

Do Pro-Lifers Believe What They Claim to Believe?*

*David Hershenov***

PRO-LIFERS TYPICALLY CLAIM that the unborn have the same moral status as the born. Do they really believe that? Their attitudes towards embryo rescue cases and miscarriage prevention research have been interpreted as suggesting otherwise.¹ If the frozen embryo had the same moral status as a baby, then why would pro-lifers save from a clinic fire a baby rendered unconscious by smoke inhalation rather than one or more frozen embryos? If the miscarried embryo had the same value as the born, then given the fact that more human beings die from miscarriage than all other diseases combined, why aren't pro-lifers calling for a massive re-prioritization of medical research to prevent miscarriages? One explanation for the reactions of pro-lifers in the hypothetical embryo rescue cases and their inaction in the face of the scourge of miscarriages is that they do not really believe that unborn have the same moral status as the born. This inconsistency between what they say and do does not mean that they are hypocrites, but only that they are unaware of their deepest moral commitments and that it may take a clever thought experiment or argument to elicit their true beliefs about their fundamental values.

I will offer a rival explanation that allows us to take the beliefs of pro-

* This paper has appeared in the *Pacific Philosophical Quarterly* and is reprinted here by permission of the author.

** *David Hershenov* is a philosopher at the University at Buffalo. He and his wife, Rose Hershenov, are finishing up a book entitled *Health, Harm and Potential: A Philosophical Analysis of Abortion*. Most of his research has been on issues at the intersection of personal identity and bioethics. He has recently become interested in the philosophy of medicine.

¹ Tony Ord, "The Scourge: Moral Implications of Natural Embryo Loss," *American Journal of Bioethics* 8/7 (2008): 12-19; Amy Berg, "Abortion and Miscarriage," *Philosophical Studies* 174/5 (2017): 1217-26; Michael Sandel, "Ethical Perspectives in Human Cloning," *Perspectives in Biology and Medicine* 48/2 (2005): 241-47; Kate Greasley and Christopher Kaczor, *Abortion Rights: For and Against* (New York NY: Cambridge Univ. Press, 2018), pp. 27-36.

lifers to be what they say they are. The embryo rescue cases are flawed as they have not been set up to offset triage considerations. The embryos may not survive thawing and it is unlikely that anyone will be able and willing to gestate them. When embryo rescue cases are constructed so that these differences do not distinguish the born from the unborn, it is by no means obvious that one should save the baby over the frozen embryo.

The literature on the scourge of miscarriage does not recognize that many miscarriages do not harm the miscarried embryo, for the relevant alternative is their non-existence, not their being born. The reason for this is that the miscarriage would likely be prevented by using different gametes or delaying procreation so that a different embryo would be created rather than the one that would have miscarried. Abortion, the focus of most pro-lifers and the context in which they make their claims about the moral status of the embryo, typically deprives the aborted of a valuable future. Likewise, for the diseases that kill the born. So, at least pro-lifers aware of the non-identity of those embryos who would have miscarried and those who do not because of the miscarriage prevention protocols, would have reason not to call for the massive re-prioritization of research funds. Reinforcing this reluctance to re-prioritize funding is the belief of many religious pro-lifers that the use of gamete selection and in vitro fertilization is at odds with their moral duty to produce children only through conjugal acts. But even if those naturally conceived embryos who would have miscarried could undergo a treatment that brings them and not a replacement embryo to term, there are morally significant differences between saving them and saving those already born. For example, many women who do not want to become pregnant, and certainly those who would abort if they were to become pregnant, would not voluntarily undergo any miscarriage prevention treatment. Many pro-lifers would be opposed to legally compelling women to undergo miscarriage prevention treatments before (and perhaps after) they became pregnant. These and other reasons to be canvassed in the second part of this paper give pro-lifers reason not to pursue miscarriage prevention research to the extent that they would promote research to end a scourge killing comparable numbers of the born.

(1) Do Embryo Rescues Show the Unborn
to have less Moral Status than the Born?

I will begin by describing embryo-rescue cases. Then I will sketch some standard pro-life explanations of people's reactions to such cases and explain why they are not convincing, for they can be offset in ways that leave people's rescue choices unchanged. This will be followed by a defense of the idea that triage considerations are distorting our judgments, leading us to conflate moral status with triage considerations. I will conclude the first part with what embryo rescue cases can or cannot teach us about moral status, abortion, and embryo stem cell research.

Embryo rescue cases typically involve a fire in a fertility clinic and the rescuer's ability to save either one or more frozen embryos or someone already born such as the clinic's security guard or a baby² or a five-or six-year old³ overwhelmed by smoke. Most people respond that the guard, newborn, or child should be saved over the embryo(s) and that choice is then often interpreted as revealing a belief in their different moral status.

When confronted with such widely shared reactions to embryo rescue cases, some theorists have sought to explain why such life-saving choices do not reflect a devaluing of embryos.⁴ Sometimes pro-lifers justify saving the guard because of the great pain a sentient watchman, baby, or five-year old can feel as he dies from his burns.⁵ It has often been conjectured that the guard's psychological ties to his future make death a greater harm to him than the embryo. The five-year-old and the guard's future-oriented plans and desires will be frustrated by his untimely death and that justifies saving them over the

² Greasley (2018) p. 27; George Annas, "A French Homunculus in a Tennessee Court," *Hastings Center Report* 19/6 (1989): 20-22 at 22; Glantz: 1989.

³ Sandel (2005), p. 245; Stephen Napier, "Vulnerable Embryos: A Critical Analysis of Twinning, Rescue, and Natural Loss," *American Catholic Philosophical Quarterly* 84/4 (2010): 783-812 at p. 797; R. George and C. Tollefsen, *Embryo: A Defense of Human Life*. 2nd ed. (Princeton NJ: Witherspoon Institute, 2012), p. 136.

⁴ George and Tollefsen (2012), pp. 136-39; Matthew Liao, "The Embryo Rescue Case," *Theoretical Medicine and Bioethics* 27/2 (2006): 141-47 at p. 142; Christopher Kaczor, *The Ethics of Abortion: Women's Rights, Human Life, and the Question of Justice* (New York NY: Routledge Press, 2011), pp. 148-49.

⁵ Tollefsen and George (2012), p. 137.

embryo without any future directed projects and intentions.⁶ Another justification on offer for saving the guard or five-year-old instead of the embryo stresses the ties to others who will miss them or be emotionally invested in their good them.⁷ A further consideration tilting the rescue to the guard is that he also has people who are dependent upon him,⁸ while the embryo's life is not so intertwined with the lives of others.

Kate Greasley responds that these pro-life maneuvers miss the point of embryo rescue cases.⁹ The best explanation of the rescue choice is that the embryo has less intrinsic moral status than the guard. She uses a baby rather than the guard in her embryo rescue case that she constructs. I will henceforth follow her and use a baby, which was also the example in the original discussions of Annas and Glanz. She is very confident that if we remove all the other morally relevant differences, many of which are extrinsic, our judgments will reveal the baby has greater moral status than the embryo. For example, she renders the baby a friendless orphan that no one will miss.¹⁰ She adds that no one stands in a special relationship to the baby and thus has an obligation to save the baby over any of the embryos and vice versa.¹¹ Impartial moral concerns are the only ones present.¹² Also, imagine that the smoke inhalation renders the baby unconscious so the fire will not be accompanied by painful burns.¹³ Greasley then asks whom should you save and she thinks the answer obvious: the baby over even five frozen embryos. Her conclusion is that the best explanation of this decision is a difference in their intrinsic value, i.e., moral status.¹⁴

⁶ Liao (2006), pp. 143-46; Kaczor (2018), p. 149.

⁷ Kaczor (2011), p. 149; George and Tollefsen (2012), p. 138.

⁸ Kaczor (2011), p. 139.

⁹ Greasley (2018), pp. 27-36.

¹⁰ Greasley (2018), p. 31.

¹¹ Greasley (2018), p. 31.

¹² By "impartial" is meant that every moral agent has a reason to treat the being in specific ways.

¹³ Greasley (2018), p. 32.

¹⁴ I understand by intrinsic value the value that the individual has in herself, rather than for others. Her intrinsic value does not depend upon the concerns of others, or even her own interest in herself. It is value she has independently of whether anyone cares about her, appreciates her, desires her happiness and so forth.

Greasley makes a useful point about the need to offset morally relevant differences other than moral status if our judgments of whom to save are to reveal anything about how various individuals moral status compare. However, I would argue that Greasley's above recommendations do not yet make all things equal. Triage considerations come into play in embryo rescue cases as they do in wartime MASH units and in domestic hospitals. Pro-lifers' claims about the equal moral status of all human beings are not undermined by accepting that we do not have to make great efforts in the actual world to keep alive frozen embryos or anencephalic human beings. This does not indicate their lower moral status any more than when the surgical team of a MASH unit chooses to operate upon the soldier that can more likely be saved indicates anything about a difference in moral status between that soldier and the more gravely wounded soldier who is not rushed into surgery because of the likely futility of the procedure. Both soldiers have the same moral status and each is as tragically harmed as the other by their deaths. It is just that doctors cannot likely save both of them. So, they give priority to the more treatable.

Triage considerations can distort our judgments as they get conflated with different considerations of moral status. It is important to make explicit that the embryo in the rescue case is frozen,¹⁵ may not survive thawing, and there may never be found a woman willing to gestate the embryo until delivery. More importantly, the baby will certainly survive removal from the smoke filled area and will not be dependent upon anyone else's body for months of taxing, pregnancy-like support. The embryo, on the other hand, may not be viable in either of two senses. The first is that the embryo may not survive thawing. The second absence of viability is that the embryo's need to gestate means that it cannot live without imposing immense burdens upon a woman for months.

