

THE HARM OF DEATH, TIME-RELATIVE INTERESTS, AND ABORTION¹

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If a lifeboat is sinking with several normal human beings and a dog aboard, where it is clear that all will drown unless someone is thrown overboard, nearly everyone agrees that it is morally right to sacrifice the dog. Why? While many reasons are offered, most quickly prove unsatisfactory. I will suggest that the best explanation for this considered judgment, an explanation that appeals to time-relative interests, contains a key insight about prudential value. This insight, I will argue, also provides a promising—perhaps *the most* promising—reply to the Future-Like-Ours Argument (FLOA), which is widely regarded as the strongest moral argument against abortion. By providing a solution to a longstanding puzzle in prudential value theory across species while illuminating the morality of abortion, the Time-Relative Interest Account (TRIA) proves worthy of sustained theoretical attention.

THE DOG ON THE LIFEBOAT

Why is it permissible to throw the dog off the lifeboat, knowing she will drown in the rough water?² One might answer, “That’s easy. We owe equal consideration

¹ Parts of this article’s discussion of time-relative interests and abortion (but not of the harm of death across species) were presented as “Futures Like Ours, Time-Relative Interests, and Abortion,” at the Eastern Division Meeting of the American Philosophical Association, Boston, MA, December 30, 2004. I thank Jeff McMahan for feedback on a draft of the talk and Liz Harman for her commentary at the session. The talk developed several ideas sketched in “Identity, Killing, and the Boundaries of Our Existence,” *Philosophy and Public Affairs* 31 (4) (2003): 413–42. David Boonin, Don Marquis, Bonnie Steinbock, Maggie Little, and an anonymous reviewer provided helpful comments on drafts of the present article.

² This famous thought-experiment comes from Tom Regan, *The Case for Animal Rights* (Berkeley, CA: U of California P, 1983) 324.

to human beings, who are persons, but not to dogs, who aren't. Any *prima facie* obligation we may have not to kill dogs and other nonpersons is therefore weaker than our nearly absolute obligation not to kill persons."³ But, whether or not this is correct—and, to be sure, whether equal consideration, suitably interpreted, should extend to animals is one of the central issues of animal ethics—it is not a satisfying explanation of our *lifeboat judgment*, the judgment that it is right to sacrifice the dog. For even those who defend equal consideration for animals accept this judgment.⁴ Assuming the latter is correct, there should be an account that explains it without assuming less-than-equal consideration for animals.

One might therefore advance this account: "Morality involves a subtle adjudication between claims stemming from equal consideration, or moral equality, on the one hand and justified forms of partiality on the other.⁵ That parents may favor their own children in certain ways, for example, is perfectly compatible with the recognition of equal human rights. Similarly, even if animals are due equal consideration—that is, even if we ought to give equal moral weight to humans' and animals' comparable interests (e.g., avoidance of suffering)—in an emergency where someone must be sacrificed or else all will die, it is permissible, perhaps even obligatory, to favor those to whom one is most socially bonded. In the lifeboat crisis, this means sacrificing a nonhuman rather than a human inasmuch as we are socially more closely bonded to fellow humans." But this appeal to justified partiality, while illuminating in some contexts, is unsatisfactory here. For even if the agent deciding whom to sacrifice were nonhuman (say, an extraterrestrial) and no more bonded to humans than to dogs, it would still seem right to sacrifice the dog. Partiality justified by social bonds cannot explain this.

Perhaps the lifeboat judgment could be explained this way: "Harm is a function of thwarted desires. So death harms only those who have a desire to continue living and not to die. Dogs, lacking the concepts of life and death, do not have the requisite desire and therefore, unlike normal humans, aren't harmed by death." But this argument rests on the dubious thesis that harm is best understood in terms

³ Here I assume that throwing someone into rough water where drowning is the predictable consequence counts as killing.

⁴ See, e.g., Christina Hoff, "Immoral and Moral Uses of Animals," *New England Journal of Medicine* 302 (1980): 115–18; James Rachels, "Do Animals Have a Right to Life?" *Ethics and Animals*, ed. Harlan Miller and William Williams (Clifton, NJ: Humana, 1983) 254; Donald VanDeVeer, "Inter-specific Justice and Animal Slaughter," *Ethics and Animals*, ed. Harlan Miller and William Williams (Clifton, NJ: Humana, 1983) 156–62; Regan (1983): 324; R. G. Frey, "Animal Parts, Human Wholes," *Biomedical Ethics Reviews 1987*, ed. James Humber and Robert Almeder (Clifton, NJ: Humana, 1987) 93; L. W. Sumner, "Animal Welfare and Animal Rights," *Journal of Medicine and Philosophy* 13 (1988): 169; and Peter Singer, *Animal Liberation*, 2nd ed. (New York: New York Review, 1990) 20–21.

⁵ See Mary Midgley, *Animals and Why They Matter* (Athens, GA: U of Georgia P, 1983).

of thwarted desires.⁶ This thesis is especially doubtful in the case of a normal human infant born into favorable circumstances. It is most plausible to judge that (even painless) death would harm the infant—despite his lacking the conceptual sophistication needed for a desire to remain alive—by robbing him of the opportunities associated with a good human life.⁷ It is also, to my mind, rather plausible to judge that (even painless) death would harm a puppy born into favorable circumstances by robbing him of whatever opportunities are associated with a good canine life.

A distinct explanation for the lifeboat judgment appeals to a division of labor among ethical principles: “While we have a *prima facie* obligation not to harm humans or sentient animals,⁸ our obligation to respect autonomy is relevant to our treatment of normal humans but not to animals, who lack autonomy. Throwing a (nonconsenting) human overboard would not only harm her, but would also disrespect her autonomy, providing an additional reason not to sacrifice her; meanwhile there is only a harm-based reason not to sacrifice the dog, so it is right in the circumstances to do so.” But, while the thesis that the principle of respect for autonomy does not apply to nonhuman animals may be important in some contexts, it seems relatively unimportant here. For, even if we focus on harm, the lifeboat judgment persists. It seems that being sacrificed would harm a human more than it would harm the dog—call this the *judgment of differing harms*. If so, the lifeboat judgment may rest squarely on the judgment of differing harms.

Taking this cue, one might argue as follows: “The dog would probably suffer less in drowning than a human would. While the dog would experience unpleasant sensations in the process, a human would experience such sensations along with agonizing emotional states such as sorrow about never again seeing loved ones, grief at leaving long-term projects unfinished, and perhaps rage at the perceived injustice of being thrown overboard. Being unable to experience such cognitively rich emotional states, the dog is likely to suffer less and is therefore likely to be harmed less. This explains the judgment of differing harms, thereby justifying the

⁶ For critiques of this view, see T. M. Scanlon, “Preference and Urgency,” *Journal of Philosophy* 72 (1975): 655–69; L. W. Sumner, *Welfare, Happiness, and Ethics* (Oxford: Clarendon, 1996) chs. 5 and 6; and Martha Nussbaum, *Women and Human Development* (Cambridge: Cambridge UP, 2000) ch. 2.

⁷ David Boonin argues, to the contrary, that normal infants have the requisite desire—in the form of an “ideal [rationally corrected] dispositional” desire to stay alive. If the infant had greater understanding, he would “surely desire that his future personal life be preserved since he would understand that this is necessary for him to enjoy the experiences that he does already desire to enjoy” (84). See David Boonin, *A Defense of Abortion* (Cambridge: Cambridge UP, 2002). Elsewhere I have argued against Boonin’s attribution of this desire to infants (DeGrazia [2003]: 427–30).

