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Personhood and the Fetus: Settling the Dispute

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Abstract

The concept of personhood and its relationship to health care has long been examined and debated. The working definition of personhood holds great power over many life-altering decisions, particularly in the realm of medical ethics. This article examines the very idea of personhood, current concept definitions and their impact on society, and poses an alternative view and definition for the concept. The final portion of the manuscript discusses potential areas of affect should the new definition be embraced. Information was gathered via historical research and literature review.

KEYWORDS: fetus, personhood, ethics, human life, value

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Personhood and the Fetus: Settling the Dispute

"Imagine a pregnant woman visiting her physician and saying, 'Doctor, is my fetus healthy?' Or, 'Is this a male fetus or a female fetus?' No, she will ask, 'How is my baby?' And, 'Is it a boy or a girl?'" (Sullivan, 2003, p. 21) Presented in such a manner, the former terminology sounds a bit odd in relationship to what is known to be true about human reproduction and the unborn child. While many individuals may not share the author's view that a fetus is a person at the point of conception, few would deny the fact that life's foundational processes exist from the time of conception. For years, research has confirmed that with conception begins natural adaptive functions that allow for the sustenance of life. However, this article is not focused on the question of whether or not the fetus is a living being; rather, it is centered on the debate of when personhood should be afforded to the life within the womb. Ethical theorists, philosophers, conservatives, liberals, and political groups the world over have developed philosophical theories related to the concept of personhood for the fetus – many of them asserting that the fetus is, in fact, not a person until it reaches a certain point in gestation or even until birth. These arguments are made for a myriad of reasons; some are religious in nature, some are rooted in ethical perspectives, and others boast a biological basis. The array of arguments for and against personhood for the fetus is rather involved and ethically complicated. In an attempt to tackle the issue, many have offered what seemed to be reasonable and intelligent criteria for the fundamental basis of personhood. The myriad of definitive (yet subjective) criteria has served society in a variety of ways – from affording reproductive liberties to deciding verdicts in legal cases – but has ultimately failed to provide an absolute in regards to when the fetus actually attains personhood.

Personhood and the Non-Person Problem

Issues related to reproductive autonomy often stem from what Disilvestro (2009) terms the *Non-Person Problem*. He argues that individuals often struggle when considering autonomy and harm in regards to an organism that does not currently exist in the moral community – specifically the developing fetus. Many intelligent and scientifically acclaimed minds maintain that the fetus is not a person due primarily to its lack of immediate capacity to perform certain actions or think certain thoughts. Supporters of this view have not only seen the concept gain significant ground in the ethical and philosophical community, they have also seen it gain political stature in cases like *Roe v. Wade* and *Planned Parenthood v. Casey* (Cornell University Law School, n.d.). Despite these facts, Disilvestro offers an intriguing point of view: the fetus possesses *person-making capabilities* from the moment of its conception, making the argument of the fetus as a non-person invalid:

> Relying upon the distinction between immediate and higher-order capacities, then, a person may be thought of as an individual who has either an *immediate* capacity for rational self-governance in pursuit of a meaningful life or a *higher-order* capacity *to obtain* this immediate capacity. If an individual merely has a higher-order capacity…that individual is still a person (Disilvestro, 2009, p. 64).

Disilvestro asserts that it is the presence of these higher-order capacities (and thus, inherent person-making capabilities) that allows one to afford personhood to the fetus from the time of conception. Specifically, Disilvestro maintains this school of thought in light of ethical issues related to reproductive liberties, fetal harm, and personhood in support of those that have not yet attained it by current standards.

Warren's Criteria

Many ethicists starkly disagree with positions like those of Disilvestro's, claiming that person-making capabilities are not tangible, "real-time" properties and cannot, therefore, be considered when examining the status of personhood. Mary Anne Warren, a noted writer and ethicist, holds this particular view. According to Warren, person-making capabilities are not

an adequate tool for evaluation; the entity in question must possess the following in order to be worthy of personhood (and its resulting moral relevance): "consciousness – including the capacity to feel pain, developed reasoning ability, self-motivated activity, capacity to communicate (in creative ways), [and the] presence of self-concept (self-awareness)" (Hubin, 2002). Though Warren's perspective may seem logical, further philosophical evaluation makes obvious one very serious problem: these criteria do not address the higher-order capacity (or potential) to achieve these criteria. In other words, Warren does nothing more than identify properties akin to the average, developed, functional adult – an idea that certainly falls short of identifying those deserving of personhood.

