overwhelmed by rapid increases in the number of critically ill patients. It is worth noting that the population most vulnerable to COVID-19 is the elderly, as well as those with certain existing morbidities. Their life expectancy is unlikely to exceed an additional twenty years.

Of course, governments' willingness to impose such strict lockdowns does not necessarily justify their actions. However, even ethicists critical of lockdowns have typically argued that the harms may have outweighed the benefits, not that lockdowns themselves cannot be justified (Director & Freiman, 2023; Miller & Moss, 2023).

It might be thought that infectious diseases are a special case for public health concerns abrogating individual rights. It only takes a single 'super-spreader' to infect a significant number of people and trigger a major public health crisis (Lin *et al.*, 2020). Clearly, some sacrifices made by individuals may prevent harm to the health of many others. However,

infectious diseases are not the only scenarios where governments override individual human rights to help achieve public health goals.

#### **4. Other Public Health Issues**

One example is smoking. It is common for governments to legislate bans on smoking in public places, and this infringes on personal liberty. However, the dangers of passive smoking are well established, and so such bans can be justified on the basis of third-party harm.

Similarly, seat belt laws restrict an individual's freedom to drive unbelted, but because in Western societies, so many people drive, and the evidence shows that wearing a seat belt significantly reduces morbidity and mortality<sup>65</sup>, mandatory seat belt laws help prevent car drivers from harming others—both their passengers and those in other vehicles.

#### **5. Harm versus Rights**

A crucial question is determining what restrictions on individual rights are justified in preventing a certain level of harm. It is widely agreed that smoking restrictions and seat-belt laws are justified as they prevent serious injury, illness and death to third parties, but these restrictions do not seem particularly onerous. As we have noted, the COVID-19 pandemic has resulted in far more severe restrictions on individual liberties, justified by the potential harm that could be inflicted on many millions of individuals, namely their deaths.

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<sup>65</sup> For example, see Crandall, Olson & Skla (2001).

Some general guidelines have been developed for public health emergencies such as pandemics, and a widely accepted codification can be found in the United Nations' Siracusa Principles (UN Commission on Human Rights, 1984). Measures must be a last resort, they must be prescribed by law (rather than being arbitrary), the public interest must be compelling, measures must be proportionate to the issue being addressed, and finally, they must be necessary measures with no less onerous alternatives. The Siracusa Principles allow for derogation of rights on the basis of public health ('to take measures dealing with a serious threat to the health of the population or individual members of the population' (UN Commission on Human Rights, 1984, p. 8)) and for public safety ('protection against danger to the safety of persons, to their life or physical integrity' (UN Commission on Human Rights, 1984, p. 9)). They also allow for a 'public emergency which threatens the life of the nation' (UN Commission on Human Rights, 1984, p. 10).

In the public health utility calculus, proportionality clearly is linked to the number of lives that are at stake. The more lives that are in danger of being harmed, the more significant the incursions on individual rights may be—provided there are no alternatives. Further, as Carl Tollef Solberg and Espen Gamlund explain, the primary goal of healthcare to save lives assumes that 'longevity is valuable and that an early death is generally worse than a late death' (Solberg & Gamlund, 2016, p.1). Similarly, Kamm argues that when saving lives in a healthcare context, we should consider both the years of life saved and how good those years are expected to be (Kamm, 2013, p.378). *Ceteris paribus*, public health ethics implies that we should prioritise saving the lives of the young over those of the elderly if we cannot save both, as this maximises utility. This can be used to calculate trade-offs between target populations—preventing harm to one target population may cause harm to another.

For COVID-19, most public health authorities have concluded that short periods of lockdown accompanied by longer periods of restrictions on social gatherings have been necessary to save lives. As we have noted, the population that is most vulnerable to COVID-19 is unlikely to have a life expectancy exceeding an additional twenty years. This indicates that in the public health utility calculus, saving millions of lives, even if they are limited in extent, is thought to justify significant incursions of individual rights.

## **6. Abortion and Public Health**

Having established that preventing harm to a target population in the form of increased morbidity and mortality can justify overriding individual rights, depending on the severity of the harm, let us now consider abortion. In the abortion debate, pro-life proponents argue that abortion is immoral primarily on the basis that fetuses possess the same moral status as children and adults—they are considered persons. Of course, this is a controversial position—most philosophers believe the moral status of a person requires conscious capacities such as self-awareness, desires and rationality, and this excludes the fetus<sup>66</sup>.

However, let us explore the implications of the pro-life view with regard to public health ethics and assume that fetal personhood entails equal consideration to other persons in public health. This would imply that we should be just as concerned for the health of fetuses as other persons, and it would be a goal of public health to reduce their morbidity and mortality. Like infants and the elderly, fetuses would also be considered a particularly vulnerable population demographic. Given that there are about 73 million abortions worldwide each year (WHO,

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<sup>66</sup> For example, Mary Anne Warren outlines five criteria for personhood, including ‘the presence of self-concepts, and self-awareness’ (Warren, 1973, p. 55). Jeff McMahan requires that persons possess certain psychological capacities (McMahan, 2002, p. 242). Alberto Giubilini and Frances Minerva state that a person must be capable of attributing value to their own existence (Giubilini & Minerva, 2013, p. 262).

2022b), resulting in 73 million deaths of fetuses, this clearly would comprise a major public health crisis—annual abortion deaths are greater than the *total* number of deaths of infants, children and adults from *all* causes, around 55 million (WHO, 2019).

How would this health crisis compare to COVID-19? The pandemic was predicted to cause the deaths of approximately 40 million people, so abortion is of similar gravity in terms of the number of deaths. However, recall that calculating public health utility requires considering both the years of life saved and how good those years are expected to be (Kamm, 2013, p. 378). On both measures, fetuses are harmed far more than the average COVID-19 victim. Fetuses typically have an entire lifetime ahead of them, while the mortality rate for those with COVID-19 increases steeply for those over 60 years of age (Promislow, 2020). The typical fatality had perhaps 20 years of life remaining and usually suffered from pre-existing medical conditions. By contrast, fetuses have their entire life expectancy ahead; global average life expectancy at birth is around 73 years (WHO, 2023). This implies that *if* fetuses were granted equal consideration in public health utility, abortion would have to be considered a far more significant public health crisis than the COVID-19 pandemic in terms of the harm fetuses suffer by being deliberately killed. It would justify drastic action to protect this huge and very vulnerable population.