⁸ Here I assume that only sentient beings can be harmed in ways that matter morally. Later we will consider whether potentially sentient beings can be so harmed.

choice to sacrifice the dog, since it is better (*ceteris paribus*) to cause a lesser rather than a greater harm.” But this argument will not do. First, a human’s greater cognitive sophistication makes possible not only additional sources of suffering but also additional sources of consolation. The human, but not the dog, can mitigate suffering with the expectation of an afterlife, the thought that one has at least done one’s best, or the gladness that one’s loved ones will live on. Lacking these resources for stoicism, the dog’s misery in drowning—possibly worsened by some vague sense of betrayal by human companions (a feeling that may well be within the cognitive reach of dogs)—will be unmitigated. Moreover, even if the individual to be sacrificed never knew of his fate and were rendered unconscious before being thrown overboard, the judgment of differing harms would persist. Suffering does not seem to be the most salient factor in the judgment of differing harms (as also suggested in my earlier critique of the appeal to thwarted desires).

The more specific prudential judgment on which all are likely to agree is that *death itself harms a normal human in ordinary circumstances more than it harms a dog or, for that matter, any (or nearly any) nonhuman animal*.⁹ Call this the Unequal Harm of Death Judgment (UHDJ). Intuitively, the UHDJ may seem obvious. But it is very hard to justify in a way that is coherent, plausible, and consistent with facts about animals. One might think, on the contrary, that the UHDJ is explained by the simple fact that human beings live longer than animals, so that killing a human causes a greater *quantity* of harm or loss than killing an animal (even if we assume equal quality of life lost). But this straightforward appeal to quantity of loss is insufficient. Even if the human being is 65 years old and the dog is 2 years old, making their life expectancies comparable, the UHDJ seems likely to persist. Moreover, some animals, such as tortoises, live longer than humans. But substituting a tortoise for the dog in the lifeboat scenario would probably not extinguish the UHDJ’s credibility. So quantity of life lost seems not to be the crucial factor.

Elsewhere I have argued that the most promising approaches for explaining the UHDJ divide into two broad groups.¹⁰ Rather than reviewing details of that discussion, I will briefly characterize the two broad strategies and summarily explain why they are not fully satisfying. That will motivate an appeal to time-relative interests, which will serve as the organizing theme for the remainder of the article.

⁹ I am unprepared to advance this judgment in the case of Great Apes (chimpanzees, bonobos, gorillas, and orangutans) and the various dolphin and porpoise species in view of their enormously rich cognitive, affective, and social lives. For salient empirical and conceptual considerations, see my “On the Question of Personhood beyond *Homo Sapiens*,” *In Defense of Animals*, ed. Peter Singer (Oxford: Blackwell, 2006) 40–53. Whether my hesitancy to apply the judgment should extend to some other species, such as elephants, I don’t know.

¹⁰ David DeGrazia, *Taking Animals Seriously* (Cambridge UP, 1996) 226–57.

One broad strategy for vindicating the UHDJ is to advance *a claim of greater quantity within a mental-statist account of prudential value*. Such an account understands well-being as happiness, to which enjoyment and the absence of suffering contribute importantly; for beings who can regard their lives as wholes, happiness is roughly the condition of feeling fulfilled and satisfied with the circumstances of one's life. Some contemporary versions of this value theory include a requirement of reasonable contact with reality so that a life of pleasant delusion does not count as flourishing.¹¹ In any case, the claim purporting to justify the UHDJ is that human life typically possesses a greater *quantity of happiness*—a greater balance of enjoyments, satisfaction, etc. over suffering, discontent, etc. (however these may be quantified)—than nonhuman animal life possesses.

Naturally, one might doubt the adequacy of this general approach to prudential value, which is only a contender rather than a clear winner among value theory options. But let's set aside such doubts, focusing instead on a chief, yet commonly overlooked, difficulty with the present strategy: In the case of many animals, at least many mammals, it is simply not clear that the quantitative claim of human advantage is true. Commentators often note that human-typical cognitive capacities permit certain sources of enjoyment and satisfaction that dogs, for example, cannot have: say, pride and relief at completing a long-term project, a warm feeling of love for humanity (or sentient creation), the pleasures of reading, conversation, and chess. What commentators typically overlook, however, is that there are sources of enjoyment that certain animals have but we lack. When my dog, for example, takes a walk, his olfactory engagement with the world includes a range of rich experiences I can barely conceive of, much less enjoy. With a sense of smell immensely more powerful than mine, he participates in an olfactory world I cannot enter—and this is surely a source of great satisfaction for him. Much the same is presumably true of dogs' extraordinary auditory capacities and the rich experiences they enable. An animal's access to enjoyments that are inaccessible to humans will be a more or less significant consideration under the present strategy depending on the kind of animal. Crucially, quantitative comparisons within a mental-statist account of prudential value will be unable to vindicate the UHDJ in the case of dogs—and presumably many other mammals with rich sensory worlds—even though the UHDJ remains insistent in comparing humans with dogs and most other mammals. This affords some reason to suspect that the present strategy for vindicating the UHDJ is on the wrong track.

A second broad strategy for vindicating the UHDJ is to advance *a claim of greater quality within an objective-list account of prudential value*. Such an

¹¹ Thus, Sumner equates well-being with happiness—understood as autonomous life-satisfaction—where one condition of autonomy is being informed about one's situation. See Sumner (1996): ch. 6.

account understands human well-being as a function of certain conditions of an individual such as mental and physical functioning, autonomous living, accomplishment, deep personal relationships, and enjoyments.¹² While the inclusion of enjoyments on the list reveals an overlap with mental-statist approaches, the objective-list approach is distinguished by the claim that the other conditions enhance one's well-being independently of whether one desires or enjoys them (although humans typically do). Under the present strategy for vindicating the UHDJ, the objective-list account of well-being is extended beyond our species, the claim being that lives (of whatever species) characterized by items on this list will generally be better, prudentially, than lives not characterized by these items.¹³ By giving special weight to certain prized, human-typical conditions such as autonomy, accomplishment, and deep personal relationships, this approach creates logical space for vindicating the UHDJ with respect to any nonhuman animal without ignoring the actual capacities of animals, which might permit rich, varied enjoyments but not much in the way of other items on the list.

This strategy faces challenges, however. First and obviously, it is debatable whether the objective-list approach is adequate even in the case of humans—but it is certainly a contender. Second, it faces a problem of relevance. Deep personal relationships, for example, are very valuable to social animals such as human beings. But of what relevance is it to the well-being of a nonsocial animal that her life lacks such relationships? Possibly the value of such relationships is contingent on being a naturally social creature. In any case, this approach owes us some plausible account of what capacities or conditions have special weight across species and *why* they have special weight. If all special weight is a function of something more basic, such as complexity,¹⁴ the importance of this basic factor requires a persuasive defense. Moreover, the great convenience of claims of qualitative superiority within an objective-list approach heightens the feeling of need in any honest mind for further argumentation of a high quality; otherwise, the approach invites reasonable concerns about dogmatism. Suffice it to say here that no one has provided arguments of such a high quality in support of this strategy for vindicating the UHDJ. It would not be unreasonable to suspect that this approach, like the previous one, is on the wrong track.