¹⁵ According to my own metaphysic, which may be implicitly shared by others, the frozen are neither alive nor dead. They are not alive because they are not metabolizing. But they are not dead because they can metabolize again if just like their normal environment is added. I find the interests and the moral status of those being that are neither dead nor alive to be perplexing. If readers implicitly or explicitly shared my metaphysical assumptions and were likewise unsure about the moral status of those who are now neither dead nor alive, then this can be distorting their responses to embryo rescue cases and the lessons of moral status that can be extended to living embryos.

So, if we really want to improve our chances of learning something from embryo rescue cases regarding our deepest commitments about the moral status of embryos, then we surely need to make the embryo and baby in the rescue case much more similar so as to remove other considerations that prevent us from focusing on any differences in moral status. Greasley's baby needs to be frozen. So, I will stipulate that in the revised thought experiment offered below that the baby is likewise frozen and in an induced coma. Thus heat will thaw her out but she will not become conscious unless the coma is reversed by a routine, safe, and effective procedure. This ensures that if the fire thaws her out, it does not cause her to regain consciousness and suffer.

I will also stipulate that the frozen baby girl on the floor of the clinic may not survive thawing. The odds that the baby in the deep freeze cannot have its life processes restarted should be the same as with cryogenically preserved embryos. That renders the baby's prospects statistically like the frozen embryo. There will be no guarantee that either will be *successfully* rescued. That will partially offset the triage considerations that may be influencing different attitudes about their rescue in the original case. Furthermore, imagine that the thawed baby has a pair of failing kidneys like those found in the violinist of Judith Thomson's famous thought experiment.¹⁶ Thus someone with healthy kidneys will need to volunteer to be connected to the baby for nine months until the infant's kidneys will have recovered and she can be safely detached. Imagine, further, that the very young child with bad kidneys is an orphan, so that there is no one who has in the past willingly provided support for the youngster and might be expected to do so again without any qualms. In other words, neither the baby nor the embryo have mothers available and willing to allow their bodies to be used for months in order to keep them alive. Both will perish without the kindness of strangers.

Whom would we save if both the baby and the embryo are frozen and perhaps not viable in the first sense of being capable of surviving thawing and definitely not viable in the second sense of being able to live without the bodily support of another who may never volunteer? It seems to me that here it is much less obvious that the right decision is to save the baby over the

¹⁶ Judith Jarvis Thomson, "A Defense of Abortion," *Philosophy and Public Affairs* 1/1 (1971): 47-66 at pp. 48-49.

embryo(s). This suggests that the best explanation of the reactions in the original unreconstructed embryo rescue may *not* be the difference in moral status. Triage considerations could have been playing a crucial role.

We can avoid some of the distorting triage considerations if we modify an example created by Robert George and Chris Tollefsen.¹⁷ Consider that we could save either four pregnant women or three kids and their three mothers. If you did not do so initially, assume that the women are visibly quite far along in their pregnancies. That will suggest that they are at a stage of pregnancy where miscarriage is unlikely. So, we do not have either of the viability issues of the typical embryo rescue case. There is not a worry that the embryo will not survive thawing to be implanted in a woman's womb and there is not a concern that no woman will step forward to gestate the embryo. It may not have been the intentions of George and Tollefsen to offset such triage considerations in constructing their case, but it serves that purpose. Whom do you save? The four women have four fetal human beings inside them which make for a total of eight human beings that can be rescued. The alternative is to save the six already born human beings. I suspect that many readers will save the four pregnant women when they cannot do both. This may more reliably reflect their views of the moral status of embryos than rescue cases infected by triage considerations.

Before we conclude this first part, it is worth reminding readers that we are ultimately interested in whether embryos *in utero* can be aborted and whether those *in vivo* can be destroyed to obtain their stem cells. That is, we are interested in whether they may be permissibly killed and not merely when and whether to save them. So, let us consider a modified fertility clinic fire where the frozen embryos are safely ensconced within a fire-proof freezer. Now the only way to save the baby on the floor of the clinic is to open the fire-proof freezer and use the liquid in which the embryos are frozen to douse the flames. Doing so will destroy the embryo(s). Can you throw the cryogenic preserving liquid onto the flames, knowing that the embryos will die in the process? It is not obvious to me that is permissible. It is even less obvious if the baby to be

¹⁷George and Tollefsen (2012), p. 139; Robert George and Christopher Tollefsen, "Embryo and Five Year Olds: Whom to Rescue?" in *Public Discourse* (2017) <http://www.thepublicdiscourse.com/2017/10/20332>.

saved is frozen and has lousy violinist-like kidneys and thus needs nine months of life support to be given by another's body. So, killing embryos to save the lives of non-embryos strikes me as ethically dubious. And keep in mind that abortion is rarely life-saving rather than burden removing.