## **7. Protecting Fetuses**

How drastic might the measures taken to protect fetuses be? Given the tens of millions of deaths involved, abortion satisfies the Siracusa Principles' public health and public safety criteria, permitting derogation of rights if required. Whatever measures are taken, the requirement is that the number of abortions be reduced to the extent that abortion is no longer a public health crisis. As a comparison, let us consider the leading cause of death for adults—*ischaemic heart*

disease (WHO, 2019a). A 90% reduction in abortion numbers would be required to bring them to a similar number of deaths.

Significantly reducing abortion numbers would require a dramatic change in public behaviour towards abortion. Public education campaigns could be tried to both discourage abortion and to encourage contraceptive use. Governments could also provide generous financial incentives and support to pregnant mothers to encourage them not to have abortions. While such approaches may help to reduce abortion numbers, it seems unlikely that they will have the dramatic effect necessary to deal with such a public health crisis in the short-term. An analogy might be dealing with the COVID-19 pandemic by allocating substantial financial support for vaccine research and development, and expanding healthcare resources to cope, but doing little to prevent the immediate spread of the virus during the interim period before a vaccine is developed.

Complicating prevention strategies is Christine Overall's (2015) contention that the primary reason pregnant women seek abortions is that they do not want a child of theirs to exist that they have responsibility for—they do not want to reproduce. For such women, financial incentives to continue with pregnancy seem unlikely to be persuasive, and so the only measure likely to dramatically reduce the number of abortions would be prohibition.

This satisfies the Siracusa criterion that there should be no alternatives with an appropriate impact on the issue, and prohibition, while imposing a substantial cost on women seeking an abortion, seems proportionate to the millions of persons aborted annually. Finally, changing the law to prohibit abortions ensures this is not an arbitrary measure. Therefore, on the pro-life view that fetuses have the moral status of persons, it seems that there is a *prima facie* case that

public health considerations justify prohibiting abortion. There are, however, a number of objections that could be raised against our contention, and we examine them now.

### **8. Organ Transplant Objection**

Given the association of public health ethics with utilitarianism, a critic might claim that abortion is merely equivalent to other failures to save people at considerable cost to ourselves, such as unwillingness to sacrifice a kidney to save someone with chronic kidney failure. Few people would agree that a state is justified in coercing kidney donation, and so this undermines the case for prohibiting abortion.

One possible response would be to argue that this is not an equivalent scenario: abortion is an act of killing while failing to sacrifice a kidney is to let someone die. It could then be argued that it is easier for the state to justify a prohibition on killing than it is to justify forcing citizens to donate kidneys. Of course, if the number of people dying of organ failure is sufficient to constitute a public health crisis, coercing kidney donation might still be justified. However, there are two reasons why this argument fails.

Firstly, there are viable alternatives to coercing organ donation. McCormick *et al.* (2022) estimate that the shortage of donated kidneys in the United States could be completely eliminated by compensating living donors appropriately. Secondly, up to 10,000 people die annually in the United States while waiting for a kidney (McCormick *et al.*, 2022, p. 2028). While this is a substantial number of deaths, Diamant, Besheer and Leppert (2024) cite figures indicating that there are over 900,000 abortions annually in the United States, indicating that if fetuses are considered persons for public health purposes, abortion is by far the greater issue.

## 9. Prohibition Fails Objection

It has been claimed that abortion restrictions do not reduce the number of abortions<sup>67</sup>. However, evidence against this is accumulating. For example, a recent comparison of state abortion policies in the United States has shown that restrictive abortion laws result in a significantly lower abortion rate (Brown *et al.*, 2020). It showed that states that have highly restrictive laws have 17% fewer abortions than the median rate, which, if applied globally, could potentially save millions of lives each year. In addition, if the results of the recent liberalisation of abortion laws are examined, it is clear that this results in significantly more abortions being performed. For example, the Republic of Ireland recently legalised abortion, and overall, the number of abortions has doubled since the law was changed<sup>68</sup>. This includes the many Irish women who previously travelled to England or Wales for an abortion. If abortion had also been prohibited in these countries, abortion numbers would have been even lower prior to legalisation in Ireland.

## 10. Illegal Abortions Objection

A second objection is that if abortion is prohibited, some women might seek illegal ‘back street’ abortions that could result in their being severely injured, perhaps losing their lives. Additionally, maternal mortality could increase due to more births.

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<sup>67</sup> For example, see Sedgh *et al.*, 2016.

<sup>68</sup> There were 32 abortions in the Republic of Ireland during 2018 (Department of Health, 2019. Fifth Annual Report on the Protection of Life During Pregnancy Act 2013), According to the First Health (Regulation of Termination of Pregnancy) Act 2018 - Annual Report on Notifications, there were 6,666 abortions during 2019. During 2016, the last year figures are available, 3,265 Irish residents travelled to England and Wales for abortions. See Department of Health and Social Care (2017), Abortion Statistics, England and Wales: 2016.

The evidence for increased maternal mortality under stricter abortion laws is mixed. Unsafe abortion has been described as a ‘preventable pandemic’, costing 68,000 lives per year worldwide, and is claimed to be highest in countries with legal restrictions on abortion (Grimes *et al.*, 2006). However, when Chile banned abortions in 1989, this did not result in increased overall maternal mortality (Koch, 2013). Poland has some of the most restrictive abortion legislation in the world and yet shares the lowest maternal mortality rates with Greece, Finland, and Iceland at around 3 deaths per 100,000 births (WHO, 2019b).

