



The New Bioethics

A Multidisciplinary Journal of Biotechnology and the Body

ISSN: 2050-2877 (Print) 2050-2885 (Online) Journal homepage: <http://www.tandfonline.com/loi/ynbi20>

Arguments about Abortion: Personhood, Morality, and Law

Calum Miller

To cite this article: Calum Miller (2018): Arguments about Abortion: Personhood, Morality, and Law, *The New Bioethics*, DOI: [10.1080/20502877.2018.1468594](https://doi.org/10.1080/20502877.2018.1468594)

To link to this article: <https://doi.org/10.1080/20502877.2018.1468594>



Published online: 25 Apr 2018.



Submit your article to this journal [↗](#)



Article views: 16



View related articles [↗](#)



View Crossmark data [↗](#)

Book Review

Arguments about Abortion: Personhood, Morality, and Law. By KATE GREASLEY. Pp. 269. Oxford: Oxford University Press. 2017. £22.99 (pb). ISBN: 978-0198806608.

This book is required reading for those interested in the ethics of abortion. It is a clear, novel and intellectually honest exploration of a wide range of pertinent ethical and legal issues.

Greasley's background in Law is evident throughout: legal discussions take centre stage, but in a way that is cognisant of and responsive to the work of contemporary ethicists. While there are few firm conclusions regarding the morality of abortion, the work is no worse off for this: it frames superbly the most central ethical and legal question – that of foetal personhood – and offers sophisticated arguments which, in a more extended project, would serve to underpin a relatively permissive view of the ethics of abortion.

The most persuasive component of the book is Part I, wherein Greasley goes to great lengths to show the centrality of the personhood debate for abortion law and ethics. Although supportive of abortion rights, she comprehensively dispenses with standard attempts to bypass the question of personhood (e.g. by appealing to bodily autonomy, privacy, and women's rights, *inter alia*). She is not dismissive of these concerns. Rather, her helpful discussion shows that *if* the foetus is a person – a full rights-bearer – then abortion usually constitutes homicide, and as such should have extraordinarily stringent legal conditions for its justification, such that considerations of sex inequality, bodily autonomy, and so on, while important, are insufficient to justify it. The book thus makes a compelling case for making the question of foetal personhood the central ethical and legal issue, and contains the most complete response to popular arguments in the tradition of Judith Jarvis Thomson's famous violinist analogy.

If Part I of the book is a formidable challenge to common 'pro-choice' discourse, Part II takes aim at those who suppose that foetuses are persons. Her arguments in this section are lucid and informed, and certainly not to be dismissed lightly. This is characteristic of the whole book: aside from a very few unduly dismissive remarks, the book engages seriously with her opponents and presents their case charitably and forcefully.

An important element of Part II is its helpful framing of the relevant questions. Here, Greasley concisely and clearly explains how dialectic on the ethics of abortion ordinarily works, adopting that dialectic where reasonable, and otherwise challenging readers to approach the debate in a new way. An example of the latter is Greasley's insistence that finding a single criterion of personhood is wrongheaded: instead of searching for a metaphysical grounding of personhood, we ought to characterise archetypal personhood, which is in her view a complex mix of psychological and

emotional capacities, and ask to what extent the foetus exemplifies these traits. Combined with novel arguments that personhood *must* be attained gradually (even if only over a short period of time), this allows her to escape complaints of arbitrariness in positing a particular post-conception moment at which the foetus suddenly gains full rights. Rather, she thinks personhood develops gradually such that only at a particular point do foetuses come within the ‘range’ of personhood – but they nevertheless have steadily increasing value until that point in virtue of their rudimentary psychological capacities and human embodiment.

Greasley is thus broadly supportive of abortion rights, thinking that birth is not an unreasonable *legal* threshold for considering human beings as persons. At birth, they are still sufficiently far from being archetypal persons that late-term foetuses are not plausibly full rights-bearers. Yet the meaningful physiological/psychological changes which take place at birth and its legal precision render it a relatively non-arbitrary point at which to assign humans legal personhood. Greasley pre-emptively maintains that *some* legal arbitrariness is inevitable, and argues that the more problematic sorts of legal arbitrariness are not represented in this case. But even if arbitrariness is inevitable in law, it is not necessarily inevitable in ethics or metaphysics, and it is less clear that Greasley’s account avoids arbitrariness at these levels.