2. Insufficient Concern about Miscarriages

Embryo-rescue cases are not the only occasions in which pro-lifers are accused of not acting as expected, given their rhetoric about the moral status of embryos. They have not called for re-prioritizing research funding to prevent miscarriages to the extent that some have expected if embryos possess the moral status of the born. Tony Ord points out that more human beings die every year from miscarriages than from all the other causes of death added together.¹⁸ If embryos are as valuable as young children, then one would think that the numbers of miscarriages would demand a response befitting an epidemic. Yet pro-lifers have not been demanding a dramatic increase in and transfer of research dollars from combating other diseases to preventing miscarriages. As a result, they have been charged with being "inconsistent,"¹⁹ for they do not treat miscarriages "as the biggest health crisis of our time"²⁰ and "one of the world's greatest problems, if not the greatest problem."²¹ Thus miscarriages have been judged to provide most pro-lifers with a dilemma. Amy Berg insists that: "either personhood-at-conception opponents of abortion must radically change their political and medical priorities, or else they must accept that they do not accord fetuses the status of persons from the moment of conception."²² The pro-life movement's acceptance of rather minimal

¹⁸ Ord states that excluding miscarriage, 56 million people die each year. Miscarriages take the lives of over 220 million people every year. Miscarriages are responsible for more than three quarters of all deaths each year. It lowers the average life span in the developed world from 78 to 29. Curing just 5% of those afflicted by the scourge would prevent more deaths each year than cancer causes. More human beings die each year from the scourge than died throughout World War II (60 million deaths).

¹⁹ Berg (2017), pp. 1222, 1225.

²⁰ Berg (2017), p. 1225.

²¹ Ord (2007), p. 15).

²² Ord (2017), pp. 1217-18. Ord makes a similar claim about a dilemma between abandoning the claim of the full moral status of the embryo that is used against abortion, IVF, and embryo destroying stem cell acquisition or calling for a transfer of

miscarriage prevention research has been interpreted as showing that despite the lip service pro-lifers offer about the elevated moral status of embryos, they are, deep down, not committed to them having the moral status comparable to that of the born, which would protect them from abortion or embryo-destroying stem-cell acquisition. Ord concludes his paper about the attitudes to miscarriage that they “suggest that even now, few people really believe that that full moral status begins at conception.”²³ Berg ends her paper thus: “Arguments that abortion is wrong because fetuses are persons from the moment of conception turn out to be arguments that even Personhood-At-Conception opponents of abortion may not accept.”²⁴

I will suggest in this section a number of responses by which pro-lifers can, without devaluing embryos, explain why they do not seek to fund the prevention of miscarriage research to the extent that they finance research into preventing the death. (1) It may be claimed that the miscarried are chromosomally so abnormal that they are not human. (2) Even if these chromosomally abnormal embryos are human, they might not have lives worth living. (3) Most significantly, it may be that the miscarriage prevention protocol brings into existence a healthy embryo that is distinct from the embryo that would have miscarried. Since miscarriage prevention will produce healthy embryos that are not identical to those who would have not survived gestation, they differ from therapies for diseases that cure those already suffering from the disease. (4) Another possibility is that preventing miscarriages, unlike cures for other diseases, places great burdens on individuals other than those saved. (5) Moreover, many women who do not want to become pregnant would not voluntarily undertake a miscarriage prevention protocol. Pro-lifers may realize that such women will not make use of embryo prevention treatments. (6) Christian pro-lifers may not undergo such miscarriage prevention treatments involving in vitro fertilization because it violates their religious beliefs about reproducing sexually.

The considerations just broached all suggest that pro-lifers need not be

massive medical resources away from other diseases in order to prevent miscarriages. Ord (2007), p. 12.

²³ Ord (2008), p. 19.

²⁴ Berg (2017), p. 1225.

Life and Learning: Proceedings of the Thirtieth Conference of the University Faculty for Life, ed. Joseph W. Koterski, S.J. (Bronx NY: UFL, 2020), pp. 221-39.

inconsistent when they claim the equivalent moral status of the born and unborn does not require comparable efforts to prevent their deaths. Nevertheless, I will argue that pro-lifers should still support increases in spending directed towards *specific* types of miscarriage prevention without this suggesting that the reasons for not having done so in the past are to be explained by their not really believing the unborn have the value of the born. I will speculate that there are features of early embryos that do not indicate their having lower moral status but that distort responses, even of pro-lifers, to their plight. I suspect that it is because early miscarriages tend to occur before a woman knows that she is pregnant or before she and her partner have become very involved in the life briefly growing within her. Consequently, the extent of the embryo's deprivation is not as vividly imagined and thus does not elicit as passionate response as the death of older children. I will conclude this second part by hypothesizing that if we instead imagine miscarriages occurring late in a pregnancy resulting always in stillbirths, there would be a call to dramatically re-prioritize research funds to prevent miscarriages.

