

In Defense of Marquis: How to Save Contraception and Fetuses

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The abortion debate has raged for decades in the United States, with neither side overtaking the other.¹ Due to this stalemate, many Americans have given up on solving this issue and opted out of the debate entirely. However, in the late 1980s, the philosopher Don Marquis entered the fray to settle this debate once and for all. In his essay “Why Abortion Is Immoral,” Marquis circumvents the debate’s usual gridlock by making his case independent of the fetus’ personhood (188). Whereas many anti-abortion activists rely on controversial definitions to label the fetus as a person with certain rights, Marquis bases his argument on an attribute that makes killing *prima facie* wrong: the victim’s loss of a future. If fetuses possess this attribute, even as non-persons, then the argument against abortion follows easily.

However, despite its ambition, Marquis’ argument is not without its detractors. Just one year later, his argument was challenged by Alastair Norcross over its implications regarding birth control—a weakness in

¹Consider reading Donald Granberg’s “The Abortion Controversy: An Overview” for a history of the abortion debate in America.

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Marquis' account that undergirds much of the criticism that follows. At face value, Marquis' framework rejects contraception, alongside abortion, as the moral equivalent of homicide. Repelled by this absurdity, Marquis responded to this objection in his first paper; however, as Norcross points out, Marquis' response fails due to faulty premises and a confused epistemology.

More gravely, instead of merely attacking Marquis' response, many philosophers introduced positive arguments for why Marquis' account is irreconcilable with birth control. Philosophers like Earl Conee and Eric Reitan argue that Marquis' account of identity necessarily places reproduction cells and the fetus in conflict: Marquis must either protect the gametes or discard the fetus (645, 276). On initial reading, Conee and Reitan's arguments ring true. Nevertheless, I argue that these arguments do not spell doom for Marquis' account; rather, his framework can withstand this criticism and find new life through more detailed definitions of entity and identity. In this paper, I will explain Marquis' account of killing, the birth control objections to this account, and how Marquis can overcome these objections by narrowing his definitions.

Marquis' Future-like-ours Account

We can best understand the objections to Marquis' account within the context of his overall project. In the process of finding a property that makes killing immoral, Marquis bases his argument on an obvious proposition: ". . . killing me (or you, reader) is *prima facie* seriously wrong" (190). For example, what makes it wrong to murder Johnny, a hypothetical, moody teenager with almost no social relationships, is the loss of his future happiness and not necessarily the loss to his friends. Since Marquis posits that our loss of a good future makes killing seriously wrong, he calls this explanation for killing's immorality "the future-like-ours account" (196).

If this account succeeds, it has clear implications against abortion (202). From the future-like-ours account, we accept that—absent a significant reason—killing is wrong when it deprives an entity of a good future. Since the fetus will almost definitely live on to have a future filled with joys similar to our own, the fetus does possess a good future. Thus, Marquis concludes that killing a fetus is *prima facie* morally wrong. The case against abortion unfolds rather intuitively, based on the truth of the future-like-ours account.

Conflict with Birth Control and Marquis' Response

The future-like-ours account appears to do too much, however, in the case of birth control. Due to this account's emphasis on the future, not only the fetus' personhood but also the fetus' existence may prove irrelevant. Thus, an argument against birth control follows:

- (1) If an action denies an entity a good future, then it is immoral.
- (2) The egg and sperm qualify as an entity possessing a good future.
- (3) Birth control denies this entity a good future.

Therefore, (C) birth control is immoral.

Marquis must counter this argument if he wants his account to best explain our intuitions about killing. To do this, Marquis rejects the second premise, arguing that the egg and sperm do not constitute an entity that could act as a victim of birth control. If a victim did exist, it would be one of four possibilities: (1) the sperm, (2) the egg, (3) the egg and sperm separately, and (4) the egg and sperm together (201).

Marquis easily dispatches options one through three (201). The first two options arbitrarily victimize one gamete over the other, leading to the question: why should the sperm be the victim instead of the egg? Without a good answer, neither choice seems a likely candidate for victimization. The third possibility (the egg and sperm separately) suggests the existence of two victims instead of one, but this contradicts the single victim examples within Marquis' future-like-ours account.² For these reasons, none of the first three options seem viable as victims of birth control.