This opens her view to further criticism. For one of the foremost charges of arbitrariness against those who hold to a post-conception threshold (or characterisation) of personhood is that it is difficult to see how to ground human equality if personhood is based on a scalar or spectral quantity. Why is there a certain point at which psychological capacities amount to not merely being a partial rights bearer but a full rights-bearer *of exact equal value to all others?*

Pro-choice philosophers have recently grappled with the grounds of human equality, and Greasley’s take on it amounts roughly to a two-tiered view as found in the work of ethicist Jeff McMahan. The gist is that humans have gradually increasing value up to the certain point at which they become persons (full rights-bearers) of equal value to all other persons. This is how McMahan characterises his ‘threshold view’. Greasley frames it, instead, by construing personhood as a ‘range property’, where a range property is a property which, although supervening on variable quantities, is instantiated to an equal degree by all objects which have it (e.g. Dover has the quality of being in England just as much as Birmingham has the same quality, even though the latter is much more ‘securely’ in England because it is inland rather than coastal). McMahan’s two-tiered account of personhood and Greasley’s conception of personhood as a range property appear to amount to the same overall structure of human value.

Greasley is aware that this approach is open to a charge of circularity: “We might worry that there is a problem of circularity in claiming that there is a moral interest driving the specification of ‘person’ as range property. Surely such a moral interest exists only if all human beings within the range really *are* morally equal. But this is exactly what an account that grounds personhood on graduated characteristics seems to deny” (p. 186). She thus attempts to evade this objection by providing an independent explanation of such motivation, drawn from the work of Ian Carter. According to Carter, ‘opacity respect’, a blindness towards people’s varying capacities when treating them with the basic respect due to persons, is

motivated on account of its being necessary for maintaining the requisite dignity in our ordinary interpersonal relations.

This does not appear to escape the initial objection, however. Either humans are of equal value or they are not. If not, then it is implausible that treating them as equal is necessary for any morally substantive end. Indeed, it is only plausible that we need an attitude of opacity respect if humans are in fact equal. Human equality is thus a necessary component of the justification for this attitude. But in that case, it clearly will not do to appeal to opacity respect as a reason for believing in human equality in the first place.

We might at this point wonder in what sense opacity respect really is essential. Greasley says that it is “instrumentally indispensable to sustaining the sort of relations that Carter thinks of as inherently morally valuable” (p. 187). She then goes on to say that the reasons to treat personhood as a binary category “are not merely instrumental, but morally essential for maintaining the kind of relations between persons that we deem valuable”. There is thus some ambiguity concerning whether the reasons are merely instrumental or not. But if they are not merely instrumental, that is presumably only because humans really do require equal rights. But what could ground this need other than genuine equality? It is difficult to tell.

The second problem is that opacity respect simply seems to remain in basic tension with a psychological capacities-based view of personhood. For Greasley maintains that “[t]o be a person is to be the sort of being whose specific cognitive or emotional capacities are irrelevant for the basic appraisal of her standing as a creature worthy of the strongest moral protection” (p. 187). Yet it seems, for Greasley, that a being’s specific cognitive capacities alone are exactly what determine her moral status. Why, given that obtaining a particular these capacities is the grounds for being a full rights-bearer, would we think that the magnitude of these capacities is irrelevant to determining how we should treat someone?

There is a further problem in this vicinity: even if clear cases of persons are subject to this kind of blindness, what about vague cases? It seems to follow from Greasley’s overall ‘gradualist’ thesis that there are some cases on the margins of personhood (it is possible Greasley would deny this implication though it is not easy to see how). But given that personhood has blurred boundaries, it is difficult to tell what implication opacity respect would have for such beings. Ought we evaluate them according to their capacities? If so, it seems that they are simply not persons. But then it seems personhood does not admit of vagueness after all: and in *that* case, we might rightly look to views of personhood which admit of less vagueness to ground such a view.

A third problem is that the opacity respect thesis seems not to generate any conclusion concerning whether we are in fact equal. It merely maintains that we ought to treat people the same *in certain respects*. But most of us will hold human equality to be not only a moral thesis but an axiological one: we should not only treat humans equally in certain respects, but we should *believe* that they are of equal value. It is difficult to see how any such conclusion could be generated merely by any instrumental or other need to treat humans alike.

Greasley’s treatment of human equality is therefore a point at which her thesis appears weakest. There are certain other contentious elements: most of her

objections to dualism have been amply responded to in philosophy of mind literature, and there are allegations of ‘speciesism’ without a clear overall defence of the view that discrimination between species is necessarily morally arbitrary. There is also relatively little discussion of the view that diachronic identity might (at least in part) ground human value.

I cite these concerns primarily as cases where the book could be improved, and where the clearest points of disagreement might be. Nevertheless, Greasley’s legal discussions are novel and compelling, and the philosophical argumentation is nuanced. This book remains an impressive work in abortion ethics and law, worthy of the attention of any scholars working in the field.

CALUM MILLER
Uehiro Centre for Practical Ethics, University of Oxford, Oxford, UK
© 2018 Calum Miller