For the sake of argument (and to assume the worst case), let us assume that stricter abortion laws do make a difference in maternal mortality. The ratio for unsafe abortion mortality in countries with restrictive abortion laws is claimed to be 34 deaths per 100,000 births (Grimes *et al.*, 2006). Let us further assume that if abortion were to be restricted worldwide, this ratio would be ubiquitous. On the pro-life view that fetuses have the same moral value as pregnant women, we must compare this figure to abortion deaths per 100,000 live births. Sedgh *et al.* (2016) estimate that worldwide there were 56 million abortions annually during 2010–14. According to the United Nations (2014), there were roughly 82 million births during 2014. This translates to roughly 68,000 fetal deaths by abortion per 100,000 births—about 2000 times higher than our unsafe abortion deaths estimate. Clearly, if we treat fetuses as equal to us in moral status and deserving of equal consideration in terms of public health utility, and if restrictions can reduce abortion rates significantly as we suggest above, then the illegal abortions objection is unconvincing.

## **11. Kantian Objection**

The Kantian objection to abortion prohibition is based on Kant’s second formulation of his categorical imperative, which requires that people are never treated as mere means but as ends

in themselves (Kant, 2012, p. 45). The claim is that prohibiting abortion treats women merely as incubators or containers for the fetus.

First, it is not clear that the prohibition of abortion treats women merely as a means. We referred to Typhoid Mary earlier, who had her freedom restricted to prevent her from spreading the disease. She was not treated as a means to advantage others; rather, she was prevented from threatening others. Similarly, women seeking an abortion are the source of the threat to their fetus, and so perhaps they too can be reasonably prevented from carrying out their threat.

A rejoinder might be that women are simultaneously being prevented from discontinuing the aid they are providing to the fetus, and in that sense, they *are* being treated as a means. However, since we are assuming a position where rights are defeasible provided the outcome that is averted is bad enough, it is plausible that we may similarly be permitted to treat women as a means if that is the only way to avert such an outcome.

## **12. Unwanted Children Objection**

An anonymous reviewer raised the issue of abortion prohibitions resulting in large numbers of unwanted children. They ask if the state is responsible for raising millions of unwanted children if parents are unwilling to do so. When abortion laws were relaxed in the United States in the 1960s and 1970s, there was a marked decline in children available for adoption, so it certainly seems possible that stricter abortion laws would result in an increase (Bitler & Madeline, 2002). However, this would be an increase in children unwanted by their *parents*—it does not mean the state would be required to care for them. State care would only be required if the number of children available for adoption exceeded demand. In wealthier countries, demand exceeds supply and has been driving international adoptions in recent years (Hilferty & Katz, 2018).

Additionally, Fiona Hilferty and Ilan Katz argue that abortion is only one reason for the reduction in children available for adoption—improved economic conditions, contraception, delayed childbearing, increased infertility, and better welfare have all contributed (Hilferty & Katz, 2018). This shift has occurred both in countries receiving international adoptions and those supplying them. It suggests that if restrictive abortion laws were introduced, there would not necessarily be an increase in the number of children the state must care for. In fact, Lisa Gennetian notes that empirical research shows that ‘recent restrictions on abortion access are associated with declines or no effect on total birth rates’ (Gennetian, 1999, p. 414). She suggests that abortion restrictions may change fertility behaviour, resulting in a reduction in pregnancies.

In any case, as far as public health is concerned, if we assume the pro-life view that fetuses are persons, we are obliged to act to save their lives—we cannot hold back amid concerns regarding what might happen if too many are saved.

### **13. Thomson and Moral Status**

We have established that on the pro-life view that fetuses are considered persons, there is a compelling case for governments to prohibit abortion on public health grounds, and we have explored various objections, none of which seem likely to prevail in what would be a public health crisis involving over 73 million deaths per annum worldwide. But as one anonymous referee notes, even if this argument is persuasive, most philosophers do not accept the pro-life view of the moral status of fetuses, and so it has no significance for them.

It is true that this argument holds no persuasive power for those who do not hold that fetuses are persons, but they are not its target. Rather, this argument is aimed at Judith Jarvis Thomson's (1971) well-known violinist analogy, which presents a major challenge to pro-life arguments based on the moral status of fetuses.

Thomson's argument is based on a thought experiment that constructs an analogy to pregnancy: a famous unconscious violinist has been attached to your body while you are sleeping by the Society of Music Lovers because you are the only person whose blood can help him recover from his kidney ailment. His condition requires nine months of treatment, and if you unplug yourself from him, he will die. Intuitively, this seems like an outrageous imposition, and so Thomson argues that no one is obliged to remain plugged into the violinist.

Thomson concludes that even if the fetus is a person and possesses a right to life, this does not give the fetus the right to use its pregnant mother's body for life support. In many cases, she is not morally obliged to continue to offer support because the sacrifices involved are too large. Instead, she can choose to withdraw that support by having an abortion. This is problematic for the pro-life position—if abortion is permissible *even when the fetus is a person*, this severely undermines all pro-life arguments predicated on personhood. Indeed, there has been a concentrated effort over the years since Thomson's argument was published to refute it<sup>69</sup>.

We need not take a position on the cogency of Thomson's reasoning here. We could even grant for the sake of argument that Thomson *succeeds* in showing that the sacrifices of pregnancy usually do justify the permissibility of abortion<sup>70</sup>. However, it can also be true that in order to

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<sup>69</sup> For example: Lu (2013); Schouten (2017); Greasley (2017, pp. 33-57); Wood (2022); Hendricks (2022b). For a recent overview of responses to Thomson, see Crozat (2024).

<sup>70</sup> For the record, we do not believe Thomson's reasoning is successful, but this is of no consequence here.

avoid a greater evil, it is permissible to impose a burden on someone that they need not accept. We have argued that public health ethics implies that evils such as the deaths of thousands of persons are examples where this is the case. If it is maintained that the fetus is a person, then the greater evil is ending the lives of thousands of fetuses via abortion. In terms of public health ethics, we have calculated that there are 68,000 fetal deaths by abortion per 100,000 births, which is a huge decrease in public health utility of the fetus population. Of course, there is also a potential decrease in public health utility if abortion is prohibited—women will suffer physical and mental harms if they have no option but to continue with their pregnancies. However, on the pro-life view that fetuses are persons, prohibiting abortion clearly prevents an overall large decrease in public health utility.