Infants and children.

Infants and children exist at the threshold of life, honing their skills and abilities on a daily basis. Their lives are marked by developmental benchmarks and discovery, from the realization of sounds, colors, and objects, to standing, walking alone, eating and drinking, communicating effectively with others, and sharpening their ability for critical and reflective thought (March of Dimes, 2009). Clearly, the immediate possession of Warren's criteria does not exist within these individuals; infants and children do not possess the immediate capacity to reason and communicate effectively, nor do they possess the immediate capacity for self-motivated activity (as evidenced by their need to develop and refine motor skills, etc); they have certainly not developed their self-concept. Based upon Warren's criteria, these individuals do not meet the standards for personhood, but to assert this in an ethical, political, or social arena would be rather absurd. What Warren is forgetting is this: infants and children possess the higher-order capacity to achieve her criteria, which deems them just as much a person as the next. Disilvestro (2009) phrases it nicely: "… if we think the relevant person-making properties are sentience and self-consciousness, it is important that we allow both the

immediate capacities for sentience and self-consciousness and the higher-order capacities for sentience and self-consciousness to count as person-making properties" (p. 65).

The unconscious.

Imagine a patient signing papers while being prepped for surgery. The nurse informs her that the procedure will last approximately six hours, and she will be unconscious for the duration. The patient is instructed to count backward from 100, and soon after the anesthesia takes effect, the procedure begins. All is running smoothly until her blood pressure begins to drop at an alarming rate, and her oxygen levels begin to fall to a dangerous level. The surgical team begins to react accordingly, but stops short of any intervention, deeming the patient a non-person by Warren's criteria.

Think of it: unconscious during surgery, patients lack the ability to reason or communicate, perform self-motivated activity, and/or demonstrate self-awareness. According to Warren, these individuals are now non-persons. Those that follow Warren's ideas would assert that they would only regain personhood after regaining consciousness, but putting this idea into practice would be nothing short of unethical and medically irresponsible. Again, one must not forget that a temporary state of unconsciousness does not overshadow the higher-order capacity for person-making capabilities, and thus, an absolute (and ongoing) status of personhood.

The irreversibly ill.

Recent research indicates that, "…after age 80, up to 50% of individuals will have Alzheimer's disease" (Andreoli, 2007, para 4). This statistic indicates that a great deal of the population will soon enter into a physical and mental state characterized by disability and dysfunction, including the irreversible loss of the ability to communicate in meaningful ways, to perform self-motivated activity, to think critically, and to maintain any type of self-concept and/or awareness (Varacolis, 2006). By Warren's standards, those suffering from

Alzheimer's disease are clearly non-persons. Does it make sense, however, to remove personhood status from an individual that is merely suffering from an irreversible illness? Disilvestro (2009) answers this question quite sufficiently:

> Capacities are dispositions, and although the manifestation of a disposition may require technological assistance, the existence of a (higher-order) disposition does not… [For example, consider] someone with "irreversible" brain damage or in an "irreversible" coma; such states are "irreversible" only in the sense that we currently lack the technology to reverse them (p. 64, 65).

Though individuals afflicted with an irreversible illness have lost their immediate capacity for person-making capabilities, they certainly are not void of the higher-order capacity for them. The thought follows, then, that these individuals are not void of personhood, either.

Joyce's Criteria

Intrinsically speaking, no individual has "arrived" at his ability to perform everything for which he has the potential or capacity. Truthfully, many individuals do not discover their affinity for a particular skill or thought process until much later in life than Warren's criteria would allow. In light of these facts, Joyce (1978) provides a different, perhaps more accurate, take on personhood:

> A person is anything that has the natural potential ability, but not necessarily the functional ability, to know, will, and relate to others in a self-reflective way… A person is not an individual with *developed* capacity for reasoning, willing, desiring, and relating to others. A person is an individual with a *natural* capacity for these activities and relationships, whether this natural capacity is ever developed or not (The Person section, para 4, 5).

Joyce offers an alternative to Warren's criteria, allowing the human organism room for growth and development; his idea of personhood encompasses all human beings – those in the embryonic stage, those of healthy stature, those of ill health, and those in their final moments. For Joyce, these criteria represent a more accurate depiction of what it truly means to be a person, recognizing a human organism's natural capacity (or potential) to achieve person-making capabilities regardless of the stage of life in which it exists.