The fourth option presents a more compelling victim of birth control. Perhaps the egg and sperm—with the combined potential to form a fetus—collectively qualify as a victim denied a good future. Marquis discounts this possibility due to the epistemic uncertainty it entails. As millions of sperm could unite with the egg, countless combinations of gametes form the basis of this victim. Therefore, we do not know who or what birth control victimizes. We know that the egg will lose out, but Marquis only values the future entity (egg plus sperm), and so he does not regard the egg itself as the victim. Marquis thus concludes that the epistemic problem of knowing which sperm will fertilize the egg means that no victim exists.

²The case of the splitting zygote—raised in BYU's Philosophy 300 course—defies this response; however, I leave that discussion for a different paper.

Norcross Objects: Uncertainty Does Not Eliminate the Victim

Norcross rebuts the previous argument by suggesting that Marquis has confused epistemology with metaphysics (269). Despite the epistemic problem of knowing which sperm will fertilize the egg, the inability to know exactly who (or what) the victim will be does not entail the absence of a victim. Norcross highlights this principle with the following analogy. Imagine that power plant explosions have devastated London, leaving only a few survivors. After the explosions, the government chooses to respond in one of two ways: either (1) recording the survivors' names and then killing them or (2) bombing the city indiscriminately to wipeout the survivors. In the first scenario, we can easily identify the victims of the government's actions, and clearly these actions are immoral. In the second scenario, we do not know the victims' identities or whether the victims existed; yet, no one would claim that this second set of actions is moral. Despite creating a lapse in our knowledge, these actions jeopardize lives and could easily create victims. This analogy shows how victims can exist in spite of epistemic uncertainty.

With this analogy, Norcross shows that contraception's ambiguous—but existing—victims make it immoral. Although he considers other ways to interpret Marquis' argument, Norcross reaches the same conclusion: the future-like-ours account cannot permit contraception (276).³ Since contraception puts a combination of gametes in jeopardy, it deprives an entity of a future like ours. With contraception imperiled, Norcross rejects Marquis' account for killing (277).

Conee Objects: Marquis Makes an “Indefensible Metaphysical Claim”

Conee also objects to Marquis' response, regarding the number of possible victims involved as a “morally inert numerical fact” (641). For Conee, Marquis' dilemma with birth control runs deeper than determining whether a single victim exists or not. In fact, Conee argues that a “single thing” need not exist at all in Marquis' account because the entities' potential for a future is the only relevant moral feature.⁴ Since pre-fusion

³For an interpretation of Marquis based on arbitrariness, read Norcross's “Killing, Abortion, and Contraception: A Reply to Marquis,” pages 270–272.

⁴Russell Jacobs expands this argument in “Conee and Marquis on Contraception.” I will not discuss his non-person affecting principle in this paper, although I will note that the moral category of killing seems more relevant to entities with futures like our own, rather than to objects of value in general (e.g. the paintings).

gametes have the same potential for a future-like-ours, these gametes qualify as an entity which possesses a future.

As expected, Marquis disagrees. The future-like-ours account appeals to us because it considers the “loss of a victim of *her*, not someone else’s, future life” (77). Marquis continues, “A necessary condition of this being so is that the future life that is lost would have been the *actual* life of the same individual who dies prematurely. . .” He then concludes that unfertilized gametes—which represent two entities instead of one—are more akin to “someone else’s future” rather than the individual’s future whom they could create. Thus, in Marquis’ view, individuals composed of multiple entities do not have the same identity as unified individuals.

Conee and Marquis’ clashing views arise from conflicting definitions of an entity which can possess a future. In Conee’s criticism, merely possessing a future suffices to grant rights to entities. In Marquis’ response, only the quality of existing as a single-entity grants a being rights. These competing definitions between the authors create the conflict: on the one hand, Conee settles for the attribute of having a future; on the other, Marquis demands a physical unity that mirrors the physical unity of the future entity. Due to this conflict at the definition level, we cannot adequately weigh in on this debate without reviewing and determining which definitions we will use.