Note that the two general strategies advance a common claim: *Human life typically has (either quantitatively or qualitatively) more prudential value than*

¹² See, e.g., Bernard Gert, *Morality* (New York: Oxford UP, 1988); James Griffin, *Well-Being* (Oxford: Clarendon, 1986); and Thomas Scanlon, "Value, Desire, and Quality of Life," *The Quality of Life*, ed. Martha Nussbaum and Amartya Sen (Oxford: Clarendon, 1993) 185–200.

¹³ I interpret Frey as advancing this claim (Frey [1987]: 93). Arguably, John Stuart Mill did as well (*Utilitarianism*, ed. George Sher [Indianapolis, IN: Hackett, 1979; first published in 1861] 8–9).

¹⁴ Robin Attfield seems to think so (*The Ethics of Environmental Concern*, 2nd ed. [Athens, GA: U of Georgia P, 1991] 172).

animal life over the course of a lifetime. This core claim vindicates the UH DJ on the assumption that death harms its victim insofar as it entails the loss of goods or prudential value her life would have contained had she not died.¹⁵ The prudential value that death precludes is taken to be a sort of lump sum equal to the total prudential value the subject would have experienced or benefited from over the course of the remainder of her life, had she lived. This, in turn, assumes that numerical identity—being one and the same individual over time—is, in Parfit’s influential phraseology, what most matters.¹⁶ Put another way, the assumption is that, given some amount of future goods in a life, what matters prudentially is whether one is numerically identical to the individual who will have (or would have had) that life with those goods. Psychological connections between one at the time of possible death and one in the future, if one lives, do not matter. Following Parfit’s lead, Jeff McMahan has developed a plausible framework for understanding prudential value, the Time-Relative Interest Account (*TRIA*), which rejects this assumption. This account, I submit, satisfyingly explains the persistent UH DJ, permitting us to vindicate this judgment without any presumption about the superior prudential value of human life.¹⁷

THE HARM OF DEATH AND TIME-RELATIVE INTERESTS

Suppose we assume that numerical identity is what most matters and that we should evaluate the harm of death solely in terms of the victim’s total lost prudential good. From this *whole-lifetime perspective*, the younger a human being is, other things equal, the more prudential value he loses from death: He loses a greater quantity of human life, which is assumed to be prudentially very valuable (in ordinary circumstances). This implies, however, that a presentient fetus is harmed more by death than is an infant, who is harmed more by death than is a 10- or 25-year-old. But, as McMahan notes, precisely the opposite seems true: Other things equal, death seems to harm a 10- or 25-year-old more than it harms an infant, and an infant at least a bit more than a presentient fetus.¹⁸ We might regard the death of the presentient fetus as unfortunate for it; people’s intuitions seem to vary on this point. Most of us would probably consider the infant’s death as a

¹⁵ Here we need not tackle the very difficult issue of how to determine which, among many possible life courses, best represents the loss that death entails. For a probing discussion, see Jeff McMahan, *The Ethics of Killing* (Oxford: Oxford UP, 2002) 107–35.

¹⁶ Derek Parfit, *Reasons and Persons* (Oxford: Clarendon, 1984) ch. 12.

¹⁷ I don’t preclude the possibility of an adequate defense for the assertion of human life’s prudential superiority. My intention is to cast doubt on defenses that have been offered thus far and to argue, in the next section, that the Time-Relative Interest Account furnishes adequate support for the UH DJ independently of any assumption of human life’s prudential superiority.

¹⁸ McMahan (2002): 270–71.

major misfortune for him. By contrast, we regard the death of a 10- or 25-year-old as *utterly tragic* for the victim—and as tragic in a way that fetal and infantile death cannot be for its victim. (Importantly, the claim is not that others are likely to mourn an infant's death less than that of a 10- or 25-year-old, a fact that might be explained by family having invested more, emotionally and otherwise, in the older victim. The claim focuses on the harm of death for the individual who dies.)

One might object that the 25-year-old who dies is more fortunate than an infant who dies because the former was at least able to enjoy 25 years of human life before the Grim Reaper struck her down whereas the infant enjoyed almost no conscious life before dying. This judgment, the objection continues, suggests that the infant's death *is* tragic and perhaps more tragic than the death of the 25-year-old. But, while the judgment may be correct, the inference about the harm of death does not follow from it and remains dubious. Note that it seems much less plausible to hold that the 10-year-old who dies was considerably better off for having had 10 years of human life than the infant who dies. Why is that? If the harm of death were simply a function of lost good, it should be obvious that the 10-year-old loses less than the infant loses and is therefore harmed less by death. But this is not only unobvious; it is doubtful. To clarify why it is doubtful and reply appropriately to the objection, we must carefully distinguish two issues.

We have asked, in effect, *Who is typically harmed more by death: a 25-year-old, a 10-year-old, an infant, or a presentient fetus?* If the harm of death were simply a function of the total prudential good lost, as understood from a whole-lifetime perspective, the correct answer (assuming, as usual, normal life expectancies and comparable quality of life) would be the following: The presentient fetus is harmed the most and a bit more than the infant; the infant is harmed considerably more than the 10-year-old; and the latter is harmed a good deal more than the 25-year-old. This is not a plausible picture, especially the claim that the infant is harmed considerably more than the 10-year-old.

Our question about the harm of death must be distinguished from the issue of overall welfare at the time of death: *Who is typically better-off at the time of death: a 25-year-old, a 10-year-old, an infant, or a presentient fetus?* This question concerns not only the extent of harm at the time of death but also the amount of good one enjoyed before that time. We may plausibly regard the level of welfare at the time of death as a function of the difference between (1) the good (benefit) one had derived up until that time and (2) the harm of death at that time. And, clearly, in typical cases the older victims of death have enjoyed more good in life than have the younger victims. Thus, the objection's claim that the 25-year-old might be more fortunate, overall, than the infant is plausible: The young man is tragically harmed by death but had enjoyed lots of good before that time whereas the infant is substantially harmed by death but had enjoyed almost no good before that time. Thus, one *can* acknowledge that the young adult who dies is better-off,

overall, than the infant who dies *and* judge that death harms the young adult more than the infant. Now, the 10-year-old who dies may seem roughly as badly off, overall, as the infant who dies. That coheres with the judgment that, while the child had enjoyed considerably more good than the infant had, death harms the child considerably more than the infant, making their respective overall fortunes comparable. If the harm of death were simply a function of lost good, death would harm the infant considerably more than the 10-year-old—again, a highly implausible implication.

Our reflections on the harm of death suggest that it is a function not only of lost opportunities for valuable life, as understood from a whole-lifetime perspective, but of another factor as well. Stated simply, the second factor according to the TRIA is *the way one is psychologically “invested” in, or connected with, one’s possible future life.*

Returning to nonhuman animals will help us unpack the idea further. Compare, first, the death of a snake and that of an ordinary person. As vertebrates, snakes are surely sentient. Their lives include certain enjoyments or satisfactions and perhaps other sources of value connected with species-typical functioning. Ordinarily, a snake’s death involves a loss, the loss of opportunities for whatever goods his life would have contained had he lived. But surely a snake has very little self-awareness over time—in my view, enough to perform simple intentional actions such as pursuing a piece of food, but certainly not enough for life plans or well-developed narratives.¹⁹ If one snake were to die before reaching his natural life span and another with equal prospects for a decent snake life came into existence, that state of affairs would not seem significantly worse than for the first snake to have survived without another coming into existence. Persons, by contrast, do not seem so replaceable.²⁰ If Gerri, who has a decent life, dies (painlessly, say) in middle age, it would hardly compensate to bring someone else in existence, because Gerri’s well-developed self-narrative would be cut short. With a snake, it is almost as if the future he loses due to death might as well have belonged to another snake.