The Fetus as a Person

Based upon an ethical evaluation of the concept of personhood and the fetus, one could use Joyce's definition to assert that the fetus is, in fact, deserving of personhood status. It is important to remember that medical science has long-since accepted that the fetus, even in the embryonic stage, is a living human organism; therefore, this being clearly possesses the innate potentiality for person-making capabilities, regardless of whether or not that potential is ever realized (Joyce, 1978; Disilvestro, 2009). One can see the clarity of this argument when examining the human embryo in comparison to that of another, non-human organism. For example, when considering the potentiality of a human embryo, one knows that the organism is endowed with the higher-order capacity for person-making capabilities – consciousness, self-motivated activity, meaningful communication, critical and rational thought, and self-awareness. This organism will develop into an individual that has the capacity to utilize these capabilities in a variety of ways to benefit the society in which he lives.

The same, however, cannot be said for non-human embryos. Consider the marsupial embryo. The embryo itself matures quite similarly to the human embryo; its development begins with fertilization and progresses to the blastocyst stage. The embryo is nourished in a uterine-like environment for much of the pregnancy, maintaining that nourishment via the mother's breast milk following delivery ("Marsupial," 2009). Many pro-Warren ethicists would claim that alternative concepts would erroneously afford personhood status to the marsupial embryo, but this proves quite inaccurate in terms of Joyce's definition. Joyce (1978) and ethicists that maintain his position immediately differentiate the two beings, primarily in terms of potentiality. While the human embryo innately possesses the higher-order capacity for person-making capabilities, the marsupial embryo does not. Society has yet to witness an event in which a marsupial communicates effectively, demonstrates the

existence of a self-concept or the ability to reason, nor has it been proven that marsupial embryos possess the potentiality to perform these actions. Yes, the marsupial can perform self-motivated activity, but that alone is clearly not characteristic of personhood; after all, even plants have a tendency to move or lean themselves toward warmth and sun.

It follows, then, that the idea of personhood is clearly very specific to human organisms, no matter their size or stage of development. The differences between animal embryos and human embryos are clear when one examines their capacity for person-making capabilities, and few could deny the potentiality for life in the human embryo. Based upon the concepts of immediate- and higher-order capacities and the knowledge of human life, it would be logical to assert that, where human life exists, so, too, does personhood. Utilizing his definition of the philosophical concept of personhood, Joyce (1978) maintains that, "A one-celled person at conception is an actual person with great potential for development and self-expression...though the actual personhood and personality of the new individual are…much less functionally expressed" (Conception section, para 7).

An Infinite Debate

Certainly, it is no secret that the philosophical concept of personhood has been long-debated. No matter the viewpoint, its presentation creates a myriad of questions and potential ethical problems – ones upon which even the most rational, reasonable, and brilliant philosophical minds struggle to agree. Though Joyce's idea of personhood seems to provide a more all-encompassing definition of what it truly means to be a person, it also seems to fall a bit short of an absolute for affording personhood in certain situations.

Consider, for example, an anencephalic infant – call him Owen. During his mother's pregnancy, Owen's neural tube failed to close completely, leaving him void of a significant portion of his brain and with an immature brain stem. Though Owen has not gained consciousness, he is breathing, and he does respond to his mother's touch (National Institute

of Neurological Disorders and Stroke, 2009). The debate regarding personhood for Owen likely began during his gestation, provided that his parents obtained adequate prenatal care. Because this information is unknown, however, this discussion will consider the debate for personhood after his birth.

Many, including Warren and those following similar schools of thought, would likely assert that Owen cannot be afforded personhood status; after all, he lacks the portions of his brain responsible for consciousness, thought, and coordinated movement. How could he ever obtain personhood without these capabilities? Even Joyce would likely agree that, without some sort of incredibly advanced medical technology, Owen does not possess the capacity (either immediate or higher-order) for person-making capabilities on his own. Though this may be true, those that adhere to Joyce's school of thought factor in the reality that medical science is constantly advancing, studies are ongoing, and technology is evolving. How can one be sure that, one month after it is decided that Owen is not deserving of personhood, medical technology does not become available that would provide him the ability to perform the very activities that influenced that decision? Joyce's position allows for this possibility; it is the presence of Owen's higher-order capacity (through technology) for these person-making capabilities that makes him deserving of personhood. Remember that the question of these capacities ever being realized is irrelevant; rather, one can afford personhood to Owen based upon his potential to achieve these things at some future point in time with some assistance.