Potential Entities and Actual Entities

From the above arguments, the future-like-ours account appears dubious in the case of birth control—birth control victimizes an entity which possesses a future like ours. I will argue, however, that this argument defines entity far too broadly. If we narrow the definition of entity to only those that actually exist and have a sufficiently unique identity, then the future-like-ours account will exclude the sperm and egg from being entities that have rights.

The first half of my argument requires a distinction between *actual entities* and *potential entities*. Actual entities are those entities which exist in the present, without reference to future states. They refer to objects as they are now and disregard what they may become at a later date. In the case of birth control, the actual entities involved are the unfertilized egg and the sperm—for these are all that exist with effective birth control. Potential entities, on the other hand, are those entities which may exist, in reference to the future. Potential entities have not yet arrived; yet, they could arrive given a certain set of conditions. In the birth control case, the potential

entity is the fertilized egg—it does not yet exist, but it could have existed were it not for contraception’s influence.

If the egg and the sperm only need to qualify as potential entities, then their right to have a good future follows easily—after all, Marquis’ account does grant rights to the fertilized egg to make abortion immoral. However, Marquis need not include potential entities in his standard, rendering this argument impotent. While Marquis uses the attribute of “possessing a good future,” he always justifies his account by applying this attribute to actual entities. These actual entities include children, teenagers, the elderly, aliens, animals, and fetuses. All of these entities exist in the present and possess a good future. Thus, when determining whether the entity possesses a good future, the future-like-ours account only needs to examine actual entities.

Identity among the Actual Entities in Birth Control

Now that we have limited the future-like-ours account to include only actual entities, we will examine the actual entities at stake in the use of contraception. In this case, our actual entities are the unfertilized egg and the sperm cell. At this point, Norcross might argue that thinking of the two cells together exists as enough of a thing to qualify as an entity possessing a good future.⁵ However, this conclusion ignores the identity that these cells share with their respective hosts. As we will see, this additional identity disqualifies pre-fusion gametes from receiving moral consideration within Marquis’ future-like-ours account.

My argument for the gametes’ shared identity with their hosts relies on a comparison between gametes and other cells that relate only (if tangentially) to the host’s future. The comparison is functional, not biological.⁶ Prior to fertilization, gametes function like red blood cells or hair cells; they support the body’s needs and thereby relinquish their claim to a unique identity. In the case of red blood cells, we observe a smaller entity, red blood cells, in total subservience to a larger entity, the human. Red blood cells undeniably exist as part of a larger entity because they fulfill a vital process—they support the body’s circulatory system—and in so doing, red blood cells are necessarily an attribute of living humans. Without red

⁵I leave a more thorough analysis of Norcross’s arguments about thing theory for another paper. His argument takes place on pages 173–177 of his paper.

⁶As discussed later in this paper, arguments from biology are problematic for Marquis’ account. For the purposes of my argument, I accept functionalism as my metaphysical system. Functionalism compliments Marquis in that he cares more about the effects of an abortion than about the particularities of the materials involved.

blood cells, the body cannot support its needs. From this example, we learn an important characteristic of entities: some entities entail sub-entities, thereby giving these sub-entities the dual-identity of being themselves and being a part of a whole.⁷

In the case of gametes, the egg and sperm fulfill the vital process of spearheading the body's reproductive system. Although gametes form before most people can produce children, their existence ensures that humans can perpetuate themselves—whether collectively or at some future time. Since gametes serve the body's needs, they find themselves in the same functional category as the body's other cells. As such, gametes not only exist as entities in and of themselves, but they also exist as sub-entities within a larger whole.

Since gametes have a dual identity as themselves and as a part of a whole, they become problematic victims within the future-like-ours account. Returning to the sperm and unfertilized egg, we might consider them as entailing three possible futures: one in themselves, one through a shared identity with the man, and one through a shared identity with the woman. In this way, the egg and sperm may not have a future-like-ours at all: each of us possesses one future, whereas the egg and sperm have claim on three.