This is a significant result for pro-life arguments that rely on the personhood of the fetus, as Thomson's argument has regularly been employed to undermine such arguments. We have shown that in a society that values public health, abortion can only be legal if the fetus is thought to possess a significantly lesser moral status than that of children and adults.

#### **14. Miscarriage**

We have argued that the pro-life view that fetuses are persons entails that abortion is a public health crisis. This raises the issue of miscarriage. Numerous philosophers have argued<sup>71</sup> that if it is believed that embryos and fetuses have moral status equivalent to children and adults, then miscarriage is a public health crisis that must be prioritised. Toby Ord (2008) claims that over 60% of pregnancies miscarry, implying over 200 million deaths annually, significantly more than annual deaths from abortion.

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<sup>71</sup> Murphy (1985); Ord (2008); Simkulet (2017); Berg (2017).

Ord's argument is intended to show that pro-life advocates do not really believe that embryos and fetuses possess full moral status. According to Ord, if they did, they would be acting urgently to investigate this huge loss of valuable human lives. In response, pro-life philosophers have pointed out that a high percentage of miscarriages are not preventable and have shown that induced abortion is the most significant preventable cause of death prior to birth (Blackshaw & Rodger, 2019; Colgrove, 2021). They have, however, acknowledged that miscarriage is an important issue that deserves more attention from pro-life advocates (Blackshaw & Rodger, 2019; Hershenov, 2020).

There is a pertinent implication from miscarriage here. If Ord *et al.* succeed in showing miscarriage is a public health crisis (assuming fetal personhood), then clearly induced abortion is also a public health crisis, being of a similar scale. In effect, the argument from miscarriage (intended to undermine the pro-life view), when considered from a public health perspective, helps to justify a prohibition on abortion.

However, William Simkulet (2021) argues that compulsory vasectomies would address both induced abortion and spontaneous abortion. He notes that vasectomies are reversible, and so, presumably, the idea is that all men would be required to undergo a vasectomy and obtain a reversal when they are ready to have children. Finally, after having their desired number of children, they would have another vasectomy. By ensuring that pregnancy is possible only when a child is definitely desired, this approach seems likely to significantly reduce the number of unintended pregnancies and, hence, the number of induced abortions. It is less clear what its impact would be on spontaneous abortions, as there would still be large numbers of these during males' fertile periods.

Compulsory vasectomies, then, are a contender to abortion prohibition in addressing the public health crisis of induced abortion. Which option should be preferred? As we have noted, Thomson (1971) argues that abortion is permissible on the grounds of a woman's bodily autonomy: no one is obliged to offer their body to support the life of another person. This is primarily a negative right: her argument does not imply that the state or others are obligated to provide assistance to obtain an abortion. Therefore, on Thomson's reasoning, prohibiting abortion does not directly violate a pregnant woman's rights. Compulsory vasectomies, however, are a mass violation of every man's right to bodily autonomy. In a public health crisis, the Siracusa Principles imply that measures that do not involve violations of rights should be preferred over those that do. Further, restricting abortion affects a much smaller percentage of the population: pregnant women seeking abortions. Therefore, prohibiting abortion should be preferred over compulsory vasectomies.

## 15. Conclusion

Pro-life advocates commonly argue that fetuses have the moral status of persons, and therefore abortion violates their right to life. This view has had to contend with Thomson's violinist analogy, in which she argues that even if fetuses are persons, abortion is permissible in many cases. However, we have shown that *if* fetuses are considered to be persons, abortion constitutes a significant public health crisis. Consequently, widely accepted public health ethical principles justify overriding individual rights to bodily autonomy in order to prevent maximal harm to the population of fetuses. We conclude if fetuses are persons, public health considerations require that abortion is prohibited. Abortion can only be tolerated in a society that values public health if fetuses are not regarded as persons.

### **PAPER 3: Selective Abortion: From Disabilities to Genetic Traits**

#### **Context**

In part two of this thesis, I responded to numerous criticisms of the substance view, which claimed it had counterintuitive implications that undermined its plausibility. In this paper, I adopt a similar approach to the pro-choice stance, building upon the implications of some existing work on selective abortion.

The liberal pro-choice stance on abortion prioritises a woman's right to control her own body, holding this principle paramount even in cases of selective abortion for reasons based on disability. This is a challenge for disability advocacy groups, who are concerned that selective abortion for disability is a form of anti-disability eugenics. Nonetheless, selective abortion for disability is widely practised for conditions such as Down syndrome.

However, Jeremy Williams (2012) argues that the aforementioned pro-choice stance, if applied to selection for disability alone, is ad hoc: applying the same reasoning entails that we cannot justify prohibiting sex selective abortion. He anticipates numerous objections and demonstrates that these apply equally well to abortion for fetal abnormality as they do to sex selective abortion. If we grant that the former is permissible, we should also grant the permissibility of the latter. This is a problematic conclusion for many ethicists, particularly feminists, who are well aware that sex selective abortion is almost always used to abort females.

Williams frames his paper as a demand for consistency from pro-choice liberals (with whom he identifies). In the paper below, however, I show that rational pro-choice thinkers cannot stop there. I extend Williams' reasoning a step further to argue that they should also grant the

permissibility of various further forms of genetic selective abortion. I add several possible objections of my own to Williams' list, such as the commodification objection, which claims that selective abortion leads to the commodification of children, meaning they are treated as replaceable with only instrumental value. I show that this objection applies equally well to abortion for fetal abnormality as it does to genetic selective abortion. As a result, I argue that a liberal pro-choice stance on selective abortion for disability also entails that a prohibition on genetic selective abortion cannot be justified for any trait from which a woman would suffer a disadvantage in some way. This is an even more extreme result than that of sex-selective abortion, as it means we should not prohibit abortions that target traits such as skin colour, intelligence, sexual orientation or religious belief. I explain that in recent years, researchers have begun to be able to demonstrate an association of certain genes with all these phenotypes, and in the future, diagnostic tests are likely to become more accurate.