One response that Robbie George, Alfonso Gomez-Lobo, and Patrick Lee²⁵ are fond of providing to account for attitudes towards miscarriages being different than those towards abortion is that many miscarriages may not be deaths of *human beings* despite the deceased having human parents. They are not human beings because they are so chromosomally deficient that they lack the genes and epigenetic factors that render an individual a human person. Their genetic flaws lead to their miscarrying. These unsustainable creatures are no more human beings than are hydatiform moles. So, money spent on preventing miscarriages would not save any human beings who otherwise would have miscarried but instead will produce results that would transform and replace those creatures with human beings. Instead of there existing unhealthy non-human embryos, researchers would be creating numerically distinct healthy human beings. This is especially likely to be the case if readers believe that we are essentially rational substances, as do neo-Aristotelians. Any

²⁵ Robert George and Patrick Lee, *New Atlantis* 7 (2004-2005): 90-100
<http://www.thenewatlantis.com/publications/acorns-and-embryos>. See also R. George and A. Gomez-Lobo, "Acorns and Embryos: The Moral Status of the Human Embryo," *Perspectives in Biology and Medicine*. 48/2 (2005): 201-10.

embryo that lacks the genetic basis to become rational in the normal environment would not be a human being and so what looks like providing it with missing genes is actually bringing about substantial change.²⁶

Lee, George, and Gomez-Lobo may be overestimating the number of miscarriages that involve non-human embryos. However, if the miscarried are abnormal but human, there may be a worry that many will have brief lives that are not worth living on account of the immense pain or absence of mental life. Even pro-lifers who value the disabled, will admit that for some lives involving intolerable suffering or permanent unconsciousness that death is a welcome release. So, they may not be eager for research that keeps the miscarried alive only long enough to have mindless or anguished lives. Nevertheless, there are probably still many uncontroversial *human* embryos that die but would have had lives worth living. So, the challenge remains that the lack of a call from pro-lifers for re-prioritizing funding to prevent miscarriage shows that it is not a priority and thus perhaps indicates a belief in the unborn having lesser moral status than the born.²⁷ I suspect that what might become more common than non-human embryos miscarrying is that any cure for such miscarriages will bring a *different* human being into existence. The idea is that if you change too much of the matter that is crucial to an egg, sperm, or early embryo's makeup, the result is a different embryo than would otherwise have existed if you did not modify the composition of the egg, sperm or early embryo.²⁸ Those who accept the essentiality of origins typically maintain that we could not have come into existence with very different matter, though we can *later* undergo complete but gradual turnover in our matter.²⁹ So, the scourge of miscarriage

²⁶ This is an analogue of the Neo-Aristotelian who charge that enhancing Tooley's kitten with a serum that can transform it into a person is really replacing the kitten with a distinct person. Since I do not ascribe to a hylomorphic metaphysics that construes us as essentially *rational* animals and so I cannot help myself to this position. Michael Tooley, "If Abortion, Then Infanticide," *Philosophy and Public Affairs* 2/1 (1972): 37-65 at 60-63.

²⁷ Ord cites estimates of chromosomal defects causing 30%-60% of miscarriages. Ord (2008), p. 17. That would mean 90-150 million non-chromosomal caused miscarriage deaths per year.

²⁸ Saul Kripke, *Naming and Necessity* (New York NY: Oxford Univ. Press, 1972), pp. 112-15.

²⁹ McMahan even speculated that those with Down's syndrome could not have

is the death of many human beings, but the “cure” would be the creation of many numerically different human beings. There is nothing comparable true of abortion or deaths of the born.

Just consider what might be involved with preventing miscarriages. There could be a battery of tests on women and men before they conceive. Perhaps some women and men will be instructed to avoid conceiving with each other and instead to mate with others who are reproductively compatible. This may involve gamete donation and IVF, not swinging and swapping. If that form of prevention of miscarriage is not an option, perhaps the medical lesson will be that they should conceive at a certain time. It might also involve a *particular* egg and *particular* sperm being introduced by high tech matchmakers *in vitro* whom otherwise would not have coupled. Likewise, gamete removals and tests and surgeries or treatments on sperm and eggs will change the dates and the identities of those otherwise conceived.³⁰ Many other aspects of the diagnostic tests and therapeutic procedures will change who reproduces with whom and when and with what gametes. Of course, major genetic interventions will replace one gamete with a similar but distinct one. So, the world with many fewer miscarriages will be a world in which different children are conceived. That again will distinguish the alleged harm of miscarriage from the harm of abortion and the deaths of the born. The miscarried would not exist in the world with the cure rather than survive to term. The aborted and the born who die from disease, on the other hand, would exist in a world where their deaths were avoided.³¹

been born or existed without it. So he should be sympathetic to the notion that “cures” for miscarriage will actually be replacements. Jeff McMahan, “Wrongful Life: Paradoxes in the Morality of Causing People to Exist” in *Rational Commitment and Social Justice: Essays for Gregory Kavka*, ed. Jules Coleman and Christopher Morris (Cambridge UK: Cambridge Univ. Press, 1998), pp. 208-47.

³⁰ Derek Parfit, *Reasons and Persons* (New York NY: Oxford Univ. Press, 1984), pp. 352-79.

³¹ It should not be thought that the aborted would not have existed, however briefly, if not for past abortion laws and practices altering the reproductive history that led to them being conceived and aborted, so abortion does not harm them. It does not matter that legally permitting or restricting abortion in the near future will change the makeup of future generations. Once someone exists in utero, abortion makes them worse off than they would have been with that act. So while they would not exist to be

Life and Learning: Proceedings of the Thirtieth Conference of the University Faculty for Life, ed. Joseph W. Koterski, S.J. (Bronx NY: UFL, 2020), pp. 221-39.