A highly compelling explanation for this judgment is the TRIA, which discounts the importance of death to the victim, at the time of death, for any weakness in the *psychological unity* that would have connected the victim at that time with himself in the future.²¹ The degree of psychological unity in a life, or over a stretch of time, is a function of (1) the richness of the subject’s mental life, (2) the proportion of the mental life that is sustained over the stretch of time in

¹⁹ Regarding self-awareness in animals, see DeGrazia (1996): 166–83.

²⁰ For an influential discussion of the idea of replaceability, see Peter Singer, *Practical Ethics*, 2nd ed. (Cambridge: Cambridge UP, 1993) 120–28.

²¹ McMahan (2002): 170.

question, and (3) the degree of internal reference between earlier and later mental states.²² Examples of internal reference include memories of past experiences (ranging from dim to highly detailed), anticipation of future experiences (ranging from the simple anticipation implicit in the most primitive fear to intricate expectations for a distant future), and intentions to perform certain actions (ranging from simple intentions for the immediate future to elaborate life plans). When the psychological unity that would have bound an individual at the time of death to himself in the future, had he lived, is weak, death matters less prudentially—for that individual—at that time.²³ This suggests that the snake's death does not matter greatly from his prudential perspective, when he dies, because his mental life is not very unified over time.

If this is correct, it provides a satisfying solution to the problem of vindicating the UHDJ. Even without a convincing argument that human life is more prudentially valuable than canine life, we are in a position to say that death typically harms a human more. For, even if we assume that the human and dog have equally valuable lives from a whole-lifetime perspective, the human is much more psychologically invested in, and connected to, her possible future than the dog is to hers. While canine mental life is characterized by rich sensory experiences, certain emotions, desires and beliefs, and some sense of the subject's own past and future,²⁴ its characteristic degree of psychological unity over time pales in comparison with that typical of humans. A person has a well-developed, nuanced sense of herself as a protagonist in a life story—a *narrative* identity.²⁵ This explains the UHDJ without assuming that human life is prudentially more valuable than canine life. The crucial assumption is the TRIA.

But is this account correct? Why, in assessing the harm of death, should we focus on an individual's *time-relative* interest in remaining alive rather than the individual's interest as understood from a whole-lifetime perspective? According to the TRIA, where what is best for A from a whole-lifetime standpoint diverges significantly from what is in A's time-relative interests, we should apply the latter standard. Why accept this priority principle? After all, one might contend that the only sort of connection over time that matters is being parts of one and the same life, or perhaps parts of a life that includes a future of value.

The answer, in sum, is that the TRIA better captures and explains our considered judgments about the harm of death, offering a coherent, plausible frame-

²² Ibid: 75.

²³ Ibid: 172.

²⁴ Regarding the responsible attribution of such mental states to animals, see DeGrazia (1996): chs. 5–7.

²⁵ For an excellent exploration of this concept, see Marya Schechtman, *The Constitution of Selves* (Ithaca, NY: Cornell UP, 1996). I develop my conception of narrative identity in *Human Identity and Bioethics* (Cambridge: Cambridge UP, 2005) ch. 3.

work. Returning to the case of human infants, for example, it steers a plausible middle course between two extreme positions. As noted earlier, on the desire-satisfaction account of the harm of death, one is harmed by death only if one desires to remain alive, or not to die—but such a desire seems precluded by the relatively primitive conceptual world of infants. So the desire-satisfaction account implies, quite implausibly, that normal human infants are not harmed by death. Meanwhile, on a view that understands the harm of death as a function of lost opportunities for valuable future experiences, while assuming that numerical identity is what matters—the whole-lifetime perspective—death typically harms an infant more than a child, adolescent, or young adult. This is highly implausible. Steering between the extreme implications of these two views, the TRIA suggests that death significantly harms the infant but not nearly as much as it harms the 10- or 25-year-old (although, as noted earlier, judgments regarding how well off each is at the time of death are complicated by the different amounts of good enjoyed by each during life). Thus, this approach delivers a plausible verdict here while satisfyingly explaining precisely what factor justifies discounting the harm of death, in cases like the infant's, as it would be understood from a whole-lifetime perspective: degree of psychological unity over time. The desire-satisfaction view is correct that caring about or appreciating (and therefore desiring) one's future is relevant to the harm of death, but incorrect that one who does not appreciate or desire one's future loses nothing from having that future snatched away. The whole-lifetime approach is correct that appreciating one's own future is not necessary for having a stake in that future, but incorrect in thinking that such appreciation is irrelevant to the magnitude of the harm of death. The TRIA, meanwhile, gets right what these polar views get right while avoiding their errors.

In addition to handling the case of infantile death so well, the TRIA nicely captures and explains other considered judgments about the harm of death. As already noted, it explains the UHDJ without either (1) underestimating the riches of many mammals' mental lives, as the quantitative strategy within a mental-statist framework typically does, or (2) making highly questionable assumptions about interspecific (cross-species) value, as the qualitative strategy within an objective-list framework does. Rather than explaining the judgment that death typically harms humans more than nonhuman animals in terms of the supposed prudential superiority of human life, it capitalizes on the fact that human mental life is characterized by greater psychological unity over time than nonhuman animal life is. Furthermore, the TRIA nicely explains the very plausible judgment that death harms, say, a monkey more than a turtle: The monkey's mental life is more psychologically unified over time, so her stake in staying alive is greater. Once again, no presumption about the superior prudential value of one kind of life is necessary. Finally, the TRIA nicely captures and explains the plausible judgment

that a barely sentient creature with very little psychological unity over time may have little stake in continuing to exist.

For the remainder of this article I will assume that the TRIA is correct. Anyone who finds this assumption premature will, I hope, agree that the TRIA provides a substantial contender among views of the harm of death, one that merits our careful consideration. It remains to engage this account with the issue of abortion.

FETUSES' TIME-RELATIVE INTERESTS AND THE MORALITY OF ABORTION

Many moral philosophers accept the following picture of the morality of abortion. Any persuasive argument against abortion must not depend on religious assumptions. For, even if some religious assumption is true, it is not the case that each of us can be expected to embrace it on the basis of publicly available evidence. But, to be persuasive, moral arguments must rest on assumptions we may reasonably be expected to embrace. Now, among nonreligious arguments against abortion, the Future-Like-Ours Argument (*FLOA*), introduced by Donald Marquis, stands out as the strongest.²⁶ Moreover, it is uncertain whether there has ever been a successful reply to this argument.

Some philosophers will challenge the preceding statement, contending that the Good Samaritan Argument (*GSA*), introduced by Judith Thomson and amplified by David Boonin, convincingly responds to the *FLOA* by showing that, even if the fetus has a robust right to life, abortion is permissible.²⁷ As I have explained elsewhere, I tend to doubt that this reply succeeds.²⁸ But I will not explore the *GSA* here. Those who concur that it does not convincingly handle the *FLOA* will consider very significant any approach that does. Meanwhile, those who believe the *GSA* defeats the *FLOA* should acknowledge the importance of any additional approach that does so. My thesis is that the TRIA accomplishes this aim. Somewhat immodestly, I will conclude that, by persuasively defeating the strongest nonreligious argument against abortion, this line of reasoning greatly advances the case for a liberal position.