I conclude by stating that if fetal abnormality abortion is regarded as permissible by liberal pro-choice advocates, consistency requires that sex-selective abortion and genetic-selective abortion should also be permitted. My intention is not to argue for these practices, nor to demand consistency from pro-choice liberals, but rather to undermine the liberal pro-choice stance by showing it has unacceptable implications. Those who agree will need to reconsider their endorsement of the liberal pro-choice stance on selective abortion for disability, which I believe is difficult to do without modifying the liberal pro-choice stance in favour of an account that awards substantial moral status to the fetus. Yet, to notice this is to see, once again, as I have argued already in this thesis, that pro-choice advocates by no means escape objections from problematic implications of the kind that they are fond of deploying against their pro-life opponents.

## 1. Introduction

Selective abortion can be controversial depending on its target, even amongst those who generally hold a liberal pro-choice stance towards abortion—a view predicated on the importance of individual rights and liberty, particularly the right of women to control their own bodies. A central argument used to justify the permissibility of abortion on this view is Judith Jarvis Thomson’s much debated violinist analogy, which is intended to demonstrate that no-one has a right to the use of another person’s body (1971). For the sake of argument, Thomson grants that the fetus has the rights of a person, and her goal is to show that despite this, in at least some circumstances, abortion is still permissible. Thomson’s reasoning is not the only argument in the liberal pro-choice arsenal—it is commonly argued<sup>72</sup> that the fetus does not have equivalent moral status to children and adults, primarily because it lacks certain attributes such as sentience or self-awareness that are required for personhood. If it can be shown that this is the case, it is clearly far easier to justify the primacy of the woman’s right to control her body—her interests will always override those of the fetus. These arguments form the primary justification for the liberal pro-choice position, but other moral theories are also drawn upon that are not strictly liberal—the most common being consequentialist arguments, such as claims that restricting abortion will force women to use illegal abortions that are far more dangerous for women (Grimes *et al.*, 2006), or will result in higher levels of child abuse (Bitler & Zavodny, 2002).

While most pro-choice advocates seem comfortable with permitting selective abortion for disabilities—what Kate Greasley (2017 p.223) refers to as *fetal abnormality abortions*

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<sup>72</sup> For example, David Boonin requires that the fetus exhibits ‘organized cortical brain activity’ before it can possess rights (Boonin, 2002, p.115). Jeff McMahan’s Embodied Mind Account similarly requires consciousness for an individual to exist—prior to this point the fetus is *something* rather than *someone* (McMahan 2002, p. 267).

(FAA)—they are often reluctant to endorse *sex selective abortion* (SSA). For example, Jeff McMahan defends FAA but states that in the case of SSA, the solution ‘is to eliminate the social discrimination, not to eliminate the victims of it’ (McMahan, 2005, p.167). Allen Buchanan *et al.* argue that fetuses have no right to be born, and so it is permissible to abort fetuses with disabilities (Buchanan *et al.*, 2000, p.277)—but they advance a consequentialist argument against SSA, stating that the ‘practice depends on and reinforces a systematic bias against women’ (2000, p.184). Feminist philosophers, in particular, generally favour an outright ban on SSA while being strong pro-choice advocates (Widdows, 2014).

These concerns regarding SSA are not universally held—Julian Savulescu (2006) is one well-known defender of SSA who argues that respect for procreative autonomy overrides any concerns about possible harmful side effects, whether those harms are incurred by children, women or society. On similar grounds, John Harris (2005) has argued for the regulation of SSA, initially permitting a restricted number of procedures (1 million in a population of 60 million) over a ten-year period until the effects are better understood. Savulescu and Harris are, however, amongst a minority who consider that reproductive freedom trumps concerns regarding SSA.

Both FAA and SSA involve the selection of fetuses for termination, and so this raises the question of what differences there are between these practices that are significant enough to entail that we should permit one practice while prohibiting the other. Jeremy Williams (2012) has argued that if we are committed to a pro-choice stance with regard to FAA, we will be unable to justify the prohibition of SSA. Briefly, his approach is as follows. Firstly, he shows that the arguments commonly used to support a woman’s right to FAA are equally applicable

to a right to choose SSA. Secondly, he demonstrates that the reasoning used to *refute* arguments critical of FAA is also applicable to arguments critical of SSA.

In this paper, I review William's arguments before considering their applicability to selection against other traits that pregnant women might find undesirable in their children, depending on their beliefs and values. These include susceptibility to disease, level of intelligence, physical appearance, sexual orientation, propensity for religious belief, various psychological conditions and criminality—in fact, *any* traits attributable to some degree to a genetic component, including those yet to be discovered. I conclude that *if* we are committed to a liberal pro-choice stance with regard to FAA, as with SSA, we are unable to justify the prohibition of selecting against these traits—what we might call genetic selective abortion (GSA).

It is worth noting that FAA may well be a subset of GSA in many cases—for example, where Down's syndrome is diagnosed by genetic testing. SSA could similarly be considered a subset of GSA if sex is determined by this method. In fact, the diagnostic tool itself is not particularly relevant here—objections are based on the *type* of selections that can be made, and genetic testing happens to provide the most comprehensive data about the fetus. In effect, advances in diagnostic technology have vastly expanded (and will continue to expand) the information upon which our choices can be made.

## **2. Women's interests**

Williams' approach is to suggest three uncontroversial scenarios in which a liberal pro-choice advocate would agree that a woman has the right to opt for an abortion, all for pre-sentient fetuses: pregnancy from rape, a single woman who cannot afford a child, and a woman with

three children who is afraid another child will destroy her marriage. In the rape scenario, the woman believes she cannot cope with the emotional distress of having her attacker's child. In the second scenario, the woman will be forced into poverty, and in the last scenario, there is the possibility of a relationship breakdown. If the pre-sentient fetus has no interests, then these weighty interests of the woman are guaranteed by the right to an abortion. Williams then suggests parallel scenarios involving women who wish to have a child but know they have a 25% chance of conceiving a child with a serious disability. If they are denied abortions, these women will experience *exactly the same bad effects* as those in the first group of scenarios: increased emotional stress, relationship difficulties and susceptibility to poverty. Williams points out that in a society that allows abortion up to 20 weeks but prohibits FAA, women in the second scenario are penalised for their desire to have a healthy child: in both scenarios, the women can choose to have an abortion, but women in the second group must *gamble* with their interests if they continue with their pregnancies. As Williams states, this does not seem compatible with equal concern for women—if we believe abortion in the first set of scenarios is justified, then we should agree that selective abortion is also justified in the second set of scenarios.