Even if we imagine the egg and sperm to possess only one future, their non-unique identities still muddle the calculation of loss in the case of birth control. While the sperm and egg may die due to birth control, both hosts live on, and so whether the entity possessing a good future suffers no loss, half a loss, or a full loss appears unsettled. This “between-ness” of identity negates the idea that gametes possess a future like ours, for loss cannot be calculated in the same way. Without taking on a unique identity, the actual entities of sperm and egg do not have a clear claim to rights within the future-like-ours account.

⁷This entailment comes in two types: *necessary* and *incidental*. Necessary entailments occur when the larger entity demands the existence of the sub-entities. Give me a circle without a curve, a digital watch without digits, or a melody without sound, and we have neither circles nor digital watches nor melodies. Incidental entailments occur when the larger entity does not require the existence of the sub-entity. In humans, red blood cells are necessary, hair cells are incidental, and gametes could be either depending on whether we are considering the human in isolation or in general.

Saving the Fetus

My argument to eliminate the egg and sperm as possible victims in the future-like-ours account only succeeds so far as I do not exclude the fetus. As Eric Reitan points out, solving objections to contraception puts Marquis at risk to new objections about the identity of the fetus (280). If the fetus faces the same dual-identity problems that I suggest exist with the egg and sperm, then we could justify an abortion. If we end up justifying abortion, then my efforts to save Marquis have failed.

First, I might (wrongly) try to distinguish the fetus through an appeal to biology. After all, the fetus differs genetically from both the father and the mother, whereas the gametes collectively contain the genetic material of their respective origins. Despite this biological difference, I find this line of reasoning unsatisfactory. First off, one benefit of Marquis' account is its indifference to biological details (Marquis thinks his account's applicability to aliens and animals reinforces its rightness). Second, decisions based only on genetic differences are arbitrary. As Reitan points out:

in terms of physical structures and material, the fetus and relevant adult are radically different—arguably at least as different in their properties as the ovum and the zygote. Immediately after fertilization, the zygote retains the cellular material of the ovum and some of its physical arrangement, even if there is the addition of the material from the sperm and a number of changes that attend its introduction (such as the impermeability of the cell wall to penetration from other sperm). (277)

Thus, an appeal to biology fails to reconcile the drastic biological differences between a fetus and an adult person and the minimal biological differences between an ovum and a newly fertilized zygote. If biology separates entities from accessing a future-like-ours, then the fetus alongside the sperm and ovum may fail to qualify for possessing this future.

Thus, instead of relying on material differences, I will continue to analyze the function of the entities involved. Fetuses do not share an identity with their hosts because they do not serve the bodily processes of the man or the woman, for, if they did serve a bodily system, to which system would they belong? Fetuses differ from gametes in that they do not assist in reproduction; rather, they are the reproduced, the actuated being itself. Once the sperm fertilizes the egg, the fetus' cells work only for itself and its own purposes. Although the fetus is certainly supported by the cells of the mother, this relationship does not go both ways: the cells of the fetus work to support their own processes. Thus, unlike gametes, hair cells, and red blood cells, the fetus does not hold the identity of being an integral part

of the mother's or the father's bodies. This separate identity may qualify the fetus for personhood or it may not qualify it for personhood; regardless, by Marquis' account, the fetus has a future like ours and therefore ought not be aborted.

Final Implications for Contraception

As we have seen, the gametes' existence differs extensively from pre- to post-fertilization. My analysis shows that contraception prevents the sperm and the egg from ever uniting to become an actual entity possessing a future. Since the gametes involved are part of the host up until fertilization, no actual entity exists which can act as a candidate for victimization. And, even if we grant this entity existence, it does not satisfy the requirements of possessing a future-like-ours. Thus, Marquis' options for victimhood are not options at all—options one through three only include cells with no other identity than that of the host, and option four does not become a viable entity for victimhood until after fertilization has occurred. By understanding the timing of when a victim does not exist and when an entity is entitled to certain rights (like a future), Marquis can have his birth control and eat it too—he can withstand objections, keep his future-like-ours account, and allow birth control as a permissible tool.

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