The Future-Like-Ours Argument—And When We Come into Being

In ordinary circumstances, it is wrong to kill paradigm persons like you or me. Why? According to the *FLOA*, the fundamental reason is that killing us would

²⁶ Donald Marquis, "Why Abortion Is Immoral," *Journal of Philosophy* 86 (1989): 183–202.

²⁷ Judith Jarvis Thomson, "A Defense of Abortion," *Philosophy and Public Affairs* 1 (1971): 47–66; Boonin (2002): ch. 4.

²⁸ See DeGrazia (2005): 283–86.

deprive us of valuable futures, which would include all our personal projects, enjoyments, meaningful activities, and other valued experiences plausibly believed to make human life valuable in anything like ordinary circumstances.²⁹ This account of the wrongness of killing explains why we regard killing as such a terrible crime; it also accommodates our belief that death ordinarily harms the victim who dies. Meanwhile, it avoids certain difficulties of other leading accounts of the wrongness of killing persons, such as the desire-satisfaction account.³⁰ Further, this approach plausibly implies that, since killing infants would (normally) deprive them of valuable futures—futures like ours—infanticide is (at least normally) wrong. By contrast, accounts that base the wrongness of killing persons primarily or exclusively on their special moral status as persons—understood, roughly, as beings with the capacity for complex forms of consciousness—struggle to explain the commonsense conviction that infanticide is (at least normally) wrong.³¹

Now, to continue the argument, consider fetuses (a term I will use broadly to refer to prenatal human organisms at any stage of gestation). A human fetus—at least when twinning is no longer possible (a qualification explained later)—is an individual that can ordinarily, if permitted to live, develop into a person who has the sorts of experiences we value so highly. So the fetus has a future like ours, making abortion morally comparable to killing paradigm persons: wrong in ordinary circumstances. (Our purposes do not require identifying the circumstances that constitute exceptions to this moral presumption.) This is a substantial moral argument against abortion that steers free of religious assumptions, avoids equivocation on the moral and descriptive senses of such terms as *human being* and *person*, and does not appeal to the fetus' potential personhood as a basis for moral status.

When, exactly, does the FLOA apply? In asserting that a fetus has a future like ours, the argument assumes that a fetus can grow into a paradigm person; conversely, it assumes that each of us was once a fetus. While one might infer from this that we come into existence at conception, such an inference would be hasty. In approximately the first 2 weeks following conception, before the primitive streak—the precursor to the spinal column—appears, an embryo can split into two embryos. During the same time period, in cases of “fraternal” twinning—that is,

²⁹ The FLOA remains neutral between mental-statist and objective-list accounts of prudential value. While the preceding statement in the text refers to projects, enjoyments, meaningful activities, and the like—which may seem to suggest an objective-list approach—Marquis never claims that these objects of value are irreducible to something more fundamental such as happiness. But he explicitly rejects, in my view correctly, desire-satisfaction views. See Marquis (1989): 195–96.

³⁰ *Ibid.*

³¹ See, e.g., Mary Anne Warren, “On the Moral and Legal Status of Abortion,” *Monist* 57 (1973): 43–61.

where two conceptions have occurred—the distinct embryos can merge into one. Presumably we do not come into existence until we are *uniquely individuated*. And perhaps we are not uniquely individuated as long as the splitting of one embryo into two embryos or, in cases of fraternal twinning, the joining of two embryos into one remains possible. For immediate purposes, this potentially complicating issue does not matter. The FLOA applies whenever one of us is uniquely individuated. Whether this occurs at conception, or some other time very early in gestation, the FLOA represents a substantial challenge to any liberal position on abortion.³²

One might deny that the FLOA presents such a challenge, however, on the grounds that it wrongly assumes that we existed as presentient fetuses. Let us call *early abortions* those that occur before the capacity for consciousness, or sentience, emerges in fetal development and *late abortions* those that occur after this capacity has emerged.³³ According to some accounts of the numerical identity and essence of human beings, we are essentially psychological, or minded, beings and do not come into existence until the capacity for consciousness emerges. Other views hold that we are essentially persons in the aforementioned sense, beings with the capacity for *complex* forms of consciousness, and therefore never exist before being persons. Among the wide variety of psychological views of our numerical identity and essence, McMahan's Embodied Mind View offers the most cogent challenge to the FLOA with regard to when we come into existence, so I will consider only this view here. (The view that we are essentially persons in the aforementioned sense implies *inter alia*, quite implausibly, that we did not come into existence until well after birth.)

According to the Embodied Mind View, we are essentially beings with the capacity for consciousness,³⁴ so we never existed as presentient fetuses. From this it follows that no presentient fetus ever becomes one of us. This suggests the permissibility of most abortions because on this view, contrary to the FLOA, most fetuses that are aborted never had futures like ours (i.e., would not have had experiences like ours even if not aborted). We originate on this view rather late in pregnancy, when the capacity for consciousness emerges: perhaps as late as 7

³² In "Moral Status, Human Identity, and Early Embryos: A Critique of the President's Approach," *Journal of Law, Medicine & Ethics* 34 (Spring 2006): 50–54, I consider in greater depth appeals to the possibilities of twinning and "fusion," as well as other considerations, that might justify the thesis that we originate early in gestation but after conception. My examination of this issue was inconclusive.

³³ I assume that, in the world as we know it, a fetus becomes sentient—that is, acquires the capacity to have feelings—whenever the capacity for consciousness emerges, because it is likely that the first states of consciousness a fetus is capable of having are feelings, specifically sensations.

³⁴ And essentially embodied, but this further essentialist claim need not concern us here.

months, surely no earlier than 5 months.³⁵ Importantly, according to McMahan, even if we draw the line at 5 months, 99% of all abortions in the U.S. occur before this time.³⁶ So, if the Embodied Mind View is correct, then early abortions, representing the vast majority, do not kill beings that had valuable futures. The FLOA, he thinks, trips on the erroneous assumption that the presentient fetus will, if permitted to live, become—and is therefore numerically identical to—a minded being, one of us.

McMahan's reply to the FLOA depends on the thesis that we are essentially embodied minds and therefore do not exist as presentient fetuses. Elsewhere I have argued against this account of our identity and essence.³⁷ Here it suffices to note that his account is highly controversial. If you believe (let's assume, reasonably) that you existed as a presentient fetus, then you have reason to doubt the soundness of his reply to the FLOA. If you believe (reasonably) that we are most fundamentally human organisms or animals—and that mindedness is a property we *acquire* and, in principle, *might lose* before dying—then you have reason to doubt the soundness of his reply to the FLOA. Inasmuch as the view that we are essentially human organisms or animals is a significant contender, and if correct would provide the FLOA an ontological foothold, we may fairly judge the FLOA to remain standing. My intention now is to show that the TRIA convincingly refutes it.

If I fulfill this intention, then the FLOA will no longer remain standing *regardless of which view of our numerical identity and essence is correct*. If we are essentially embodied minds, or beings of some other psychological kind, then the FLOA rests on a false assumption about our identity over time and therefore lacks any ontological footing. If we are essentially human animals, then while the FLOA has an ontological footing, my appeal to the TRIA will trip it up.

Time-Relative Interests and Futures Like Ours

The FLOA makes two debatable assumptions. First, it assumes that each of us was once a presentient fetus. I accept this assumption. Second, it assumes that

³⁵ See, e.g., Mary Seller, "The Human Embryo: A Scientist's Point of View," *Bioethics* 7 (1992): 135–40; J. A. Burgess and S. A. Tawia, "When Did You First Begin to Feel It?—Locating the Beginning of Human Consciousness," *Bioethics* 10 (1996): 1–26; Julius Korein, "Ontogenesis of the Brain in the Human Organism: Definitions of Life and Death in the Human Being and Person," *Advances in Bioethics* 2 (1997): 25–26; and Susan Lee *et al.*, "Fetal Pain: A Systematic Multidimensional Review of the Evidence," *JAMA* 294 (2005): 947–54.

³⁶ McMahan (2002): 268. I was able to find some confirmation for this claim: According to the Alan Guttmacher Institute (http://www.agi-usa.org/pubs/fb_induced_abortion.html), only 1% of abortions were performed in the 21st week or later in the U.S. in 1998 (the most recent year for which the institute provided data).

³⁷ See DeGrazia (2005): ch. 2.

numerical identity is the sole basis for rational prudential concern, for what most matters in our continued existence, suggesting that evaluation of a fetus' future should be made from the whole-lifetime perspective. From this perspective, abortion (ordinarily) entails an enormous loss, the loss of a future like ours. On the basis of this prudential claim, the FLOA infers that the fundamental consideration underlying the wrongness of killing paradigm persons like you or me also applies in the case of abortion.

But, as noted earlier, from this whole-lifetime perspective, the younger one is, the more of a valuable future one loses from death and, therefore, the more death harms one. We found this implication highly implausible in comparing, for example, the deaths of a late fetus, an infant, and a 10- or 25-year-old. On the basis of this and other considerations, we rejected this approach to assessing the harm of death and embraced the TRIA.

Let us apply this account to early abortion, the abortion of presentient fetuses. No later than about 2 weeks after conception, there is a human organism with a future like ours. This is what is right about the FLOA. *But the utter lack of psychological unity between the presentient fetus and the later minded being it could become justifies a very substantial discounting of the harm of the fetus' death.* For the proper basis for assessing the harm of death to the presentient fetus is its time-relative interest in remaining alive. Either of two possible ways of understanding this time-relative interest justifies a major discounting of the harm of death.

On the view I am inclined to accept, because the fetus is identical to the later personal human animal, it has *some* (time-relative) interest in remaining alive, but its interest is very weak, much weaker than yours or mine, due to the absence of psychological unity. On this view, the mere fact of numerical identity with a later person is sufficient for having interests, or time-relative interests, despite the fetus' not having had any mental life so far. Many people doubt this. Without any mental life (so far), they say, one has yet to care about anything and therefore has no interests of any kind. Those who hold that sentience is necessary and sufficient for having interests make this judgment.³⁸ On the view I am inclined to accept, by contrast, *future* sentience—and a fortiori having a future like ours—is sufficient for having (time-relative) interests. This view takes seriously that “what you don't know can hurt you,” that the loss of valuable opportunities counts as a harm even if one does not know about the loss. Nevertheless, the lack of present mental life entails a massive discounting of one's stake in future life and particular goods in that life, according to this view. So, while the FLOA is right that numerical

³⁸ See, e.g., Joel Feinberg, *Harm to Others* (Oxford: Oxford UP, 1984); Singer (1990); and Bonnie Steinbock, *Life Before Birth* (New York: Oxford UP, 1992).

identity with a being who will have experiences like ours entails (in ordinary circumstances) some interest in staying alive, it is wrong in assuming that this interest should be assessed from a whole-lifetime perspective.

Another possibility for one who holds that we were once presentient fetuses and embraces the TRIA is to drop the claim that bare identity (with psychological life only in the future) is a basis for prudential concern—in which case the presentient fetus would have *no* (time-relative) interest in remaining alive. On this view, one has interests only if one has some mental life and one specifically has interests in events or conditions in the future (e.g., continued life) only if one has some psychological unity over time. Lacking such mental life and psychological unity, the presentient fetus has *no* stake in remaining alive and is not harmed by death. The principle that “What you don’t know can hurt you” applies only to beings who have already attained a mental life and, with it, interests.

Intuitions are likely to clash about which way of understanding the presentient fetus’ possible time-relative interest in remaining alive is more reasonable. Because the first view, which attributes some time-relative interest to the presentient fetus, is not obviously incorrect, it will be sensible to assume this view at least for the sake of argument (since this view presents more of a challenge to those seeking to undermine the FLOA). Importantly, even on the assumption that the presentient fetus has a stake in remaining alive, this time-relative interest would—due to a very substantial discounting—be too weak to ground a right to life or, equivalently, a very strong presumption against killing it.³⁹

³⁹ Boonin suggested to me another way of understanding the FLOA according to which it can embrace the TRIA yet hold that the fetus has a right to life and that abortion is *prima facie* seriously wrong. On this alternative reading, a defender of the FLOA could accept that a fetus is harmed much less by death than a person typically would be, yet hold that the fetus nevertheless loses a future like ours and that neither the quantity of such a future precluded by death nor the appropriateness of discounting the loss in accordance with the TRIA matters. On this view, having *any* future like ours establishes a robust right to life; though the harm of death may vary greatly, the right to life is equal. Note, first, that this is not Marquis’ view, as is clear in his article and in personal communication in which he has indicated that the TRIA and FLOA as he understands them are incompatible. But, as Boonin suggests, one could adopt this modified FLOA. If one did, however, one would owe a persuasive argument that having *any* future like ours—regardless of quantity and of whether discounting the harm is appropriate—confers a robust right to life, seemingly a tall argumentative order. Moreover, I believe there are good reasons to reject this view. First, it seems to me on its face less intuitively plausible than the account I am suggesting with regard to sentient nonpersons such as late fetuses and nonhuman animals. Moreover, insofar as we currently lack a persuasive case for the claim that human life is prudentially more valuable than animal life—a lack discussed earlier in this article—my approach helpfully explains the UHDJ in a way that this modified FLOA cannot. Lacking a way to explain the UHDJ, the modified FLOA would apparently have to confer an equal right to life on all sentient creatures, an implication that will strike nearly everyone, including animal protectionists, as incredible. For these reasons, I will continue to interpret the FLOA as Marquis does.

This suggests that the sorts of personal or family interests that often motivate abortions could easily justify this choice. For example, a woman's interest in pursuing her education or career without the interruption that pregnancy and having a child would entail could outweigh a very heavily discounted interest in remaining alive. A family's interest in remaining financially sound could outweigh the fetus' interest as well. I do not claim that all choices to abort pass moral muster on this account. I claim only that *many* choices to abort presentient fetuses are justified by the TRIA. (That, I suspect, is sufficient to justify liberal abortion laws, but I set aside the legal issue here.) Now, since nearly all abortions involve presentient fetuses, this application of the TRIA, if sound as applied to early abortion, is very important.

Before turning to objections, it is worth noting that I will not attempt to extend the analysis to sentient fetuses. Sentience, which emerges between 5 and 7 months after conception, is morally significant (as I will argue later). Fetuses become viable at roughly 6 months after conception—that is, at very roughly the time they become sentient. Viable fetuses *could be* infants, yet their continued presence within the mother's body cannot be ignored; whether viability carries any special moral significance is debatable. I find the issue of late abortion more puzzling and difficult to resolve than that of early abortion. Rather than addressing late abortion here, I will rest content with a defense of early abortion—the only sort that most girls and women who consider having an abortion ever consider.

But appeal to the TRIA in defending early abortion can be considered sound only if one adopting this framework can respond persuasively to objections. In the following section, I address objections concerning (1) prenatal harm, (2) the killing of persons, and (3) infanticide.

Objections and Replies

Prenatal Harm

Suppose a woman frequently abuses alcohol and smokes crack cocaine while pregnant, and carries the fetus to term. Consequently, the child who comes into the world suffers from numerous disabilities. Assuming the woman was not forced to use these substances, we judge her behavior morally indefensible. But the TRIA, according to this first objection, implies that we should evaluate the harm done to the fetus during pregnancy on the basis of her *time-relative* interest in being healthy. Now, since the presentient fetus is psychologically cut off from the child she will become, her time-relative interest in robust postnatal health is very weak, just as her time-relative interest in staying alive is very weak. How, then, to account for our judgment that the woman's behavior is seriously objectionable?

This judgment is easily explicable within our theoretical framework. Because the woman elected not to abort, her fetus has not only a present time-relative

interest in being healthy but also many future time-relative interests in being healthy—including when, as a person, she is deeply psychologically unified over time. Because all of these time-relative interests count, the overall harm of the avoidable handicaps is very substantial, and certainly sufficient to support our moral criticism of the woman's behavior.⁴⁰ By contrast, in examining abortion, we count only the fetus' present time-relative interest to live, because an aborted fetus will never have time-relative interests while psychologically deeply unified.⁴¹ Thus, the appeal to the TRIA in defending early abortion is consistent with our judgment of prenatal harm.

The Killing of Persons

According to the second objection, employing the TRIA as a guide to the ethics of killing is incompatible with certain considered judgments about the killing of persons.⁴² As discussed in connection with animals and fetuses, the TRIA construes the harm of death in terms of an individual's time-relative interest in remaining alive. This time-relative interest is a function of (1) the value of one's possible future life as considered from a whole-lifetime perspective and (2) discounted in proportion to diminished psychological unity over time. Moreover, as with the justification of early abortion, the ethics of killing is understood in terms of a harm-based account, the *prima facie* wrongness of killing varying with the strength of the victim's time-relative interest in continuing to live. But, if we employ the TRIA to the ethics of killing persons, the objection continues, this approach suggests that killing some persons is less *prima facie* wrong than killing others. After all, some persons are less deeply psychologically unified over time due, say, to compromised mental functioning. Moreover, even if we assume equal quality of life among persons, older persons generally have less life remaining than younger persons. So the present approach suggests that it is less *prima facie* wrong to kill persons who have less psychological unity over time than to kill those more deeply psychologically unified and less *prima facie* wrong to kill older persons than to kill younger persons. But these inegalitarian implications are highly implausible.

⁴⁰ In certain extreme cases, the victim of prenatal harm may be so handicapped that she never develops into a person or, equivalently, a being who is deeply psychologically unified over time. Does the discounting of the time-relative interests of sentient nonpersons suggest that it might not be very morally problematic to abuse substances while pregnant? No, because the fetus who will have such a postnatal future will have many time-relative interests in being healthy over the course of her lifetime and will almost certainly be more psychologically unified than even a late fetus (even if less than a person); all of these time-relative interests will be thwarted by poor health.

⁴¹ McMahan presents roughly the same argument in the case of *late* abortions. See McMahan (2002): 280–83.

⁴² Thanks to Liz Harman for pressing me on this issue.

In response to this objection, for two reasons the present approach does not have the asserted implications. First, persons are, by definition, deeply psychologically unified over time. The TRIA may be understood as motivating presumptions against killing that vary in strength only for those beings whose mental lives fall short of personhood; personhood, we can stipulate, marks a threshold of psychological unity at or above which one enjoys an equal right to life. (I understand such a right as entailing a very strong, though not quite absolute, equal moral presumption against being killed.⁴³) In effect, the TRIA construes the ethics of killing in terms of the harm of death, but regards this harm in the case of persons as presumptively large enough to ground an equal right to life.

Second, a proponent of the TRIA need not assume that the ethics of killing is to be understood entirely in terms of a harm-based account. It is preferable, I suggest, to apply the TRIA to the harm of death and the ethics of killing for all sentient beings (including persons) *and to apply an additional account to persons*. On this approach, all persons are subject to a principle of respect that provides additional grounds for a strong moral presumption against killing them.⁴⁴ Thus, while a consequentialist, TRIA-based ethics of killing may apply to all sentient beings (and, perhaps for rule-consequentialist reasons, confer equal rights to life on persons), a deontological ethic of respect for persons may reinforce a strong egalitarian presumption against killing persons. For these reasons, on the present approach, one should be no more open to killing the elderly person than the younger person or to killing the moderately demented person than the psychologically robust one. Taken together, these two points suggest that the appeal to the TRIA in justifying early abortion does not have unacceptable implications regarding the killing of persons.

Infanticide

A third challenge concerns possible implications of the present approach for infanticide. According to the TRIA, an infant ordinarily loses more from death than does a presentient fetus—but also loses less than a paradigm person does. An infant has a psychological life, whose unity deepens with time, but this unity is less than that characterizing a paradigm person's psychological life. There is reason to worry, therefore, that the TRIA does not support the right to life that we are inclined to attribute to infants and not only persons.

⁴³ This presumption, I hold, may be overridden in certain cases including killing as a last resort in self-defense, legitimate killing in a just war, autonomous suicide where dying does not entail failing to fulfill specific obligations to dependents or others, and possibly other cases such as voluntary active euthanasia.

⁴⁴ See, e.g., McMahan (2002): ch. 3; and Mary Anne Warren, *Moral Status* (Oxford: Oxford UP, 1997) chs. 3 and 4.

Those who are relatively liberal about active euthanasia are likely to accept infanticide in those rare cases where death would be better than continued life *for the infant herself*—that is, where death is in her best interests. But the TRIA may imply, much more radically, that infanticide is justified fairly often even where the infant has a (time-relative) interest in continuing to live. Perhaps discounting this interest in accordance with the infant's diminished psychological unity would permit the former to be overridden by the interests of the mother, family members, or the broader society in a rather wide range of cases.

My defense of early abortion, however, does not support radical openness to infanticide. Presentient fetuses and infants are differently situated in several ways that justify a very strong presumption against infanticide—a right to life for infants—but very little presumption against early abortions. In this final section, however, I can only gesture in the directions a full account would take.

Note, preliminarily, that *infants are sentient whereas presentient fetuses, by definition, are not*.⁴⁵ Only sentient beings have experiential interests such as interests in avoiding pain, distress, and suffering. Because infanticide can be performed in ways that entail little or no pain for the infant, the scope of the present challenge effectively narrows to *painless* infanticide.