Williams then presents a third set of scenarios, this time involving SSA. The first involves a woman who was sexually abused by her mother as a child and who believes she cannot cope emotionally with having a daughter—instead, she has a strong preference for a boy. The second is a woman who lives in a culture where raising girls is far more expensive than raising boys, as discrimination in the labour market means they cannot contribute financially to the family, and dowry requirements mean marriage is expensive. She believes she cannot afford a daughter and also wants a son. The final scenario is a woman with four daughters who fears her marriage will break down if her husband's desire to have a son is not satisfied.

Williams' crucial point is that the women in the third set of scenarios involving SSA are trying to protect *precisely the same interests* as the women in the second set of scenarios who wish to use FAA. *If* we are willing to grant that the interests of the women in the second set of scenarios justify the use of FAA, then we should be willing to grant that these *same* interests justify the use of SSA in the third set of scenarios.

Williams notes there will be cases where the reasons a child of a certain gender is desired are not as strong as those shown above—they may even seem frivolous. However, in a liberal society, why should we enforce a certain threshold for what is regarded as a 'good enough' reason? And, if we choose to do so and are able to develop a suitable criterion, it seems unlikely that women's reasons could be consistently and fairly assessed by the state against this criterion.

Of course, as Williams points out, these considerations are equally applicable against restrictions that permit abortion only for severe fetal abnormalities or a risk to the mother's mental health. Let us now examine their applicability to GSA after a brief overview of recent research into inheritable traits.

### **3. Genetic selective abortion**

There are currently numerous tests that can be conducted that give an indication of the health of the fetus. *Screening tests* use ultrasound or maternal blood tests to estimate the probability that a fetus has Down's syndrome, neural tube defects or other abnormalities, and are not invasive. These blood tests rely on the presence of fragments of fetal DNA in maternal blood,

known as cell-free DNA. The proportions of certain sequences of DNA that are specific to chromosomes, such as chromosome 21, can be measured, indicating whether Down syndrome or other aneuploidies are likely in the fetus. *Diagnostic tests* are more definitive and use amniocentesis or chorionic villus sampling (CVS) to obtain cells from the fetus or placenta for testing<sup>73</sup>. Technological advances are rapidly expanding the number of genetic conditions that can be diagnosed from these tests<sup>74</sup>.

As well as being able to detect genetic diseases and conditions, research is increasingly informing us of genes that are correlated with certain traits and tendencies to a wide range of conditions and behaviours. For example, certain mutations of the BRCA1 and BRCA2 genes significantly increase the risk of developing breast cancer and ovarian cancer (Kotsopoulos *et al.*, 2018); we are beginning to discover gene variants that predispose children to acute leukaemia (Churchman *et al.*, 2018). It is now possible to detect severe intellectual disability (Gilissen *et al.*, 2014), and researchers are beginning to associate certain genes with intelligence (Sniekers *et al.*, 2017). According to John Alford *et al.* (2005), ‘genetics plays an important role in shaping political attitudes and ideologies’, while Bryanna Fox states that ‘it is increasingly clear that criminal behaviour results from a combination of factors, both biological and environmental’ (2017). Recently, Michael Price (2018) reported on Andrea Ganna’s research presented at the American Society of Human Genetics, which identified four genetic variants correlated with same-sex sexual experiences, and Jinting Liu *et al.* (2017) have identified a gene that is correlated with altruistic behaviour. Wray *et al.* (2018) have identified 44 loci associated with major depressive disorder. In time, it is likely that the range of available prenatal genetic tests will expand to include these and other traits, such as propensity for

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<sup>73</sup> According to Van den Veyver (2018), fetal cells also circulate in maternal blood, but they are rare and difficult to isolate.

<sup>74</sup> See Van den Veyver (2016).

religious belief. We must consider, therefore, whether selective abortion based on the results of such tests should be permitted.

Again, let us consider three hypothetical scenarios, this time involving potential genetic selection:

1. Alice has lived with major depressive disorder for most of her life. She does not believe she can cope with the emotional strain of raising a child with the same condition.
2. Wanda is a single woman with no medical insurance. She believes having a child who develops leukaemia will bring financial costs that will result in severe financial stress, and she fears being unable to provide for the child's needs.
3. Sally is married to an extremely homophobic man, and she fears that if she has a child who is gay, her husband will leave her.

Once again, the women in this set of scenarios are trying to protect the *same* interests as the women in each of Williams' sets of scenarios, including those involving FAA. Again, if we are liberal pro-choicer advocates willing to grant that the interests of the women in the second set of scenarios are sufficiently strong to justify the use of FAA, then we should be willing to grant that these same interests justify the use of GSA in order that women do not need to gamble with these interests. The same arguments against requiring minimum thresholds for the strength of women's reasons to abort in order to prevent frivolous use of GSA also hold.

To summarise, then, liberal pro-choice advocates allow FAA in order that women's interests are not harmed. If this stance is taken, the same reasoning applies to both SSA and GSA—if these are not permitted, in certain circumstances, women's interests will be harmed. Limiting

the use of SSA and GSA by forcing women to justify their reasons to the state is also likely to harm their interests. Consistency requires that if FAA is permitted, so should SSA and GSA.

#### **4. Objections**

We must now consider how Williams deals with objections to SSA, and whether similar objections are applicable to GSA in general. He identifies three standard objections: (1) that if SSA is available, women will be coerced into abortions against their will, undermining their autonomy, (2) SSA supports ‘harmful sexist attitudes towards women in the society at large’, and (3) SSA is analogous to genocide (Williams, 2012, p.137).

##### **4.1 Autonomy objection**

The *autonomy objection* claims that SSA should be banned because it will contribute to cultural pressures to abort female fetuses, reducing women’s autonomy. However, Williams points out that precisely this occurs in relation to FAA—significant pressure is exerted on women to abort a fetus that is diagnosed with Down’s syndrome (Saxton, 2000). Moreover, Williams shows that the same reasoning actually entails that *all* access to abortion should be prohibited on the grounds that women in a wide variety of situations are pressured into having abortions.

How does the autonomy objection fare with GSA? Certainly, there are many conceivable scenarios where women might be pressured to abort their fetus if tests indicate a non-negligible chance of developing certain conditions. If the chances of a child developing a severe childhood illness is significant and health insurance costs are high, potential financial strain might result in partners pressuring women to abort. In some cultures, particularly societies where homosexuality is illegal, there may be family and societal pressure to abort fetuses exhibiting

genes for certain sexual orientations. If a test for the propensity to develop certain criminal tendencies was widely available, it is conceivable that pressure could be exerted on women to abort fetuses with a positive result. Again, these pressures seem little different to those experienced by women whose fetuses have tested positive for disability, and so if these pressures are deemed acceptable in disability scenarios, they are also acceptable for GSA.

#### **4.2 Expressivist objection**

The *expressivist objection* to FAA claims that this expresses ‘negative, extremely damaging judgements about the value of disabled persons’ (Buchanan, 1996, p.28). Similarly, the expressivist objection to SSA claims that it undermines the status of women and reinforces notions of their inferiority. How do pro-choice advocates defend against this argument? The primary defence is that an act expresses the beliefs that motivate the act, and so for disability, selective abortion expresses judgements about the value of disabled persons *only* if individuals are motivated by such beliefs. Williams applies the same reasoning to SSA, arguing that women who choose to abort a female fetus need not have a personal belief in the inferiority of women—they may believe that giving birth to a girl will worsen their circumstances in some way. Provided such reasons exist—and Williams’ scenarios demonstrate it is a realistic possibility—SSA does not necessarily express a belief in the inferiority of women, and therefore we cannot make inferences regarding women’s reasons. Clearly, the same reasoning can be applied to GSA. Whether the selection is based on traits for sexual preference, political belief, criminality or susceptibility to cancer, the scenarios I have presented demonstrated that women may have reasons for abortion unrelated to negative attitudes about the particular traits that are targeted. Of course, we may be less concerned about negative judgements concerning criminality and extreme political views.

A related objection is that such abortions contribute to a negative view of disabled people, women, gay and lesbian people, and so on—irrespective of the personal motivations of women who seek abortions in these circumstances. Williams points out that in the scenarios we have seen, this is asking certain women to bear an unreasonably heavy cost to help prevent prejudice against these groups. Of course, we might consider only permitting GSA in cases where a woman's reasons are not based on prejudice against a group, but as we have discussed, it is problematic having the state assess women's reasons for wanting an abortion. Moreover, *any* policy that permits SSA or GSA, even under restricted conditions, surely contributes to negative judgements regarding these groups.

Given that pro-choice advocates consider that the interests of women being able to abort for disability outweigh the effect of the accompanying negative judgements for those who are disabled, once again, this objection fails against SSA and GSA.

### **4.3 Genocide objection**

The third objection to SSA is that it is analogous to genocide, which, according to the United Nations, is the 'intent to destroy, in whole or in part, a national, ethnical, racial or religious group' (1948). Williams provides three reasons why this analogy fails. Firstly, SSA, if performed on pre-sentient fetuses, does not involve the violation of any fundamental human right. Secondly, SSA is undertaken by individuals, and is not a coordinated campaign to destroy a particular group, and finally, there is no *intent* to eliminate the group. Clearly, these reasons are equally applicable to GSA in cases where fetuses that are part of certain ethnic, racial or religious groups are targeted—and where they are not, the genocide objection has no force.

Williams also discusses a related objection: selective abortion might deprive group members of certain communal goods that are dependent on the group flourishing, such as shared traditions and a sense of belonging. Diminishing the numbers of a group by selective abortion might also harm the group in its ability to lobby for their interests. Of course, in the case of those predisposed to criminal tendencies, if they even exist, we would be unconcerned by their deprivation of communal goods or lobbying power. For other groups targeted by GSA, it seems unlikely that they would be deprived of communal goods or lobbying power to a greater extent than disability groups, and so once again, if we are willing to permit FAA, it implies we should be willing to permit SSA and GSA. If we do not, we are asking women to sacrifice their own interests for the sake of these groups when they are not responsible for society's discrimination against them.

#### **4.4 Consequentialist objections**

Finally, Williams considers consequentialist objections, predicated on threshold deontology, which says rights can be trumped if consequences are serious enough. He has argued that requiring pregnant women to unfairly bear the cost of society's prejudices is an imposition on their rights, but perhaps the consequences of a skewed sex ratio are serious enough that this can be justified. There are two issues with demonstrating this (apart from theoretical issues with threshold deontology itself). Firstly, we do not really understand the consequences of allowing or banning SSA—there are too many unknowns, and typically the threshold required to override rights is thought to be very high. Secondly, this involves what Derek Parfit calls 'different number choices' (Parfit, 1987, p. 356): when it comes to abortion policy, denying abortions results in additional people who exist, and it is not clear how we can decide if this will result in a better world, as measured on consequentialist terms.

Clearly, these same issues are no less applicable to any kind of GSA. The consequences of such selection are unknown; in the case of selectively aborting fetuses identified with negative traits such as criminality or violence, it might be that the overall consequences are positive. Similarly, the consequences may be positive if fetuses which are more likely to die early deaths from disease are selectively aborted. Most forms of GSA will target a smaller proportion of the population compared to SSA, and so if Williams' arguments regarding the consequences of SSA succeed, it is unlikely the consequences of other GSA are more serious. If we endorse a woman's right to choose whether or not she continues with her pregnancy, it seems unlikely that we can trump that right based on the consequences of allowing such selective abortion practices.

#### **4.5 Commodification objection**

There is a more specific objection that can be made: that selective abortion leads to the *commodification* of children. Heather Widdows claims it is possible with these technologies that children 'will become the types of things which parents can choose rather than simply accept' (Widdows, 2014). Let us examine this objection more closely. According to Stephen Wilkinson, the morally relevant characteristics distinguishing *commodification* in this context are treating children as *fungible*—or replaceable with similar goods—and as having only *instrumental* value (Wilkinson, 2010, p.132). He cites the well-known Kantian principle that people should be treated as ends-in-themselves rather than as means as a common basis for this objection. Wilkinson believes it is difficult to show that selective reproduction is *solely* instrumental as required by this principle—provided the child is not treated *merely* as a means once born the principle is not violated. Selective reproduction also does not seem any more

objectionable than the many other reasons why parents decide to have children, some of which are selfish: providing a playmate for an existing child, to have an heir, or to please grandparents.

With regard to treating children as replaceable commodities, Wilkinson points out the moral wrong is treating as replaceable someone who should be treated as irreplaceable. However, treating *merely possible persons* as irreplaceable seems implausible, as we know almost nothing about them that would make them irreplaceable. In fact, it is difficult to imagine why prospective parents would prefer a *particular* embryo from a set of embryos that meet their broad criteria—but if this were the case, they would need to be *ultra-selective*, as Wilkinson puts it.

According to Widdows, who discusses commodification in relation to the use of genetic tests in selecting IVF embryos for implantation, ‘when the aim is to have a healthy child rather than a particular type of child or a child with certain parts or traits then there does not seem to be any dramatic move to commodity’ (2009, p. 39). She does not, however, explain why selecting for health is *not* a strong move to commodity while selecting for certain traits *is*—a trait is nothing more than a distinguishing characteristic, and so a disability seems to be as much a trait as, say, intelligence or physical appearance. Widdows does imply, however, that health is relevant. I explore whether health makes a moral difference in the following section.

To summarise, if fetuses and embryos are not regarded as unique persons but as merely possible persons, then the commodification objection provides insufficient reason to override a woman’s interests. More importantly, both this objection and these responses are agnostic with respect to the target of selective abortion—they seem equally applicable to FAA, SSA and GSA.

## 5. Life not worth living objection

Finally, perhaps there is still some further moral difference between aborting for disability compared to aborting for certain genetic traits that allows us to justify the former and not the latter. Of course, as has been noted earlier, many abortions for disability are based on genetic testing and so are a subset of GSA. However, we must consider whether abortion for disability has characteristics that make it less morally objectionable than abortion for other genetic traits, or perhaps even morally praiseworthy. It might be, for example, that it prevents the existence of people who have lives that are not considered to be worth living because of pain or disability, while at the same time preventing a significant decrease in the quality of life of the prospective parents of a disabled fetus.

There are, of course, possible scenarios involving SSA and GSA where life might be extremely difficult and even not worth living, perhaps because of attitudes towards particular groups in certain societies, but being born female (for SSA), or being born with a genetic susceptibility to certain diseases, beliefs or behaviours does not *entail* this must be the case, or that it is even likely. So *perhaps* a definitive diagnosis of a severe disability means abortion in these cases is justifiable on moral grounds, while SSA and GSA are not.

I will not take a position on this here but rather point out that the majority of abortions on disability grounds do *not* involve people who have lives generally considered to not be worth living. An examination of abortion statistics for England and Wales is instructive. There were 3,314 abortions performed in 2017 under ‘ground E’, the category recorded when aborting because of the risk of fetal anomaly (Department of Health and Social Care, 2017). The most frequent recorded conditions were Down’s syndrome, accounting for 20% of terminations,

followed by congenital malformations of the cardiovascular system (9%) and the musculoskeletal system (8%), and anencephaly (8%). How do these conditions affect the quality of life of those who are born with them? Anencephaly is fatal, resulting in stillbirth or death soon after birth, and so quality of life does not seem relevant. However, it is known that children with Down's syndrome live relatively happy lives (Shields *et al.*, 2018), and according to Skotko, Levine, and Goldstein, 'the overwhelming majority of parents surveyed report that they are happy with their decision to have their child with DS and indicate that their sons and daughters are great sources of love and pride' (Skotko *et al.*, 2011, p. 2335).

Clearly, a disability such as Down's syndrome does not entail someone's life is not worth living—quality of life is ultimately a subjective assessment by an individual, and there is a broad range of factors that will influence it. What is important to one individual may not be as important to another, particularly if it is out of their range of possibilities. In fact, Gary Albrecht and Patrick Devlieger (1999) have described what they call the 'disability paradox': many people with serious disabilities report having a good or excellent quality of life, contrary to what might be expected. According to Kate Greasley, 'only a rare few disabilities and syndromes detectable before birth' would reach the threshold of suffering beyond which life is considered not worth living (Greasley, 2017, p. 229). FAA, then, cannot be said to be less morally objectionable than SSA or GSA on the grounds that it prevents the existence of lives considered to not be worth living.

Interestingly, Savulescu (2001) subverts this objection with his *principle of procreative beneficence*, which he proposes in his discussion of genetic selection in the context of IVF and preimplantation genetic diagnosis. He argues that prospective parents should 'select the child, of the possible children they could have, who is expected to have the best life, or at least as

good a life as the others, based on the relevant, available information' (Savulescu, 2001, p. 415). Here, Savulescu is claiming that prospective parents have a *moral obligation* to use genetic selection to choose children with genetic traits that will ensure their children are those that will have the best possible lives. He is referring not just to the absence of disease or disability, but suggests memory and intelligence as important traits that will help ensure a better life. Although he is primarily referring to preimplantation genetic diagnosis, Savulescu is clear that this principle could be extended to the termination of pregnancy. The principle does not recognise any moral difference between eliminating disabilities or enhancing traits.

## **6. Conclusion**

I have explained Jeremy Williams' argument, which demonstrates that a liberal pro-choice stance with regard to FAA entails being unable to justify a prohibition for SSA, and shown that the same reasoning is equally applicable to GSA in general. I have also considered some additional objections that Williams did not examine and concluded that provided it is accepted they are not sufficiently strong to prohibit FAA, they similarly lack force against SSA and GSA. Accordingly, pro-choice liberals are placed in a difficult position regarding their support for FAA if they are opposed to SSA and GSA.

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