Ethicists also often disagree on personhood status for those suffering from any given condition that significantly decreases brain activity. Consider Susan, an intensive care patient admitted after experiencing a severe heart attack. The physicians directing her care have confirmed that she was without oxygen for a prolonged period of time, leaving her brain-damaged and in an indefinite coma. Clearly, this particular situation presents a problem for

philosophers that maintain different views on personhood. Warren would likely declare Susan a non-person due to her lack of consciousness and inability to feel pain, perform self-directed tasks, reason, and communicate effectively, but, one factor remains. Susan is still breathing, her heart is still beating, and though she is unconscious at the moment, potential still exists for her recovery. Therefore, Susan possesses the higher-order capacity for person-making capabilities (though they are unrealized at the moment) and is still deserving of personhood status.

A New Perspective

Clearly, given the ongoing debate, one must beg the question: what exactly are the criteria that define this concept? What are the criteria that must absolutely be present in order to afford personhood? Taking Warren and Joyce's ideas into account, one could venture to combine the two to provide an all-inclusive, accurate depiction of what it means to be a person. Doing so creates the following "blueprint" for personhood: 1) the organism is actually in existence (versus an organism that has not yet been created, such as in the case of a couple that intends to procreate), 2) the organism is wholly genetically and physically human (versus, for example, a organism of animal origin injected with human DNA), and 3) the existence of immediate and/or higher-order capacities for person-making capabilities.

This particular description differs from both previously-discussed views; it takes into account the higher-order capacities void from Warren's criteria while adding the necessary element of human origin to Joyce's concept. While Joyce alludes to the necessity for human origin, he only describes personhood in light of the organism's potential for performing activities and thoughts that humans perform and possess. Nowhere does he require that the organism be actually human in order to afford personhood. The addition of the human origin element to the concept of philosophical personhood negates many common (yet valid) "what if" arguments, including those regarding animals that possess human qualities, such as the

ability to communicate and demonstrate self-awareness. By definition, these animals possess the capacity for select person-making capabilities, but could not be afforded personhood, as they are not of human origin.

Further Issues

The concept of personhood has sparked ongoing controversy and debate among some of the world's greatest philosophers. It is important to remember that the implications of this concept are more far-reaching that just that of the ethical arena; personhood and its definitive beginning often serve as the fundamental basis for many personal, societal, and political decisions. The current concept of personhood, though partially accurate, fails to take into account important factors that could alter the very process of ethical decision making. The new, more concrete definition for personhood would have an impact so great that it would be difficult to fathom the effects on every arena involved.

Though the following issues fall beyond the scope of this paper, instituting an improved idea of personhood would inevitably change the course of action and schools of thought associated with them:

- Abortion – often, abortion is defended on the premise that the fetus has not yet achieved personhood. In light of the new definition, arguments could be made against the legalization of abortion. Due to the relative nature of many of these circumstances, however, special consideration and research would be necessary for each case, and it would be unlikely to establish a "blanket" policy or decision.
- Contraception – certain forms of birth control, such as intrauterine devices and emergency contraception, may be scrutinized based upon their physiological activity in pregnancy prevention. For example, methods that irritate uterine lining to prevent implantation of the embryo could be criticized in light of its newly-recognized status of personhood.

- Embryo storage and disposal – particularly in processes such as in-vitro fertilization (IVF), a large number of embryos are frozen and stored for later use, and those that remain unused are destroyed. Because the integrated concept of personhood now deems these embryos deserving of personhood, one can imagine the looming ethical debates in these types of situations.

Conclusion

For years, definitive guidelines for affording personhood to the fetus have remained elusive. Through the combination of Warren and Joyce's criteria, it seems that a foundation for this concept has perhaps been laid. It is important to note, however, that to defend or negate ethical decisions related to the gamut of issues connected to personhood (as seen in the previous section) would require additional arguments likely somewhat dissimilar in nature. One cannot deny, however, that the effects of the concept of personhood in these situations are obvious and provide a unique point of reference for future ethical perspectives.

Please note that the opinions expressed by the author represent those of the author and do not reflect the opinions of the Online Journal of Health Ethics' editorial staff, editors or reviewers.

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