Does infantile sentience have further significance for infanticide? Earlier I noted my inclination to accept the controversial thesis that even a presentient fetus has a time-relative interest, though a very weak one, in continuing to live. If that is right, then while the infant's having psychological life per se might not entail a stronger time-relative interest in continuing to live than the presentient fetus has, any unification of this psychological life—that is, any carrying forward of this psychological life *over time*—will strengthen the time-relative interest. Whereas psychological life may develop very little between the time at which a fetus becomes sentient and the time of birth (perhaps just a greater capacity to feel sensations due to neural growth), *postnatal psychological life develops very quickly due to the infant's exposure to the bustling, varied, highly social world outside the womb*. The infant's mental life rapidly becomes more complex and unified. Even at a sensory level, it is more complex insofar as the infant is processing a much wider range of experiences than a sentient fetus encounters. Exposure to the world of vision, for example, greatly richens sensory experience. Unification of mental life also increases as the infant begins to recognize (remember) her mother and other familiar figures, form desires

⁴⁵ More precisely, nearly all infants are sentient. Anencephalic infants, lacking a functioning cerebrum, are not and never will be sentient. But infanticide in their case—for example, in an effort to remove vital organs in order to help other infants—may well be justified insofar as beings lacking even the potential for sentience or consciousness lack interests and therefore cannot be harmed in morally significant ways.

(which, by their nature, are future-oriented) and—once equipped with some sense of bodily control—intentions (also future-oriented), and experience fear and perhaps other forward-looking emotions. Such a mental life is already much richer and more unified than a sentient fetus' mental life and, of course, the nonexperience of presentient fetuses bears no comparison to it. So, even if immediately after birth the newborn does not have greater psychological *unity* than a presentient fetus has, very soon psychological unity deepens—entailing a stronger time-relative interest in continuing to live—and, again, this deepening of psychological unity continues relentlessly. On the present approach, this difference between presentient fetuses and infants is significant except perhaps shortly after birth. This observation further narrows the central challenge for my view: demonstrating that there is a very strong moral presumption against even *early*, painless infanticide.

The role of sentience in the case against infanticide is greater if I am mistaken that presentient fetuses have a time-relative interest in continuing to live. If they do not, then sentience *per se* will make a more significant difference because the emergence of psychological states and capacities will mark the emergence of a time-relative interest in continuing to live. In that case, whereas the presentient fetus has *no* time-relative interest in continuing to live, an infant clearly has some such time-relative interest, providing a reason that applies to infants generally (even immediately after birth) for treating infanticide as morally more problematic than early abortion.⁴⁶ In any event, more work is required to show that, on my approach, even early, painless infanticide is nearly always wrong. My argument appeals to two fundamental facts about postnatal life: (1) the infant's sociality or membership in the community, and (2) the possibility of persons other than the mother significantly sharing in the weighty responsibility of protecting, nourishing, and raising the child.

First, *birth ushers the infant into a social world in which the presentient fetus cannot participate*. It is true that a pregnant woman and other people can talk to her fetus, see it in a sonogram, feel its movements, and introduce it to Bach's cello suites. But these "social interactions" bear no honest comparison to the social interactions in which an infant participates, even on her first day of postnatal life. The new baby is held, dressed, fed, spoken to frequently, changed, cleaned, and engaged in eye contact. Anyone present can behold her. Soon after birth she

⁴⁶ A reviewer asked why we might not say that prior to sentience there is no *self* and that only *selves* can have an interest in, and right to, life. In a sense, the present interpretation of the role of sentience in the case against infanticide says just this. On the other hand, insofar as I grant to the FLOA the assumption that we came into existence as presentient fetuses, I must allow that we existed prior to the development of any psychological self. Moreover, the alternative interpretation of the role of sentience—that it deepens an already existing time-relative interest in remaining alive—remains standing.

participates actively in social interactions with facial expressions, vocalizing, and reaching. There is a profound sense in which an infant is socially present in a way that fetuses, especially presentient fetuses, are not. And the infant's social presence helps to explain why both our legal institutions and common morality regard newborns as having full moral status, including a right to life, while regarding fetuses' moral status with great uncertainty.

But let us consider an objection that challenges not only the present appeal to infants' sociality but also the earlier appeal (which narrowed our challenge to early, painless infanticide) to their sentience and fast-developing mental life. Suppose, immediately after birth, an infant is whisked away to a dark room devoid of sensory stimulation and social interaction. The baby is fed, let's say, and not caused pain, but is deprived of the sort of varied, bustling social environment in which infants normally develop. This infant's mental life would advance little and she would seemingly exist apart from any social world. In this imagined scenario, according to the objection, my approach quite implausibly implies that infanticide would be justified.

The objection, however, neglects much of the import of the observation that newborns are part of the social world of persons. The point is not merely that newborns do in fact participate in social life, a claim that might not apply in unusual cases such as the imagined scenario. Also critical is how people regard infants as part of their social world, as *members of the community*. There is a sense in which, once the fetus exits the woman's body, becoming an infant, she is a *separate individual* to whom members of the community, and not only the mother, have a legitimate moral claim. Once outside the woman's body, this being can be protected, cared for, and nurtured by members of the community other than, or in addition to, the mother.

This takes us to the second fundamental difference between presentient (or any) fetuses and infants: *The personal costs to the pregnant woman of continuing an unwanted pregnancy are typically, and almost inherently, much more substantial than the personal costs to the biological mother or any other individual of an infant's continuing to live.*⁴⁷ A pregnancy involves the fetus' continued, increasingly burdensome use of a woman's body (a point underscored in the GSA). Pregnancy, childbirth itself, and recovery from childbirth entail a great deal of pain and discomfort, can have significant psychological costs—especially if the pregnancy was unwanted—and may substantially interfere with the pregnant woman's lifestyle and opportunities. By contrast, *having borne* a child does not necessarily involve continuing use of the mother's body (though breast-feeding, if chosen, is a lesser form of body "use"). Moreover, the possibility of giving up a child for adoption means that the personal costs of a continuing infant life for the

⁴⁷ McMahan develops this point persuasively. See McMahan (2002): 344–45.

biological mother may be relatively small and transient. These points relate to the simple fact that pregnancy involves a profound use of a woman's body in a way that having given birth does not. Further, even if a pregnant woman has an enlightened partner, a supportive broader family network, or other forms of support, there are drastic limits to what a partner, family, or society can do to lessen the burdens of pregnancy for the biological mother—due, again, to what pregnancy inherently involves: continued profound use of a woman's body. Once an infant has been born, even in the vast majority of cases where she is not given up for adoption, the possibilities for distributing the responsibilities and costs involved in child rearing are extensive. While the differing burdens of pregnancy and of having borne a child are not directly relevant to the moral status of the fetus and infant, they bear significantly on a crucial moral factor: the costs to the biological mother of granting fetuses or infants a right to life.

For these reasons, then, I conclude that appealing to the TRIA in justifying early abortion does not have unpalatable implications regarding infanticide. Infants, but not presentient fetuses, are properly regarded as having a right to life. Inasmuch as the most widely accepted justifications for killing—such as self-defense and just war—do not apply to infants, it is an open question whether they should ever intentionally be killed. If so, that is likely to be only where continuing to live is contrary to an infant's best interests. I leave open the question of whether active euthanasia, which involves killing and not merely forgoing treatment in allowing someone to die, is justified at the level of public policy.

CONCLUSION

This article has argued that McMahan's TRIA offers a key insight about prudential value: the appropriateness of discounting the value of future goods, as they would be evaluated from a whole-lifetime perspective, in proportion to decreased psychological unity over time. This insight, in turn, illuminates the harm of death, especially where sentient nonpersons are concerned. I have argued that this account of the harm of death solves a longstanding puzzle in interspecific value theory—how to vindicate the UH DJ—while providing an effective, perhaps the most effective, reply to the FLOA, which many consider the strongest moral argument against abortion. The TRIA, I suggest in conclusion, forever alters the landscape of prudential value theory.

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