Ord mentions sperm sorting as a way to prevent the chromosomal defects in the first place.³² Ord is right that this will prevent many miscarriages, but he does not consider that those who would have died without the cure are not as a result alive but instead never existed. Ergo, the short lives of those who die from miscarriages must be compared to their never existing. The prospect of not existing compared to a short, miscarried life show that the latter did not harm them. The only currently available alternative to conceiving and miscarrying is not conceiving at all. Therefore, the miscarried are not rendered worse off than the alternative. Abortion, on the other hand, involves shortening an already existing life that typically would have gone on much longer. We can compare the well-being of the brief life of the embryo that is aborted with the well-being that it would have possessed if not terminated. That can render the deliberate termination a great harm, unlike the spontaneous abortion.³³

Moreover, Berg and Ord do not consider that Catholics and some other religious pro-lifers will be wary that some miscarriage prevention involves violating duties to reproduce only sexually (not through in vitro fertilization) with a spouse. Reproducing outside of the conjugal act will be considered sinful. It would not be surprising if pro-lifers suspected that this is the direction

aborted if there were different abortion practices years earlier, they are still harmed when aborted.

³² Ord (2008), p. 16.

³³ Defenders of non-comparative accounts of harm such as Seana Shiffrin and Elizabeth Harman claim that harm does not involve counterfactual comparisons and so it can be a harm to die even if the alternative was not a longer life but non-existence. Seana Shiffrin, "Wrongful Life, Procreative Responsibility, and the Significance of Harm," *Legal Theory* 5 (1999): 117-48; Elizabeth Harman, "Harming as Causing Harm" in Roberts and Wasserman, eds., *Harming Future Persons* (2009), pp. 137-54. However plausible a non-comparative account of harm is when someone is undergoing intrinsic evils, it does not fare well with accounting for the harm of death. Being dead does not involve any intrinsic bads and so its harm can only be accounted for comparatively. Ben Bradley, "Doing Away with Harm," *Philosophy and Phenomenological Research* 85/2 (2012): 390-412 at pp. 398-401; Neil Feit, "Plural Harm," *Philosophy and Phenomenological Research* 90 (2015): 361-88 at p. 369. Nor can the non-comparative account explain the harm that occurs when one ceases to possess a good at the level one did earlier. The comparative counterfactual account points to the difference in well-being the level of a good while the non-comparative account cannot recognize a harm as the good in question is still possessed.

that miscarriage prevention would take. Therefore, their unwillingness to call for such research to be funded does not belie their claim that embryos and born humans have comparable moral status.

Some pro-lifers try to conceive despite knowing that a miscarriage is very likely as they have a personal history of miscarriages. The willingness of pro-lifers to risk conceiving and miscarrying has been interpreted as showing that they do not really believe that actions that bring about the death of early fetuses are great wrongs. But if they accept that the harm of the deaths of embryos in abortion and miscarriage are both great and equal, then if it is a wrong to inflict such a harm via abortion, it should likewise be a wrong to create an embryo that one knows will likely miscarry. Both scenarios seem to make one complicit in actions that one foresees will bring death and harm to valuable embryos. Thus, it has been argued that they ought to accept that embryos that die on account of IVF procedures, stem-cell research, and abortion are at least as ethical as natural reproduction.³⁴ If pro-lifers do wish to claim that abortion is a great harm and wrong, then they must deny themselves the opportunity to reap the benefits of having children, given that miscarriage is extremely likely. But that conclusion can be reached only if a premise is added that the harm that occurs in abortion is the same degree of harm that occurs in miscarriage. However, risking miscarriage by trying to get pregnant may not involve a harm at all to the conceived that soon afterwards miscarry.³⁵

Perhaps some pro-lifers who do not demand massive re-prioritization of research funds are motivated by a recognition that their prevention of miscarriages differs from preventing other diseases in that the former does not directly put the burdens of undergoing treatment upon the person saved. The remedy for a life threatening condition like heart disease may involve those at risk undergoing invasive procedures and changing their diet and lifestyle in drastic and unpleasant ways. Those who are inconvenienced are also those who benefit from the remedy. Miscarriages do not directly benefit the women who must undergo whatever impositions are required to prevent them -- exams,

³⁴ James Harris, "Stem Cells, Sex, and Procreation," *Cambridge Quarterly of Healthcare Ethics* 12/4 (2003): 353-71 at p. 360.

³⁵ Of course, the distress of parents when an embryo dies may provide motivation to redirect some funds even if the results of successful research will avoid embryo deaths only by producing different embryos.

pills, bills, doctor visits, partner replacements, lifestyle changes, etc. It is revealing to compare miscarriage prevention with real and hypothetical cancer treatments. Imagine if the cure for a new type of cancer that afflicts me requires that you undergo painful chemotherapy or radiation treatments. (Perhaps your body will then produce the cure for the cancer in me.) Research into such a cure would not be greatly funded even if it was a real scientific possibility rather than a philosopher's bizarre thought experiment. Cures to prevent miscarriages will burden women to save someone else before conception and then continue to support them afterwards yet such woman may not want to become pregnant or remain pregnant.

Pro-lifers may not be calling for more research funds to battle miscarriages since they know that many women will not voluntarily use those biotechnologies and they would be reluctant to force them to do so. Pro-lifers are likely aware that many women do not want to become pregnant and thus will not take a miscarriage prevention pill or undergo any other miscarriage prevention protocol. Most of those who do not want to become pregnant and would subsequently abort would likely prefer to miscarry. Even some of those who do not want to become pregnant but would not abort if they unintentionally become pregnant, would welcome miscarriage as it does not involve them intentionally killing the innocent as does abortion. They, too, would be reluctant to undergo any miscarriage treatments. So, the numbers of miscarriages that would be prevented by the research that Ord and Berg believe that pro-lifers are committed to sponsoring would likely prevent far fewer embryo deaths than they anticipate when leveling their charges of inconsistency.

Of course, pro-lifers are urging that considerable burdens be put on women when they call for making abortion illegal. But pro-lifers are more willing to compel women to undergo such impositions and discomforts to avoid killing fetuses than to avoid letting fetuses die. It is morally worse to kill than fail to save. Demanding women burden themselves before they become pregnant so they do not miscarry puts even more burdens on them to prevent miscarriage than to avoid abortion. That is because not only will they have to make efforts preconception to avoid miscarriage, but they then must support the fetus for nine months. So, avoiding miscarriages does not just involve preconception doctor office visits and procedures – some invasive, others

Life and Learning: Proceedings of the Thirtieth Conference of the University Faculty for Life, ed. Joseph W. Koterski, S.J. (Bronx NY: UFL, 2020), pp. 221-39.

perhaps just pill taking – but subsequently nine months of gestation. This is a huge burden to avoid *letting someone die*. It is difficult enough for pro-lifers to defend nine months of just post-conception burdens to avoid *killing* someone.

Nevertheless, I do not believe that these explanations considered so far can fully explain the actions – or inactions – of pro-lifers in regards to miscarriage prevention. I suspect that some pro-lifers, like many pro-choicers, might unwittingly allow morally irrelevant features to distort their judgments about early miscarriages. Those distortional factors could explain the lack of a public relations battle demanding an all-out war on fighting the scourge of miscarriage. Keep in mind that many abortion opponents – who are unaware of the metaphysical reasons given above – have not called for transferring of research funds to miscarriage prevention research. Perhaps they had some awareness of the above metaphysical considerations about non-identity problems. Maybe they appreciate that miscarriage prevention is different from preventing other scourges in that the burdens of a cure are imposed upon pregnant women, many who do not want to be pregnant, and not the embryonic patient that is cured. But I doubt that can fully explain the fact that many pro-life lay people have not called for funding to end the scourge. Why are pro-lifers not demanding massive amounts of money being redirected to research that will save the embryos of women who want to gestate their embryos? If it is claimed that many pro-lifers are unaware of the numbers of miscarriages then the question becomes (1) why do those pro-lifers *in the know* not call for re-prioritization and (2) would lay people call for transferring such research funds from other diseases or projects once they become aware of the number of miscarriages? I suspect the answer to the second question is “no.”³⁶

Most miscarriages occur earlier than most deliberate abortions. Scientists have theorized that the majority of women who miscarry do so without knowing that they are pregnant. Since parents do not emotionally involve

³⁶ Some pro-lifers might claim that the right contrast may be not defunding the fight against other diseases but using other funds to fight miscarriage. Defunding other diseases is only relevant if that is the only option. Nevertheless, Ord and Berg may be content with the hypothetical where that is the only source of funds to be transferred to miscarriage prevention research as that might reveal the unhealthy unborn have less moral status than the unhealthy born.

themselves with the prospects of such very young embryos, they may wrongly fail to extend their own beliefs about moral status to them. Their lack of grief might tell us less about the moral status of the deceased and more about the limits of the imaginations and affections of the living. David Oderberg suggests attitudes and practices would be very different if women had “transparent stomachs with magnifying windows.”³⁷ If the pregnant women could see the week-old embryo, they may concern themselves with their child’s prospects and mourn such offspring as much as they mourn a stillborn or infant death.

Considerations broached above about the parents not concerning themselves with the good of their prenatal offspring suggest that if we change the age at which miscarriages occur that might enable them to think more clearly about the unborn’s moral status. Compare the miscarriage of the early embryo yet to embed in the uterine wall with the very same creature miscarrying late in the pregnancy’s ninth month and thus being born lifeless. The parents tend to be devastated in the latter case. They would have spent considerable amounts of their own money and lobbied for more of the state’s money to be spent preventing such a tragedy.

I think that it likely that the failure of parents to involve themselves with the prospects and interests of the very young embryo as they do with their late-term fetal child should be explained away by not a difference in moral status but features that distort our views of their moral status (e.g., lack of a longstanding relationship, insufficient imagination, the non-human appearance of very early embryos, etc.). Keep in mind that viable late term fetuses are more developed than younger premature newborns. So, it is very unlikely that any pro-lifer will believe that a newborn has a moral status that the unborn lack. Moreover, even full-term newborns that are unconscious or mentally impaired will not differ mentally from mindless embryos so it is hard to see why they would differ in moral status.³⁸

³⁷ David Oderberg, *Applied Ethics: A Non-Consequentialist Approach* (Oxford UK: Blackwell, 2000), p. 19) He was talking about twinning bringing the death of the original embryo, but the lesson is the same as that of miscarriage.

³⁸ I think even abortion proponents should agree with an abortion defender like McMahan that there are not morally significant attributes that even healthy newborn possess that are lacking in embryos. Jeff McMahan, *The Ethics of Killing: Problems at the Margins of Life* (New York NY: Oxford Univ. Press, 2002); McMahan,

So, if newborns cannot be distinguished from embryos and fetuses in terms of moral status, then fetuses and embryo deaths should be prevented with the same resources that we provide to prevent the deaths of newborns. (I am assuming that we are not preventing stillborns for the sake of the parents.) If newborns were dying at rates that embryos were, then I suspect that there would be a massive transfer of funding. If we imagine miscarriages occurring not with young embryos but always very late in the third term of a pregnancy resulting in stillbirths, then there would be a massive investment in preventing such deaths. Since pro-lifers will not believe that newborns about to die have a greater moral status than fetuses about to die right before delivery, they should, and likely would, advocate funding should change dramatically if moral status is the main consideration. Thus, current allocations need not indicate one's deepest beliefs about fetal moral status. Thus, pro-lifers should demand some re-prioritization.³⁹ Pro-lifers can call for expanding research on miscarriage prevention at financing rates that they and others would demand if there were epidemic levels of pregnancies ending at nine months with fully developed stillborn babies. So, the proper comparison is funding research to either prevent the scourge of stillbirths or postnatal deaths from other diseases. Imagine that miscarriages rates remain the same but that they only occur in the ninth month of a pregnancy, resulting in babies being delivered dead. That is 225 million stillbirths a year. Then ask whether there would be a re-prioritization of research projects and funding. I suspect that many readers, not just pro-lifers, will be more sympathetic to considerable re-prioritization when

"Infanticide," *Utilitas* 19/2 (2007): 1-29; McMahan, "Infanticide and Moral Consistency," *Journal of Medical Ethics* 39 (2013): 273-80. Any differences between the unborn and newborn are found also in minimally minded non-human animals without moral status approaching our own. Regina Rini, "Of Course, the Baby Should Live: Against After-Birth Abortion," *Journal of Medical Ethics* 39 (2015): 353-56; Jose Bermudez, "The Moral Significance of Birth," *Ethics* 106 (1996): 2, 378-403.

³⁹ Many of those people whose embryos have miscarried and experienced their deaths as great losses would like to see a re-prioritizing of research. So before pro-lifers are accused of inconsistency, we need to see polls about re-prioritization that distinguish pro-choicers from pro-lifers who have known that they lost a child. Some of the latter have named, buried and mourned the unborn child. The numbers of deceased are not mere mathematical abstractions for them.

all miscarriages produce stillbirths right before their due dates.

I do not think that it will be as great a re-prioritization as if there was a new epidemic of comparable size with deaths that were slow and painful like cancer. The prolonged horror of some deaths makes eradicating them a greater priority than the painless deaths of those like mindless embryos. Matters are also complicated by our being apparently closer to a cure for some diseases than others. Moreover, the age of the dying will be significant, as fighting diseases of the very old will not seem as pressing as preventing the greater deprivations of the young. That said, if miscarriages can be prevented by interventions (likely post-conception) that do not replace those likely to miscarry with numerically distinct healthy individual, if they do not violate ethical considerations about conjugal relations and are to be voluntary undertaken, then considerable research re-prioritization would be justified. All deaths of people of equal moral status are not equally bad, nor is it equally urgent to prevent them all. Nevertheless, all other things being equal, pro-lifers should and would likely call for a major re-prioritization of funding to prevent miscarriages. Doing so would rebut the Berg/Ord charge of inconsistency.

Conclusion

I have argued that far more should be done to prevent miscarriages, assuming that those embryos who would have miscarried in a world without such research would exist in a world with successful miscarriage research and their mothers would want to save them. Some pro-lifers have already called for this expanded research but have been ignored. I suspect that other pro-lifers have not made such demands because they do not concern themselves with the interests of embryos just a few days or weeks old. Ergo, we should not take their present failure to call for re-prioritization as evidence that, deep down, they think that the unborn lack the moral status of the born. Nor should we draw that lesson from their reaction to embryo rescue cases. Triage considerations may be a better explanation for why a choice would be made to save a baby on the clinic floor rather than a frozen embryo. Render the baby as unlikely to recover from the smoke and receive the support that the embryo needs, and it becomes much more plausible to endorse the claim that pro-lifers believe what they say they believe about the moral status of embryos.

Life and Learning: Proceedings of the Thirtieth Conference of the University Faculty for Life, ed. Joseph W. Koterski, S.J. (Bronx NY: UFL, 2020), pp. 221-39.