

ARTICLE

Mary Anne Warren and the Boundaries of the Moral Community

Timothy Furlan

Center for Ethical Leadership, University of St. Thomas, Houston, Texas 77006, USA
Corresponding author: Email. Timothy_Furlan@hms.harvard.edu

Abstract

In her important and well-known discussion “On the Moral and Legal Status of Abortion,” Mary Anne Warren regrets that “it is not possible to produce a satisfactory defense of a woman’s right to obtain an abortion without showing that the fetus is not a human being, in the morally relevant sense.” Unlike some more cautious philosophers, Warren thinks that we can definitively demonstrate that the fetus is not a person. In this paper, Warren’s argument is critically examined with a focus especially on the question of the foundation and the boundaries of the moral community. The fundamental thesis of the paper is that Warren’s approach is flawed for at least four reasons: (1) that being a person is not as obviously central to having full moral rights as Warren assumes, (2) that her exclusivism regarding moral status has dubious moral consequences independent of the abortion issue, (3) that it is not clear that a fetus is not a person, even on Warren’s own criteria, and (4) her criteria for personhood are themselves suspect.

Keywords: moral status; moral community; dignity; personhood; abortion; rights

In her important and well-known discussion “On the Moral and Legal Status of Abortion,” Mary Anne Warren regrets that “it is not possible to produce a satisfactory defense of a woman’s right to obtain an abortion without showing that the fetus is not a human being, in the morally relevant sense.”¹ Significantly, for Warren, one is a human being in this morally relevant sense only if one is a person. Unlike some more cautious philosophers, Warren thinks that we can definitively demonstrate that the fetus is not a person. In fact, this is just the task she sets for herself.² Her case, she insists, is so strong that, given even the intuitions of recalcitrant opponents of abortion, we will recognize that it is conclusive. In this paper, I would like to critically examine Warren’s argument with a focus especially on the question of the foundation and the boundaries of the moral community.³ My fundamental thesis will be that Warren’s approach is flawed for at least four reasons: (1) that being a person is not as obviously central to having full moral rights as Warren assumes, (2) that her exclusivism regarding moral status has dubious moral consequences independent of the abortion issue, (3) that it is not clear that a fetus is not a person, even on Warren’s own criteria, and (4) her criteria for personhood are themselves suspect.

Two Views of the Moral Community: Exclusivism and Inclusivism

Warrens’ argument begins with a useful reformulation of what she sees as the primary question of the abortion debate. We can restate the question “who counts as a person?” in this way: “How are we to define the moral community, the set of beings with full and equal moral rights, such that we can decide whether a human fetus is a member of this community or not?”⁴ According to Warren, only if we first determine the constituency of the moral community can we resolve the abortion debate. Even though I will find her analysis faulty, Warren does well to focus on the boundaries of the moral community and its

membership as ethicists are too often imprecise or obscure about this issue.⁵ Many requirements for the moral community have, of course, been proposed.⁶ Historically, admission has been based on a wide range of criteria including class, race, nationality, religion, and biological sex. These restrictions, surely we agree, are untenable. One also finds criteria such as species membership, various forms of cognitive capacity or development, moral agency, language use, sentience, social or relational function, and/or psychological identity or continuity suggested.⁷ Some proposals including such criteria have recently found increasing support.⁸ I refer to such restrictions and their advocacy as “exclusivist.” I choose this term, since such criteria minimally exclude some living human beings. In this regard, I would agree with Tom Beauchamp and James Childress that each of these various theories provides a sufficient, but not a necessary, condition for some level of moral status. As they note, however, each of these theories often makes “the mistake of isolating a singular property or type of property ... as the sole or at least primary criterion of moral status. Each theory proposes using its preferred property for including certain individuals (those having the property) and excluding others (those lacking the property). Each theory thereby becomes too narrow to be a general theory of moral status unless it accepts some criteria” from other theories.⁹ In addition, each of these theories struggles with what we might call the problem of “marginal cases” by excluding vulnerable populations such as infants, young children, the cognitively disabled, patients with advanced dementia, and/or research animals.

By way of contrast, an “inclusivist,” as I use the term, holds that any biological human being belongs to the moral community. So too does any person, if there is any, who is not a human being. This account of inclusivism raises, of course, two key questions: (1) who counts as a biological human being? and (2) who counts as a person? Question (1) is the easier to answer, since the concept of a human being is more precise than that of a person. Moreover, for our purposes we can make do with a partial answer. We can get by with a sufficient condition for being a human being; we do not need a full set of necessary and sufficient conditions. This lets us say that a fetus is a human being and bracket for now questions that “advances” like chimeras or artificial intelligence suggest.¹⁰ An inclusivist answer, then, to (1) might be roughly this: any biological and genetic individual conceived by human beings counts as a biological human. Hence, human fetuses are human beings.¹¹

But question (2) is much more difficult. My own view is that it is answerable only in a general and tentative way. I would say that a person is any normal adult human being or any individual sufficiently like one. Yet however hard it is to answer (2), the exclusivist has a serious duty to give a widely acceptable answer to just this question insofar as he or she maintains that only persons belong to the moral community. I say “widely acceptable” because society would be unwise to withdraw its protection from some human beings in virtue of a controversial theory that they do not have standing in the moral community. As Beauchamp and Childress convincingly argue, a morally appropriate response is not to strip what limited protections such individuals already possess but rather to offer special protection and care.¹²

On the other hand, the need to answer question (2) is not so pressing given an inclusivist’s answer to question (1). After all, most controversial candidates for personhood, on this view, already belong to the moral community as biological humans.¹³ There are, to be sure, other more or less commonly proposed candidates. For instance, we might ask about the status of “higher” animals such as dolphins or chimpanzees.¹⁴ And what of artificial intelligence and extraterrestrials? Suppose we consider this list, working in reverse order. Extraterrestrials creatures may not exist, so their status is not immediately pressing. Whether AI systems or programs are persons is of greater concern. The question may someday become more urgent with advancing research.¹⁵ But for now the problem yields to what I take to be a decisive consideration. Today’s examples of artificial intelligence are not persons. For they lack a central feature of persons we recognize, namely, being alive.

It is, however, already of great concern whether animals are persons. In this regard, I would agree with Warren that our treatment of animals is too often capricious and morally troubling.¹⁶ If full standing in the moral community extends at least to some animals, we could not justify exploiting them as we do. The serious question this raises, the problem of animal rights, I cannot explore in any detail here.¹⁷ But I do think that there is a cluster of morally relevant differences between animals and human persons.

Because of these differences, including the capacity for objectivity, certitude, rational deliberation, moral agency, and the formation and use of abstract concepts, I doubt that animals are persons.¹⁸ Yet this extends no *carte blanche* to our abuse or mistreatment of them. Much of this, especially factory farming or various forms of animal experimentation, can be opposed simply because animals are sentient.¹⁹ The far stronger and somewhat counterintuitive claim that animals are persons need not be made at this time. Still even these few remarks about animals support a stronger inclusivism, though not one according personhood to animals. Thus a more thoroughgoing inclusivism could bring within the moral community some merely sentient beings, all human beings, and any nonhuman person.

This stronger inclusivism does not, however, suppose that each member of the moral community has full and equal moral rights.²⁰ Nor does it suppose that each is by definition a person. Here my understanding of the moral community differs from Warren's. I do not think, though she seems to, that full equality is a part of the very concept of a moral community.²¹ But this does not mean that I think that only humans and (other) persons have any serious rights. Indeed, I think that there is a "second order" right that each member enjoys. This is the equal right of having whatever first order rights one does have taken seriously. So if an animal has a right not to be tortured except in the most extreme circumstances, then nothing less can justify its torture. And if humans have a right not to be killed except in the most extreme circumstances, then nothing less can justify the deed. Different members of the moral community may have different and variously restricted rights; but the rights of each must be taken equally seriously.

So far I have given no real argument for either an exclusivist or an inclusivist view of the moral community. But I find that an inclusivist view has a strong intuitive appeal, and not just for me. Indeed, I am inclined to accept the strong inclusivism I have just sketched, unless I find some persuasive objections against it. The best argument for such an inclusivism, I think we shall see, is that the exclusivist alternatives lead to disturbing and unacceptable moral consequences. But we shall also see that Warren does not share my inclination. Nor does she admit that certain consequences of her view are unacceptable. Most importantly, she denies that biological humans as such, what she calls "genetic humans," are members of the moral community. She insists rather that it is, or should be, self-evident that all and only persons are members. Hence, we must distinguish between genetic humans and human beings in the moral sense, that is, human persons. Thus, she faults the inclusivist John Noonan for assuming that the fetus, admittedly a genetic human, is morally human.²² This assumption, she says, is only too common an error of both friends and foes of abortion.

But Warren's criticism itself merits scrutiny. Must we have an argument to show that fetuses are members of the moral community? Not, of course, if all (biological) humans are members of it, as inclusivists hold. But Warren contests just this claim. She proposes, instead, that we significantly limit membership in the moral community, arguing that there are good reasons for defining the moral community and personhood in a way that excludes the fetus. Any proposal about the constituency of the moral community must, of course, avoid being arbitrary and *ad hoc*.²³ One could not exclude fetuses simply because one favors abortion. It is precisely the morality of abortion that is in question. Nor, obviously, can one advance so controversial a proposal with stipulative definitions. And it is surely not a definitional truth, unless one uses a stipulative definition, that a fetus is not a member of the moral community. We ought not to say, on the other hand, that one should or even could be wholly neutral in defining the moral community. The concept is, at the very least, partly a normative one.²⁴ For example, a definition that excluded most adults would be implausible and entirely miss the mark.

If, then, she is to support her proposal with good reasons, Warren needs independent and nonarbitrary grounds for her construal of the moral community. As we will see, however, it is not clear that her account of its constituency has such a basis. The moral community, she says, includes "all and only people, rather than all and only human beings."²⁵ This is supposedly self-evident, or "perfectly obvious," at least upon reflection.²⁶ Yet her claim is surely arguable, and she gives little warrant for it.²⁷ As Beauchamp and Childress note, the notion of person is so ambiguous that they attempt to avoid it as much as possible: "some people maintain that what it means to be a person is simply to have some biological properties; others maintain that personhood is delineated not biologically, but in terms of

certain cognitive capacities, moral capacities, or both. What counts as a person seems to expand or contract as theorists construct their theories so that precisely the entities for which they advocate will be judged to be persons and other entities will not.”²⁸ Suppose, for a moment, that we did agree on who counts as a person. Why should we limit the moral community to persons? Why suppose that only they have rights? It is surely not absurd to think that animals, infants, young children, and comatose patients are not persons and yet have rights.²⁹ Warren’s claim is hardly self-evident then. Were it so, I doubt that inclusivism would even occur to us, much less have the appeal it does. So until Warren produces a justification for her exclusivism, her proposal is simply one of many. It has no unique credentials, and, as I will argue, its consequences are suspect.

Some Criteria for Personhood: Consequences and Objections

But quite apart from this significant gap in her argument, there are serious problems both with Warren’s analysis of personhood and how she uses it. While she declines to give a full account of personhood, she thinks that even a rough analysis shows that the fetus is not a person. If she is right, nothing yet follows, I have argued, about the rights of a fetus. But that question aside, how does Warren construct “a rough and approximate list” of the most basic criteria of personhood?³⁰ She does so by inviting us on a trip to outer space. But since morality does not vary with distance, we need a code of ethics for astronauts. Our code will require us to treat any creatures we meet with due respect. Here the plot thickens; for how are we to do so unless we know whether they are persons?

In this regard, I am skeptical of Warren’s *modus operandi*. First of all, thought experiments that rely on what we would do in outer space—or in other unusual contexts—often presage an explanation of the obscure by the more obscure. And, secondly, given her scenario and an encounter with an extraterrestrial, I doubt whether we would check for putative person criteria anyway. Such a studied response is implausible. Rather than working through a problematic set of criteria, I think we would simply see what the creature did and how it acted and consider how we felt about it. In the meantime, I think we might give it the benefit of the doubt. There is nothing “philosophical” in this approach, but moral practices antedate artificial decision procedures.³¹ If we forget this, we may lose sight of the core moral sensibilities in light of which we test a moral theory. But perhaps Warren’s approach has some merit, so we will try her plan. Her basic criteria for personhood are:

- 1) consciousness (of objects and events external and/or internal to the being), and in particular the capacity to feel pain;
- 2) reasoning (the developed capacity to solve new and relatively complex problems);
- 3) self-motivated activity (activity which is relatively independent of either genetic or direct external control);
- 4) the capacity to communicate, by whatever means, messages of an indefinite variety of types, that is, not just with an indefinite number of possible contents, but on indefinitely many possible topics;
- 5) the presence of self-concepts, and self-awareness, either individual or racial, or both.³²

In this regard, Warren is not wholly sanguine about her criteria. As she herself notes, there are many problems in making them suitably precise and in determining the behavioral criteria for their fulfillment. Still we might suppose that we astronauts know well enough what (1–5) require. Moreover, she urges us to be flexible. A living organism need not meet all five criteria to be a person. Perhaps (1) and (2) alone are sufficient. Quite probably meeting (1–3) will do. And perhaps no one criterion is necessary for personhood, though (1) and (2) and (3) are “necessary condition” candidates. But our liberality has its limits. This much is clear: neither an extraterrestrial nor a human being who meets none of (1–5) is a person. Anyone who disagrees, Warren claims, fails to understand the concept of personhood.

If there is any real dispute about her criteria, Warren thinks, the abortion debate is doomed insofar as the conceptual frameworks of the disputants would be irreconcilable. But she has no fear of this, because “the concept of a person is one which is nearly universal.”³³ Here she overlooks, seemingly, a wealth of anthropological data that suggests that there is a family of person concepts rather than any one universal concept.³⁴ For example, in some cultures many persons have been thought to “belong” to one biological human.³⁵ In other cultures, many humans or members of a family unit, were seen as a single person.³⁶ Perhaps, though, her talk of “racial self-awareness” in (5) reflects the historical and cultural dependency of the concept(s) of person.

Now given her criteria for personhood, Warren draws two complex and important conclusions. First, some genetic humans, for example, some of the intellectually disabled, and the irreversibly unconscious, are not persons. But since they are only “genetic humans,” their genetic humanity is insufficient to establish personhood. And since personhood (she thinks) is required for being a member of the moral community, it follows that such individuals, for example, do not have full moral rights.³⁷ I noted earlier that Warren’s exclusivism has suspect and troubling consequences. That is, the exclusivist seems to maintain that some X that we do take to have rights does not. In the case at hand, if one holds that all intellectually disabled human beings (those whom Warren calls “defective human beings”) have some rights,³⁸ for example, the right not to be killed, one already has a strong case against Warren’s exclusivism. For she seems committed to the view that the rights of some disabled human beings, for example, not to be killed, are not equal to your rights or mine. In addition, given Warren’s criteria for personhood (complex problem solving, a sense of self-identity, engaging in sophisticated communication), this would clearly put the arrival of personhood *after* birth which would justify not only abortion but also infanticide. Indeed, it might even allow for the justified killing of children up to the age of 3–5 years or so.³⁹ If these consequences are repugnant, we should conclude that the exclusivist has gone wrong.

Warren’s second conclusion is that fetuses are not persons and, for like reasons, do not have full moral rights. As we have seen, both of her conclusions rely on the dubious, though supposedly self-evident, claim that *only* persons have such rights. Both also suppose that some human beings fail to satisfy Warren’s criteria. While the irreversibly unconscious do fail to meet them, infants, young children, some intellectually disabled individuals and fetuses might not. Surely many such disabled individuals meet (1) and (3) and (5). This leaves open the question of their personhood, even given these criteria. Warren does, at least, go through the motions of applying her checklist to the fetus, a courtesy not given to the intellectually disabled.⁴⁰ But evidently the result is too obvious to merit much discussion. Significantly, she acknowledges that a well-developed fetus feels and responds to pain, has quite an active brain, and even some “rudimentary” consciousness. But since the consciousness is rudimentary and since criteria (2–5) are not met, she concludes that the fetus is not a person.

This seems hasty for a number of reasons. There is reason to suspect that even on her criteria some fetuses may be persons. Such a finding, of course, would undermine her entire case. Let us begin with her first requirement. Consciousness is undoubtedly a difficult concept.⁴¹ But if an organism that feels pain is conscious, many fetuses are conscious. In fact, contemporary fetology suggests that there are good behavioral grounds for saying that the fetus has both painful and pleasurable sensations at an early stage.⁴² But with this only “rudimentary” consciousness, as Warren terms it, the fetus supposedly does not meet (1).

At least two objections to her claim ought to be made here. The first is that (1) seems to become more demanding when she comes to apply it. Is “the capacity to feel pain” not so important after all? This capacity is, we recall, what (1) originally emphasized. The second objection is that if we are more or less persons, in effect, as our consciousness is more or less developed and acute, then a doctrine of equal rights will be hard to uphold. As one’s consciousness is more or less acute, it seems, one’s rights might also wax and wane.⁴³ And yet as we have seen, Warren builds a doctrine of equal rights into her view of the moral community. Perhaps, however, she does not suppose that one is more fully a person as one more fully satisfies (1) or (1–5), even though what she says is consistent with this view. If so, what we must still press

for is a substantial change or a recognizable turning point in development (or senescence) after which one is a “full-fledged” person (or is no longer one).⁴⁴

Perhaps not surprisingly, Warren does not offer us one. Two likely reasons for this are that it is difficult to establish precisely when such a change occurs and secondly that such an approach entails a form of Cartesian body-self dualism that is difficult to defend both empirically and metaphysically.⁴⁵ But if there is doubt about whether the fetus meets (1), Warren seems sure that it fails to meet (3). Again, I am not persuaded by Warren’s case. There is, as she notes, difficulty in determining what behavior is “self-motivated.” Still, as many mothers know, the fetus at some stages moves about on its own as it “tries” to find a comfortable position. Such activity might well be seen as self-motivating, although perhaps a case might also be made that it sometimes results from “direct external control” or internal “genetic control” and so fails to meet (3). Even so, one would want to distinguish between fetal movements prompted, say, by a physician’s prodding and the great majority of fetal movements that are not. And one would want to distinguish between localized reflex movements like swallowing, squinting, and tongue retraction and more generalized movement that is spontaneous at least in the sense that it is independent of external stimulation. Sometimes a fetus just does move on its own. So it is arguable that the fetus does satisfy criteria (1) and (3). True, the fetus does not meet (2) or (4); and it is doubtful that it meets (5), although I do not know how one could prove that a well-developed fetus cannot distinguish between itself and its environment.

But Warren allows that meeting only (1) and (2) may well be sufficient for personhood. So might not meeting (1) and (3) also be sufficient? If not, why not? It seems that the fetus could be seen as a marginal case, at least, but this is wholly unrecognized by Warren. Of course, there is no clear consensus that a fetus is a person.⁴⁶ In some important respects, a fetus is unlike an adult; this dissimilarity is morally significant. In particular, its lack of development precludes its having autonomy or moral obligations.⁴⁷ What I want to argue, however, is that given Warren’s criteria it is not clear that a fetus is *not* a person. Moreover, a fetus is genetically just like an adult human being. Both share a single developmental continuum. Both are human beings.⁴⁸ In virtue of this similarity, whether one speaks of a fetus as a “mere” human being or as a “potential person,” it is not implausible to suppose that it has rights. So far, by way of summary, I have argued (1) that being a person is not so obviously central to having full moral rights as Warren assumes, (2) that her exclusivism has dubious moral consequences independent of the abortion issue, and (3) that it is not clear that a fetus is not a person, even on Warren’s own criteria.

The Limits of Warren’s Criteria

I would like now to argue that (4) her criteria for personhood are themselves suspect. In particular, I will offer three examples to show why they are suspect, why they are perhaps both too weak and too strong. It is not inconceivable, although it is very unlikely, that some plants manifest a kind of “knowing” and “feeling.” There is even a certain amount of serious experimentation going on to test such a hypothesis.⁴⁹ And it is possible, though even more unlikely, that some plant thinks after a fashion, perhaps about itself or its victim (it might be carnivorous) or the weather. We would be astonished, of course, to find such a plant, but it is at least theoretically possible. But I suggest that even if we found such a plant, we need not on moral grounds at any rate, treat it in a privileged way. Much less need we acknowledge it as a person, though on Warren’s criteria we should consider doing so. After all, it might well meet criteria (1) and (2). Still, whatever amazing things we learn about plants, they are simply too foreign from us to have any significant place in our moral practices and sensibilities.

In addition, we can imagine that some forms of artificial intelligence such as Hal from the film 2001: A Space Odyssey might meet, say, (1) and (2) and (4). They might meet (1) only in a qualified way, since they could not be said to feel pain, unless perhaps we adopted a purely behavioral account of pain for them. But their capacity for communication and sophisticated pattern “recognition” (such as chess playing or lip reading) might make up for this. Would such a form of AI be a person? On Warren’s view it may well be. But we can well imagine our judging it to be too foreign from us. Our response might be

something along the lines of: “It is just following a script!”⁵⁰ “It’s not even alive!” “Why, it looks just like a camera lens!” Indeed, I doubt that we would count it as a person. Moreover, it seems implausible to speak of a computer’s having a right to life, even metaphorically. We would be unwise to destroy so useful a tool although in some circumstances it may be necessary in self-defense. But to recognize this is not to count it as a bearer of rights.

Each of these first two thought experiments suggests that Warren’s criteria may be too weak. But a third example suggests that they might also be too strong. Suppose someone suffers a major stroke and loses consciousness. Even after regaining consciousness, he might be unable to reason for a long period of time. His therapy might involve something like a re-education in skills first learned in early childhood. In particular, he would lack a “developed capacity to solve new and relatively complex problems.” So (2) would not be met. (Even the fetus has the capacity to reason and communicate. Perhaps this is why Warren requires a “developed” capacity.) But if this person fails to meet (2) for some time after gaining consciousness, surely he fails to meet (2) while unconscious. Moreover, while unconscious (and for some time after) he could hardly communicate with the skill which (4) requires. After all, his ability to reason has been affected. We cannot even say that he has any self-awareness. Hence neither does he meet (5). But now would our patient, while unconscious and even for some time afterwards, be a nonperson? I think we would say that he remains a person nonetheless. Yet Warren says that if an organism meets none of her criteria, and our unconscious person seems not to, he is not a person. Hence, he is not a member of the moral community. And yet nearly everyone would agree that our patient remains very much a member of the moral community. Indeed, we often give special care and protection to those approaching his condition. We feel a special obligation to the vulnerable and the defenseless, though for a time they have no obligations to us.⁵¹ So it seems that Warren’s criteria may be both too weak and too strong.

Now an important reply to, or qualification of, the conclusion I draw from this case might well be made here. One could say that the reason we treat our patient as we do is simple enough. He has the potential to meet, in the future, criteria (1–5). We need only await his recovery. So the criteria are not too strong, if we give potentiality its due. There is some merit to this reply, though I think it gives only a partial explanation of our behavior. An appeal to potentiality is not, of course, the only way to explain our attitude toward our patient. One might argue that once personhood is ascribed it remains until death. Too much turns on personhood to let uncertain medical standards affect it. This suggestion, too, has merit, although one’s definition of death might in turn invoke uncertain or disputed standards.⁵² But it is not the position Warren seems to take. For she considers at least some of the irreversibly unconscious to be “alive,” even though she denies they are persons.⁵³

Potential Persons and Their Rights

Clearly one intriguing feature of the appeal to potentiality, if it is legitimate, is that the fetus stands to benefit by it. Potentiality, indeed, plays a large role in many discussions of moral status in general and abortion in particular.⁵⁴ Warren introduces it, as we might expect, in conjunction with her account of personhood. For even if the fetus is not an actual person, the question arises whether anything of moral consequence follows from its being a “potential person.” Warren’s “lead in” question, before turning explicitly to the role of potentiality, is this: how much like an adult human being, our paradigm person, must a human being be in order to have a right to life? Fetuses and infants and children, *qua* human beings, are somewhat like human adults. But how much like adults must they be to have full moral rights?

Warren’s answer is forthright. As an organism becomes more like a person, the case for its having a right to life and other rights gets stronger. But nothing, she insists, in the development of a fetus makes it significantly more like a person than it is at its earliest stage. We are left to wonder, too, whether anything in the early development of a postnatal infant contributes to its personhood.⁵⁵ In this regard, Warren offers us no reason to think so. Indeed, she thinks that even a fetus of 8 months is not nearly as much like a person as is an average fish—a gold fish should do. And, for that matter, a newborn guppy is as much like a person as an 8 month fetus. The gold fish, after all, comes closer to meeting criteria (1–5) than does the

fetus. The guppy does just as well as the fetus. It is only as one comes closer to meeting these criteria, too, that one becomes more like a person.

It follows that even if we grant some moral standing to the developed fetus, it would never have rights greater than a guppy's, should a guppy have rights. On this account, then, the rights of the unborn could never come before a woman's right to abort. Warren's conclusions are certainly provocative. But they come with a warning to keep our emotions in check. We are told that "mere emotional responses cannot take the place of moral reasoning."⁵⁶ This is certainly true; yet neither can the emotions be ignored in moral discernment and assessment. Morality without emotion is not a human morality.⁵⁷ Still, we need not lay great stress on the emotions to show Warren's position suspect. A fish is, indeed, more like a person than is a rock. But a fish is not very much at all like an adult human being. Moreover, it is the adult human being that is our paradigm person. An 8 month fetus, on the other hand, is far more like an adult human being than even the wildest Brook Trout.

Of course Warren might reply that a fetus is not as much like a human person in the *relevant respects* as a Brook Trout is. Again, I am skeptical about Warren's approach. For it is not yet shown that her five criteria are the relevant respects. As I have argued, they seem both too weak and too strong. Moreover, we have seen that fetuses may meet criteria (1) and (3). In this regard, I doubt that fish do any better. Indeed, fetal consciousness might be much more like an adult's than is that of a fish. Still, so long as we focus on the actual development of the fetus rather than its potential, and so long as persons alone are allowed full moral rights, the moral status of the unborn is tenuous. But there are two important questions before us.

The first, which leads into the second, is how much like an adult must a fetus be to have rights. Warren's answer is that a fetus must be much more like an adult than it is. The second question is how does the fact that a fetus is a potential person bear on its having rights. How does Warren answer this second question? First of all, she admits the obvious: the fetus is a potential person. Indeed, she makes a second important admission. If an entity is a potential person, there seems to be a strong *prima facie* case for not destroying it. Are we to conclude, then, that the fetus has after all a right to life?

According to Warren, the answer is no. For even the case for not destroying a potential person, which hardly ascribes it rights, is only a *prima facie* one. We must realize, first, that a concern for potential persons may well be just a function of our concern about natural resources. But any concern for our "potential persons resources" surely bears rethinking. For today we have an extraordinary and growing amount of these "resources." Here I would argue there is something wrong with Warren's easy transition from potential persons to natural resources. The potential persons in question *are* actual human beings. Ordinarily, we distinguish between the human population of a country and its natural resources. Even if the humans in question are not persons, it is odd that they should be treated as mere things or objects; they are neither pine trees nor oil fields. Surely it is better to treat potential persons as among those for whom natural resources have purely instrumental value. Indeed it is better even to look upon future generations—merely possible persons—as using a share of the earth's resources rather than constituting a part of them.

Even Warren herself is uneasy with this view of potential persons as natural resources. She allows that there may be more than a prudential question at stake in how we treat potential persons and admits that *qua* potential person the fetus may have some right to life. Yet she insists that a woman's right to abort always outweighs any such right.⁵⁸ Indeed, she makes a much stronger general claim: "the rights of any actual person invariably outweigh those of any potential person, whenever the two conflict."⁵⁹ Apparently her argument for this general claim is to establish the more specific claim; no independent argument is given for the latter. Yet her argument for the general claim is, we shall see, unpersuasive. Warren soberly concedes that her general claim is not obvious. But if it is true, she thinks, abortion on request is always justifiable. And if we doubt the general claim, a new journey to outer space will reassure us.

The Rights of Actual and Potential Persons

On this trip one of our crew falls into the hands of some alien evil geniuses. These aliens envisage a grim future for our poor friend. (Perhaps he does not meet their criteria for personhood?) His body is to be

broken down into its component cells. These cells, in turn, will be used to make millions of adult human persons. Each new human will share our colleague's genetic code and his personal traits. This evil scheme can be realized in seconds, and "success" is almost certain. But what is this scenario leading to? The dilemma posed, purportedly suggestive of the abortion issue, is this: can our fellow astronaut escape in good conscience? If he does millions of potential persons will have no chance at life. What about their "right to life"? Warren (correctly) assures us that he can blamelessly escape. But is not it now equally obvious that a woman can abort even if this deprives one potential person, the fetus, of life? The astronaut, to extend the analogy, could escape in good conscience even if his life were not at stake but only a day of his freedom. He could legitimately escape even if he were captured through his own carelessness. By a parity of reasoning, a woman may legitimately secure an abortion for convenience, not just to protect her life. She may do so even if she is pregnant due to her own carelessness. Escape and abortion are alike, for the astronaut and the pregnant woman, respectively, are legitimate because the rights of an *actual* person are greater than those of one or a million potential persons.

One might wonder, of course, why Warren bothers with the fiction of the "rights" of potential persons in the first place. Rights ordinarily have correlative duties. But I cannot imagine how persons, who alone have obligations, would ever, on her view, have an obligation corresponding to the "right" of a potential person. But more importantly has a second voyage to outer space established Warren's general claim that the rights of an actual person always outweigh those of a potential person? Here I would argue the answer is clearly no; for there are crucial differences between the escape of the astronaut and obtaining an abortion which preclude treating the two cases alike. First, the astronaut's rights are being maliciously violated. So only rape provides, in this respect, a comparable pregnancy case. His captors have no claim on him; nor would his carelessness give them one. Because he has been taken by force and his life is at stake, he surely has a right to self-defense. Indeed, even if he kills some evil scientists in the course of his escape, he is morally blameless.

Secondly, the astronaut, unlike one who secures an abortion, does not kill any potential person. None of his cells is a potential person—or a human being. Any idea that in escaping he is killing potential persons or, more accurately, keeping them from being actualized supposes that his cells are already potential persons. But this supposition is implausible. And we must distinguish between (1) preventing existing potential persons from becoming persons and (2) preventing it from coming about that possible future potential persons become persons. Abortion minimally involves (1) and escaping involves only (2). But showing that (2) is legitimate has no bearing on (1). Perhaps a short way to put this is that the problem of abortion is fundamentally different than the problem of future generations.⁶⁰

If Warren thinks that it makes sense in the astronaut case to talk of potential persons, she must hold a very unusual view of potentiality. Perhaps she thinks that any X that can be developed into a Y is already a potential Y. Since each cell of the astronaut can be developed into a person, each cell X is already potential person Y. At least two things make such a view suspect. First, as often happens with science fiction thought experiments, a plausible causal story never gets told. If we understood how X becomes Y, how a cell becomes a person (typically and naturally), we might think of X as a potential Y even now while it is simply X. But again we might not. Much depends on our concept of X.⁶¹ But we do not know at all how cell X becomes person Y. We are just assured that there is a causal story to account for it. Perhaps this might be true. But until we have it in detail, we need not think of X as a potential Y. X is still, at most, just a possible Y. For all we know, cell X is no more potential person Y than a brick is a potential house.

Secondly, X seems not to be a potential Y in a morally relevant sense unless the morally relevant description of X is "a potential Y." But the morally relevant description of a cell X is, in our story, "a part of the explorer's body." Basic biology, on the other hand, tells us that we cannot rightly describe a fetus as "a part of its mother's body."⁶² Were this so, it would be false that no major part of the human body is regenerated. In addition, the fetus possesses its own distinct biological sex, bodily organs, genetic profile, blood type, and bone structure.⁶³ But as Warren herself recognizes, a fetus can be described as "a potential person" or "an actual human being." It may be that with the proper manipulation nearly any X is a possible, if not potential Y. But for now any X is already an actual X. An actual genetic human being

that is also right now a potential person does not seem morally comparable to what is here and now a cell and a part of an astronaut's body.

Warren's argument, then, with its doubtful doctrine of potentiality, does not show that the rights of an actual person always outweigh the rights of a potential person. In the end, the astronaut example fails to do the job she thinks it does. Because it is not really comparable to an abortion case, it sheds little light on the topic. But her case for abortion on request hangs on this argument by analogy. So both the doctrine that the rights of actual persons always prevail and her broader case for the moral and legal right to abortion remains suspect.

Conclusion

In this paper, I have argued that several of Warren's basic theses lack support. To begin with, she gives no adequate argument for her crucial claim that being a person is a necessary condition for having full moral rights. Secondly, her claim regarding the foundations and the boundaries of the moral community is not self-evident. Indeed, we found that her exclusivism has disturbing consequences for vulnerable populations. Nor does Warren show that a fetus cannot be a person, even given her criteria for personhood. Her pledge to do so, moreover, is unredeemed. In addition, her criteria for personhood seem both too weak and too strong. Finally, though she admits that a fetus is a potential person and as such can have rights, Warren argues that the rights of an actual person always outweigh those of a potential person. But, as we have just seen, she fails to establish this general claim and gives no independent basis or argument for the particular claim that the rights of the mother always override those of her unborn fetus. So at best her case for abortion on request has yet to be made.

Notes

1. Warren MA. On the moral and legal status of abortion. *The Monist* 1973;57:43–61. Hereafter, cited as *MLSA*. Warren's article has been anthologized hundreds of times since then and is widely used in ethical theory, bioethics, and applied ethics courses. Remarkably, it has been cited at least 627 times as of 2021. See for instance Warren MA. On the moral and legal status of abortion. In: Cahn S, ed. *Exploring Ethics*. New York: Oxford University Press; 2009.
2. Contrary to Judith Jarvis Thomson, Warren argues that if one grants the full personhood of the fetus, it is not possible to establish conclusively that abortion is morally permissible. See Thomson JJ. A defense of abortion. *Philosophy & Public Affairs* 1971;1:48.
3. I will focus primarily on her article *MLSA* because of the significant influence it has had on discussions surrounding the morality of abortion, moral status, and the boundaries of the moral community. At various points in the article, I will make reference to other relevant works by Warren and in particular to her later book *Moral Status*. Warren MA. *Moral Status: Obligations to Persons and Other Living Things*. Oxford: Clarendon Press; 1997.
4. See note 1, Warren 1973, at 52.
5. See Beauchamp TL. The failure of theories of personhood. *Kennedy Institute of Ethics Journal* 1999;9:309–24; Nelson L, Meyer M. Confronting deep disagreements: The President's Council on bioethics, moral status, and human embryos. *American Journal of Bioethics* 2005;5:33–42; and Beckwith F, Thornton AK. Moral status and the architects of principlism. *Journal of Medicine and Philosophy* 2020;45:504–20.
6. On the foundations(s) and boundaries of the moral community, see Anderson E. Animal rights and the values of nonhuman life. In: Nussbaum M, Sunstein C, eds. *Animal Rights: Current Debates and New Directions*. New York: Oxford University Press; 2004:277–98; Arneson RJ. What, if anything, renders all humans morally equal? In: Jameison D, ed. *Singer and His Critics*. Oxford: Blackwell; 1999:103–27; Buchanan A. Moral status and human enhancement. *Philosophy & Public Affairs* 2009;37:346–81; DeGrazia D. Moral status as a matter of degree? *Southern Journal of Philosophy*

- 2006;**46**:181–98; Engelhardt TH. *The Foundations of Bioethics*. 2nd ed. New York: Oxford University Press; 1996, at chaps. 4–6; Feinberg J. Abortion. In: Regan T, ed. *Matters of Life and Death*. Philadelphia, PA: Temple University Press; 1980:183–217; Finnis J. The fragile case for Euthanasia. In: Keown J, ed. *Euthanasia Examined*. Cambridge: Cambridge University Press; 1995:46–55; Green R. Determining moral status. *American Journal of Bioethics* 2002;**2**:20–30; Harman E. Creation ethics: The moral status of early fetuses and the ethics of abortion. *Philosophy and Public Affairs* 1999;**28**:310–24; Jaworska A. Caring and full moral standing. *Ethics* 2007;**117**:460–97; Kamm FM. Moral status. In: *Intricate Ethics: Rights, Responsibilities, and Permissible Harm*. New York: Oxford University Press; 2006:227–30; Lee P, George RP. The nature and basis of human dignity. *Ratio Juris* 2008;**21**:173–93; Marquis D. Why abortion is immoral. *The Journal of Philosophy* 1989;**86**:183–202; McMahan J. *The Ethics of Killing: Problems at the Margins of Life*. New York: Oxford University Press; 2002; Morris CW. The idea of moral standing. In: Beauchamp RL, Frey RG, eds. *The Oxford Handbook of Animal Ethics*. Oxford: Oxford University Press; 2011:255–75; Olson E. *The Human Animal: Personal Identity without Psychology*. Oxford: Oxford University Press; 1999; and Quinn W. Abortion: Identity and loss. *Philosophy and Public Affairs* 1984;**13**:24–54.
7. For a good overview, see Beauchamp TL, Childress JF. *Principles of Biomedical Ethics*. 8th ed. New York: Oxford University Press; 2019, at chap. 3.
 8. See, for example, Fletcher J. Four indicators of humanhood: The enquiry matures. *The Hastings Center Report* 1974;**4**:4–7; Tooley M. *Abortion and Infanticide*. Oxford: Oxford University Press; 1984; Rachels J. *The End of Life: Euthanasia and Morality*. Oxford: Oxford University Press; 1986:7–8; and Dworkin R. *Life's Dominion: An Argument about Abortion and Euthanasia*. New York: Random House; 1994:27. In this regard, Peter Singer has enthusiastically adopted Rachels' project to "unsanctify" human life. See Singer P. Is the sanctity of life ethics terminally ill? *Bioethics* 1995;**9**:327–42; Singer P. *Rethinking Life and Death: The Collapse of Our Traditional Ethics*. New York: St Martin's Griffin; 1996:189; Singer P. *Unsanctifying Human Life: Essays on Ethics*. Oxford: Wiley Blackwell; 2002; Singer P. *The Expanding Circle: Ethics, Evolution, and Moral Progress*. Princeton: Princeton University Press; 2011:71–2; and Singer P. *Practical Ethics*. 3rd ed. Cambridge: Cambridge University Press; 2011:71–94. For a good critique of Singer on this point, see Gensler H. Singer's unsanctity of human life: A critique. In: Schaler JA, ed. *Peter Singer Under Fire: The Moral Iconoclast Faces His Critics*. LaSalle, IL: Open Court; 2009:163–85. On the sanctity of life approach, see Dyck AJ. *Life's Worth: The Case Against Assisted Suicide*. Grand Rapids: Eerdmans; 2002:45–71; Sulmasy D. Speaking of the value of life. *Kennedy Institute of Ethics Journal* 2011;**21**:181–99; and Keown J. *The Law and Ethics of Medicine: Essays on the Inviolability of Human Life*. Oxford: Oxford University Press; 2012:88–109. For a good collection of articles on the topic, see Bayertz K, ed. *Sanctity of Life and Human Dignity*. Dordrecht: Kluwer Academic Publishers; 1996.
 9. See note 7, Beauchamp, Childress 2019, at 80–1.
 10. See note 7, Beauchamp, Childress 2019, at 69–70. See as well Savulescu J. Human-animal transgenesis and chimeras might be an expression of our humanity. *American Journal of Bioethics* 2003;**3**:22–5; Eberl J, Ballard RA. Metaphysical and ethical perspectives on creating human-animal hybrids. *Journal of Medicine and Philosophy* 2009;**34**:470–86; and Hyun I. From naïve pluripotency to chimeras: New ethical challenge. *Development* 2015;**142**:6–8.
 11. On this point, see Lee P. The pro-life argument from substantial identity. *Bioethics* 2004;**18**:249–63; George RP, Gomez-Lobo A. The moral status of the human embryo. *Perspectives in Biology and Medicine* 2005;**48**:201–10; Beckwith F. *Defending Life: A Moral and Legal Case Against Abortion Choice*. Cambridge: Cambridge University Press; 2007:130–72; Lee P. *Abortion and Unborn Human Life*. 2nd ed. Washington, DC: Catholic University of America Press; 2010:8–108; Kaczor C. *The Ethics of Abortion: Women's Rights, Human Life, and the Question of Justice*. London: Routledge; 2014:41–152; and Lee P, Tollefsen C, George RP. The ontological status of embryos. *The Journal of Medicine and Philosophy* 2014;**39**:483–504.
 12. See note 7, Beauchamp, Childress 2019, at 75.

13. Examples here would include infants, individuals with advanced dementia, PVS patients, and the cognitively disabled.
14. For a good discussion, see MacIntyre A. *Dependent Rational Animals: Why Human Beings Need the Virtues*. LaSalle, IL: Open Court; 2001:21–53 and Beauchamp TL, Wobber V. Autonomy in Chimpanzees. *Theoretical Medicine and Bioethics* 2014;35:117–32.
15. On the possibility of AI or Robot rights, see Gunkel DJ. *Robot Rights*. Cambridge, MA: MIT Press; 2018. For a skeptical view, see Smith BC. *The Promise of Artificial Intelligence: Reckoning and Judgment*. Cambridge, MA: MIT Press; 2019. For a good overview of the field, see Carter M. *Minds and Computers: An Introduction to the Philosophy of Artificial Intelligence*. Edinburgh: University of Edinburgh Press; 2007.
16. For a powerful account, see Korsgaard C. *Fellow Creatures: Our Obligations to the Other Animals*. New York: Oxford University Press; 2018.
17. The literature on animal rights is vast. Some of the better studies include: Beauchamp TL, DeGrazia D. *Principles of Animal Research Ethics*. New York: Oxford University Press; 2019; DeGrazia D. *Taking Animals Seriously: Mental Life and Moral Status*. Cambridge: Cambridge Press; 1996; Frey RG. *Interests and Rights: The Case Against Animals*. Oxford: Clarendon Press; 1980; Lindsay RL. Slaves, embryos, and nonhuman animals: Moral status and the limitations of common morality theory. *Kennedy Institute of Ethics Journal* 2005;15:323–46; Beauchamp TL, Frey RG, eds. *The Oxford Handbook of Animal Ethics*. New York: Oxford University Press; 2011, at chaps. 1–4; Nozick R. Do animals have rights? In: *Socratic Puzzles*. Cambridge, MA: Harvard University Press; 1997:303–10; O’Neill O. Kant on duties regarding nonrational nature. *Proceedings of the Aristotelian Society Supplementary* 1998;72:211–28; and Regan T. *The Case for Animal Rights*. Berkeley, CA: University of California Press; 2004.
18. One extraordinary element of human reason is the capacity for objectivity, that is, the ability to go beyond one’s immediate interests, needs, and desires and perceive oneself and others as possessing intrinsic value, dignity, and worth. In addition, human rationality involves the use of abstract concepts that do not refer to this or that object but to all possible objects of a certain kind. As Stephen Barr notes, “circularity applies to all circles and circular objects of any size, position, and orientation. Its universality has an unlimited reach to all possible things. It is infinite in scope.” Another extraordinary ability is to judge the truth and falsehood of propositions. A computer can also “distinguish” between true and false propositions but only when it has been programmed by a human intellect and does so in an automatic way. Even more astonishing is that human beings not only can judge truth and falsehood, but that we are also capable of certitude that some are necessarily true. As Barr notes, humans can know with certainty that necessary truths like $1 \neq 0$ are “true here and now, true a billion years ago and true a billion years hence, true in galaxies too remote to be seen with a telescope, even true in any other possible universe.” In addition, “we can even know that some truths remain true in an infinite number of cases such as $a \times b = b \times a$, for all numbers a and b .” See Barr S. *Modern Physics and Ancient Faith*. Notre Dame: University of Notre Dame Press; 2003:199–203.
19. Allen C, Bekoff M. *Species of Mind: The Philosophy and Biology of Cognitive Ethology*. Cambridge, MA: MIT Press; 1997; Griffin DR. *Animal Minds: Beyond Cognition to Consciousness*. 2nd ed. Chicago: University of Chicago Press; 2001; and Korsgaard C. Medical research on animals and the question of moral standing. *Harvard Journal of Bioethics* 2019;5:1–27.
20. As Fukuyama notes, “we tend to accord conscious creatures greater rights in this regard because, like humans, they can anticipate suffering and have fears and hopes. A distinction of this sort might serve to distinguish the rights of a salamander from those of, say, your dog Rover ... But even if we accept the fact that animals have rights not to suffer unduly, there is a whole range of rights that they cannot be granted because they are not human. We would not even consider granting a right to vote, for example, to creatures that, as a group, were incapable of learning human language. Chimps can communicate in a language typical of their species, and they can master a limited number of human words if extensively trained, but they cannot master human language and do not possess human

- cognition more generally. That some human beings cannot master human language either actually confirms its importance to political rights: children are excluded from the right to vote because they do not as a group have the cognitive abilities of a typical adult.” Fukuyama F. *Our Posthuman Future: Consequences of the Biotechnology Revolution*. New York: Farrar Straus & Giroux; 2002:146.
21. Warren refers to this as the “Agent’s Rights Principle” in her later work. See [note 3](#), Warren 1997, at 156.
 22. Noonan JT. Deciding who is human. *Natural Law Forum* 1968;13:134. See as well Noonan JT. An almost absolute value in human history. In: Feinberg J, ed. *The Problem of Abortion*. Belmont, CA: Wadsworth; 1984:9–14.
 23. See [note 7](#), Beauchamp, Childress 2019, at 81.
 24. In particular, the notion of personhood seems to be a good example of what Bernard Williams has referred to a “thick ethical” concept. See Williams B. *Ethics and the Limits of Philosophy*. Cambridge, MA: Harvard University Press; 1985.
 25. See [note 1](#), Warren 1973, at 54.
 26. See [note 1](#), Warren 1973, at 56.
 27. For a skeptical account of personhood as a necessary condition for moral status see Ohlin JD. Is the concept of the person necessary for human rights? *Columbia Law Review* 2005;105:209–49.
 28. See [note 7](#), Beauchamp, Childress 2019, at 71. As Alan Donagan notes, such an approach often reduces the concept of personhood to a “do it yourself kit for constructing a ‘moral community’ to your own taste.” See Donagan, A. *The Theory of Morality*. Chicago: University of Chicago Press; 1977, at 170.
 29. Beauchamp captures this point well: “possession of a right is also independent of being in a position to assert the right. A right-holder need not be the claimant in a particular case. For example, small children and the mentally handicapped may not be able to understand or claim their rights. Nonetheless, they possess them, and claims can be made for them by appropriate representatives. Similarly, animals have all the rights correlative to obligations that humans owe them, and they have these rights regardless of whether they or any surrogate is in a position to exercise the rights.” See [note 5](#), Beauchamp 1999, at 317 and Bartolotti L. Disputes over moral status: Philosophy and science in the future of bioethics. *Health Care Analysis* 2007;15:155–7.
 30. See [note 1](#), Warren 1973, at 54.
 31. See [note 1](#), Warren 1973, at 55.
 32. See [note 1](#), Warren 1973, at 56. For an insightful critique of these criteria as manifestations of an “anthropology of expressive individualism” see Snead CO. *What it Means to Be Human: The Case for the Body in Public Bioethics*. Cambridge, MA: Harvard University Press; 2020:139–40. On expressive individualism see Sandel M. The procedural republic and the unencumbered self. *Political Theory* 1984;12:81–96; Bellah R, Madsen R, Sullivan WM, Swidler A, Tipton SM. *Habits of the Heart: Individualism and Commitment in American Life*. Berkeley, CA: University of California Press; 1985; and Taylor C. Atomism. In: *Philosophical Papers, Vol 2: Philosophy and the Human Sciences*. Cambridge: Cambridge University Press; 1985:187–211.
 33. See [note 1](#), Warren 1973, at 56.
 34. See for instance Allen D, Ashok Kumar M. *Culture and Self: Philosophical and Religious Perspectives*. Boulder, CO: Westview Press; 1997; Cohen AP. *Self-Consciousness: An Alternative Anthropology of Identity*. London: Routledge Press; 1994; Geertz C. *The Interpretation of Cultures*. New York: Basic Books; 1973:360–411; and Mauss M. A category of the human mind; The notion of person. In: Carrithers M, Collins S, Lukes S, eds. *The Category of the Person: Anthropology, History, and Philosophy*. Cambridge: Cambridge University Press; 1985:1–25.
 35. This view also seems to have been held by John Locke. See his discussions of the “Prince and the Cobbler” as well as the “Day Man” and the “Night Man.” In each of these cases, two distinct persons “inhabit” or “occupy” the same material body at different times. Locke, “Of identity and diversity,” Chapter XXVII of *An Essay Concerning Human Understanding*. For a strong critique of this view, see Van Inwagen P. What do we refer to when we say I? In: Gale RM, ed. *Blackwell Guide to Metaphysics*. Oxford: Wiley Blackwell; 2002:174–99; Lee P. Soul, body, and personhood. *American Journal of*

Jurisprudence 2004;49:87–125; and Eberl J. *The Nature of Human Persons: Metaphysics and Bioethics*. South Bend: University of Notre Dame Press; 2020.

36. On this point, see Shweder RA, Bourne EJ. Does the concept of the person vary cross-culturally? In: Marsella AJ, White GM, eds. *Cultural Conceptions of Mental Health and Therapy*. Boston, MA: D. Reidel; 1982, and Markus H, Kitayama S. Culture and the self: Implications for cognition, emotion and motivation. *Psychological Review* 1991;98:224–53.
37. In response to vigorous criticism, Warren has attempted to walk back some of these implications in subsequent work. In particular, in her 1982 postscript to *MLSA* and her later book *Moral Status* (1997) she attempts to find a place for infants, PVS patients, individuals with advanced dementia, and the mentally disabled within her multicriterial account of moral status. In particular, she focuses on possessing (1) the “barest level” of sentience as sufficient for moral status as well as (2) being an “object of empathy” for those “who care for and about them” and finally being part of a (3) “community of caring.” The difficulty for Warren though is that unborn fetuses should then also be afforded moral status and included in the moral community as they also meet these very same criteria for moral status. And yet if Warren were to recognize this then her entire defense of abortion rights would unravel. On this point, see as well Card R. Infanticide and the liberal view of abortion. *Bioethics* 2000;14:340–51.
38. See [note 1](#), Warren 1973, at 56.
39. These implications have been explicitly defended most notably by Michael Tooley and Peter Singer. See Tooley M. Abortion and infanticide. *Philosophy & Public Affairs* 1972;2:37–65 and Singer P. Discussing infanticide. *Journal of Medical Ethics* 2013;39:260. On this point, see as well Warren’s later essay “The Moral Significance of Birth” where she attempts to argue for birth as marking a decisive moment where some type of moral status is conferred. See Warren MA. The moral significance of birth. *Hypatia* 1989;4:46–65. Significantly, in her 1982 postscript and *Moral Status*, Warren does not regard the killing of newborns as murder because of their subpersonal status and continues to defend infanticide as being consistent in principle with what she calls the “Human Rights” principle. Finally, she urges that a “tolerant attitude towards early infanticide is kinder and more just than the persecution of parents who choose it as the lesser evil.” See [note 3](#), Warren 1997, at 165.
40. While this gap in her argument is acknowledged in *Moral Status*, nonetheless, her revised conception of the moral community remains problematic. In particular, Warren now includes infants, PVS patients, and individuals with severe cognitive disabilities. As Warren notes, because such individuals may be “objects of empathy” or pass the “barest threshold of sentience” they may be acknowledged as members of the moral community. The difficulty for Warren though is that this acknowledgment undermines her exclusion of fetuses from the moral community as well as her specific argument in defense of abortion. The continual challenge for Warren is to find some way to incorporate these “marginal cases” without also including fetuses who meet the same criteria for moral status. As Warren notes, “it is both impractical and emotionally abhorrent to deny full moral status to sentient human beings who have not yet achieved (or who have irreparably lost) the capacity for moral agency. If we want there to be human beings in the world in the future, and if we want them to have any chance to lead good lives, then we must at least value the lives and well-being of infants and young children. Fortunately, instinct, reason, and culture, jointly ensure that most of us regard infants and young children as human beings to whom we can have obligations as binding as those we have to human beings who are moral agents.” See [note 3](#), Warren 1997, at 164–5. In this regard, I am in complete agreement with Warren. The question immediately arises, however, as to why this same regard, concern, and protection is not extended to fetuses if they also possess a potential for moral agency, are “objects of empathy,” and we desire and value their well-being as well as the continued existence of the human race.
41. For a good overview, see Chalmers D. *The Conscious Mind: In Search of a Fundamental Theory*. New York: Oxford University Press; 1997.
42. See Brugger CE. The problem of fetal pain and abortion: Toward an ethical consensus for appropriate behavior. *Kennedy Institute of Ethics Journal* 2012; 22:263–87 and Derbyshire S, Bockman JC. Reconsidering fetal pain. *Journal of Medical Ethics* 2020;46:3–6.

43. See [note 7](#), Beauchamp, Childress 2019, at 73–4.
44. McMahan J. Cloning, killing, and identity. *Journal of Medical Ethics* 1999;25:83. Alfonso Gomez-Lobo captures this point of view well: “on the dualist view, the core of our being is our mind or consciousness. The key intuition or self-evident claim behind this view is my awareness of myself. It is a ‘first-person singular’ perspective. As long as I am conscious of the fact that I am thinking, I am assured that I exist, and if I should become permanently unconscious, the person that I am would no longer exist, even if my body continued to live. Indeed, my body is somehow external to me, for I am, on this view, what might be called a ‘nonbodily person’ or a ‘mind inhabiting a body.’ When Jane watches her mother baking a cake in the kitchen, Jane does not see a person: she sees only a biological organism. The person is her mother’s mind, which merely inhabits her body. If her mother develops advanced dementia, she ceases to be a person, and all that remains is a biological organism.” See Gomez-Lobo A. *Bioethics and the Human Goods: An Introduction to Natural Law Bioethics*. Washington, DC: Georgetown University Press; 2015:31.
45. As Gomez-Lobo notes, “most people would surely have trouble thinking of themselves as somehow distinct from their body. They experience themselves primarily as a single body occupying a place in space and subject to the ravages of time. Illness affects *them*, not something they occupy, and it is on this assumption that they worry about their health and well-being. We are immediately affected by everything that happens to our body, such as the pain of a wound. All this could perhaps be explained within a dualist framework by postulating a sophisticated theory of the copresence of two substances in the same place. However, the more sophisticated the theory, the less persuasive it will probably be. What seems to count decisively against dualism, though, is the fact that the empirical evidence makes it highly unlikely that a substantial change occurs when the mind arises.” See [note 45](#), Gomez-Lobo 2015, at 33. For a good general critique of such an approach see George RP, Lee P. *Body-Self Dualism in Contemporary Ethics and Politics*. Cambridge: Cambridge University Press; 2009. As Gomez-Lobo argues, a more likely explanation is “the brain is formed gradually as required by the human genotype and is part of the unified overall development of the human organism under the guidance of the human genome. Indeed, the neural activity that may indicate the onset of sentience arises at some point during gestation, but the brain continues to develop well after birth. If these elementary biological facts are taken into account, it becomes clear that the metaphor of an ‘unoccupied organism’ before the detectable activation of a crucial human organ, the brain, is highly misleading. It is much more plausible to hold that a succession of continuous alterations is taking place in an organism that does not thereby receive something external or extraneous to itself. A young human body, by its genetic constitution, is internally programmed as a unified whole to undergo the alterations that lead to the activation of the mind. It undergoes a dynamic, self-directed progression toward the full actualization of its indwelling capacity.” See [note 45](#), Gomez-Lobo 2015, at 33–4.
46. I would argue that this is ultimately rooted in the lack of consensus regarding the concept of personhood itself noted earlier.
47. Following Alasdair MacIntyre, I would argue that we have moral duties and obligations to protect the vulnerable and defenseless even though they may not have nor be able to fulfill such duties to others. See [note 14](#), MacIntyre 1999.
48. In this regard, every identifiable and existing adult human being has once been a fetus though never just a sperm or an ovum. But unless some adult human beings have a history of past membership in other species, or in none, no existing adult has ever not been a member of the species *Homo sapiens*. So, it seems, clear that fetuses are human beings.
49. For a good overview, see Chamovitz D. *What a Plant Knows: A Field Guide to the Senses*. New York: Farrar Strauss & Giroux; 2013.
50. As Patrick Lee notes, “We [human beings] understand the difference between a *modus tollens* argument, and one that is similar but invalid, namely, the fallacy of affirming the consequent (If A then B, B, therefore A). But, what is more, we understand *why* the fallacy of affirming the consequent is invalid—namely, some other cause (or antecedent) could be, or could have been, present to lead to

that effect. A computer, a mechanical device, can be programmed *to operate according to the modus tollens* and to react differently (give a different output) for words arranged in the pattern of the fallacy of affirming the consequent. But *understanding* the arguments (which humans do) and merely *operating according to* them because programmed to do so (the actions of computers) are entirely different types of actions.” See note 35, Lee 2004, at 92.

51. Lee captures this point well in his review of MacIntyre’s *Dependent Rational Animals*: “We become mature practical reasoners, and thus able to participate in fully human flourishing only in, ‘a set of relationships to certain particular others who are able to give us what we need.’ But once we reach that stage, we then find ourselves in a network of relationships of giving and receiving. And we owe to this community a kind of giving that cannot be calculated or restricted in advance. We *ought* to enter this network of relationships, this pool of giving and receiving, but to enter it is to assume an obligation to give to individuals from whom we have not received, and to be ready to give without restrictions or conditions.” See Lee P. Review: Dependent rational animals: Why human beings need the virtues. *American Journal of Jurisprudence* 2000;**45**:133–6.
52. On this point, see Veatch R, Ross LF. *Defining Death: The Case for Choice*. Washington, DC: Georgetown University Press; 2016.
53. See note 1, Warren 1973, at 56 and Moral Status, at 166.
54. Annis DB. Abortion and the potentiality principle. *The Southern Journal of Philosophy* 1984;**22**:155–63; Baertschi B, Mauron A. Moral status revisited: The challenge of reversed potency. *Bioethics* 2010;**24**:96–103; Benn S. Abortion, infanticide, and respect for persons. In: Feinberg J, ed. *The Problem of Abortion*. Belmont, CA: Wadsworth Press; 1973:92–104; Brown MT. The potential of the human embryo. *Journal of Medicine and Philosophy* 2007;**32**:585–618; Buckle S. Arguing from potential. *Bioethics* 1988;**2**:227–53; Burgess JA. Potential and foetal value. *Journal of Applied Philosophy* 2010;**27**:140–53; Charo RA. Every cell is sacred: Logical consequences of the argument from potential in the age of cloning. In: Lauritzen P, ed. *Cloning and the Future of Human Embryo Research*. New York: Oxford University Press; 2001:83–9; Covey E. Physical possibility and potentiality in ethics. *American Philosophical Quarterly* 1991;**28**:237–44; Eberl J. The unactualized potential of PVS patients. *APA Newsletter* 2011;**11**:14–8; Gomez-Lobo A. