

the word 'patient' were merely a technical term stipulated to mean an object of some unspecified beneficence-based medical obligation, then, with suitable qualifications, referring to the fetus as a patient could be rendered morally unproblematic. By the same token, however, if the term 'unborn child' could be reduced to a technical term with a specified meaning, it, too, could be rendered morally suitable. The reason to be concerned with the latter, despite the availability of dictionary definitions, is the same kind of reason to be concerned with the former: concepts have their own pragmatic lives, and what counts as an illuminating and helpful extension of a concept, rather than an obscuring or worrisome one, is in large part a function of how that extension comports with or battles the penumbral associations that inform the concept's broader meaning. The danger in calling the fetus a patient is found not in the logical fallacies that would follow, but with the proclivities of reasoning and interpretation, already natural to some, that it might underscore. This problem, note, is not unique to 'patient.' None of the usual concepts inherited from law, medicine, or philosophy—person, patient, child—were designed with the fetus in mind (Little 2003). Deploying any such off-the-shelf concepts, however many asterisks we add, risks distortion.

Everyone should agree that, for pregnancies that will be continued (as well as, in our opinion, for late gestational age fetuses), pregnant women and physicians alike have beneficence-based moral obligations toward the fetus. Progress in thinking morally about the nature of these obligations will come from exploring partial and overlapping analogies from a wide variety of situations in which clinicians have obligations to multiple objects of concern (e.g., parents, siblings) that extend beyond the discrete patient. Where such progress will not be found, we fear, is in adding qualifications to concepts whose pragmatic meanings are fundamentally formed around reflection on individuals who, physically separate and endowed with

independent moral status, stand in stark contrast to the fetus. ■

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# The Moral Status of 'Unborn Children' Without Rights

Jason T. Eberl, Indiana University–Purdue University Indianapolis

Laurence McCullough and Frank Chervenak (2008) correctly note that the *descriptive* term 'unborn child' does not entail any *normative* propositions regarding the moral status of human embryos and fetuses, especially using the

language of moral or legal "rights." The conclusion does not follow, however, that an embryo or fetus thereby fails to have "independent moral status." For an embryo or fetus's moral status may be established on grounds other than

Address correspondence to Jason T. Eberl, Associate Professor of Philosophy, Indiana University–Purdue University Indianapolis, Cavanaugh Hall 331, 425 University Boulevard, Indianapolis, IN 46202-5140. E-mail: jeberl@iupui.edu

rights-based normative language. For instance, according to classical natural law theory (as influenced by Aristotelian virtue ethics), a being's moral status is related to the set of intrinsic capacities it possesses and the inherent value in allowing such capacities to develop into full actualization (Eberl 2006; Lisska 1996). A typical human embryo or fetus—one without any preclusive genetic defects—has the intrinsic capacity to develop into a being who acts in a self-conscious, rational, and autonomous manner (Eberl 2005). Hence, there is a fundamental value in allowing an embryo or fetus to develop from a state of being *potentially* self-conscious, rational, and autonomous to a state of being *actually* such. Furthermore, the metaphysical nature of typical human embryos and fetuses as beings with the intrinsic capacity to develop self-consciousness, rationality, and autonomy, and the value that supervenes upon their having such a capacity, may justify conceptualizing them as having the moral status of "persons" (Eberl 2006).

Typically, when something is claimed to be a person, it is assumed that it has a "right to life." However, Thomas Aquinas (c. 1225–1274), a representative proponent of natural law ethics, never defines a human person's moral status in terms of having "rights," but rather solely in terms of her intrinsic *goodness*. Whatever "rights" a human person may have are derived from her inherent value and the natural law mandate to pursue the good in all its forms (Aquinas 1272 [1948], Ia-IIae, Q. 94, a. 2). A human person's intrinsic goodness is based on her nature as a living, sentient, and rational entity. The capacity for rational thought, according to Aquinas, has the utmost value because it enables one to know universal conceptual truths and to determine her own actions (Aquinas 1272 [1948], Ia, Q. 29, a. 1). Hence, the term "person" is attributed to rational beings insofar as they have a particularly high degree of intrinsic goodness (Aquinas 1272 [1948], Ia, Q. 29, a. 3).

From a Thomistic perspective, insofar as a typical human embryo or fetus constitutes a person, it thereby has an intrinsic goodness that ought to be promoted. Life, Aquinas asserts, is a fundamental good for human persons (Aquinas 1272 [1948], Ia-IIae, Q. 94, a. 2; Finnis 1980, 86). For, without life, none of a person's other inherently valuable capacities—including self-consciousness, rationality, or autonomy—could be actualized in the service of contributing to the overall goodness of the natural world in which we exist and flourish. To act against the existence and flourishing of a human person, including an embryo or fetus, is contrary to the natural law mandate to promote life as a fundamental good (Eberl 2006). This argument can be made coherently without reference to a human embryo or fetus having any moral or legal "rights."

The premises of the above argument are certainly open to counterargument, however, and thus McCullough and Chervenak (2008) are correct to point out that there is a great deal of conceptual disagreement among different religious and philosophical views concerning the moral status of human embryos and fetuses. The authors err, though, by inferring that the lack of an "indisputable view on the independent moral status of embryos or fetuses" leads to

the conclusion that decisions regarding the moral status of such entities "are a function solely of the pregnant woman's autonomous decision." The authors claim that the moral status of an embryo or fetus is *conferred* insofar as it has only "dependent moral status." But it does not follow that, just because an incontrovertible criterion for establishing an embryo or fetus's independent moral status has not yet been rationally defined, such a criterion is not rationally *definable*. The question then becomes what our ethical attitude should be towards an entity which may be reasonably argued to have the moral status of a person, when a conclusive rational demonstration of its status as such is not immediately forthcoming.

At this point, it is interesting to note the Roman Catholic Church's position on the moral status of human embryos and fetuses. It is widely believed that the Church's doctrine is that such entities are undeniably persons. But there is disagreement even among Roman Catholic bioethicists concerning, for example, whether this is indeed the case for early-term embryos prior to implantation (McCormick 1991; Ford 1988). Nevertheless, in its official teachings, the Church contends that all human embryos and fetuses should be treated as "unborn children" insofar as it is the ethically safest default position regarding their moral status:

Furthermore, what is at stake is so important that, from the standpoint of moral obligation, the mere probability that a human person is involved would suffice to justify an absolutely clear prohibition of any intervention aimed at killing a human embryo. Precisely for this reason, over and above all scientific debates and those philosophical affirmations to which the Magisterium [the Church's teaching authority] has not expressly committed itself, the Church has always taught and continues to teach that the result of human procreation, from the first moment of its existence, must be guaranteed that unconditional respect which is morally due to the human being in his or her totality and unity as body and spirit (John Paul II 1995, §60).

This ethical stance is affirmed by some who deny that an early-term human embryo meets the minimum criteria to be considered a person, but acknowledge the rational cogency of arguments to the contrary (Ford 2002, 64). Therefore, in the face of reasonable doubt concerning the moral status of embryos and fetuses, one stands on a steeper ethical precipice by asserting that such status is a *conferrable* trait by virtue of individual human *fiat*. Confronted by a vacuum of incontestable authority on this matter, a reasonable argument that a human embryo or fetus constitutes a being with the moral status of a person is arguable grounds for an "intellectual obligation to accept the normative discourse of 'unborn child . . .'" ■

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# Throwing the Baby Out with the Bathwater? Moral Status and Rights-Based Moral Obligations

Janet Malek, Brody School of Medicine

McCullough and Chervenak (2008) have made a valuable contribution to the ongoing debate surrounding moral status and abortion with their article, "A Critical Analysis of the Concept and Discourse of 'Unborn Child'". The distinctions they draw between descriptive and normative uses of the term 'unborn child' and between independent and dependent moral status are helpful. I agree with the authors that disputes about independent moral status are currently irresolvable and that an approach acknowledging the dependent moral status of fetuses and embryos is more promising.

McCullough and Chervenak argue that when a woman confers dependent moral status on a fetus or embryo, when she presents that entity to a healthcare provider and when there are interventions that are likely to benefit it, the fetus or embryo becomes a patient (2008, 34). As a patient, the pregnant (or would-be pregnant) woman and healthcare providers have beneficence-based obligations to that fetus or embryo. The authors further claim that the "concept of the fetus as a patient does not, need not, and should not deploy the discourse of rights, because there is no intellectual authority for any claim that the fetus or embryo has independent moral status" (2008, 34). It is here that I fear they are 'throwing the baby out with the bathwater'.

The close connection that McCullough and Chervenak draw between independent moral status and rights-based moral obligations may be overestimated. The existence of independent moral status may generate rights-based moral obligations, but is not the *only* way that such obligations can be created. As a result, the authors' shift to the use of

dependent moral status does not entail the incoherence of the discourse of rights in this context. A discourse of rights of the fetus or embryo as a patient is only problematic if dependent moral status is insufficient to generate rights. The question, then, is whether dependent moral status can create rights-based moral obligations. I believe that it can.

Moral status is moral status, no matter how it is generated. It is immaterial whether an entity's moral status is derived from its core characteristics or is legitimately conferred on it by another entity. In both cases, moral status exists and so creates rights for that entity and rights-based moral obligations for others with regard to that entity. I can think of no defensible reason why dependent moral status must be an inferior type of moral status that cannot serve as a foundation for rights-based moral obligations.

Further, it seems plausible that rights, such as moral status, can be constructed, conferred, withheld, or withdrawn. If something as fundamental as moral status can be conferred on a fetus or embryo, surely the rights generally associated with that status can be conferred in the same way. Individuals and groups can create many kinds of rights through commitment, agreement or convention that have a moral force equal to that of basic human rights derived from independent moral status. Perhaps by granting her fetus or embryo moral status, a woman makes a commitment that entails the creation of a set of moral rights.

Finally, the example that McCullough and Chervenak use to elucidate the concept of dependent moral status uses the concept of rights (2008, 34). If an individual with

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Address correspondence to Janet Malek, 2S-17 Brody Medical Science Building, Greenville, NC 27701. E-mail: [malekj@ecu.edu](mailto:malekj@ecu.edu)

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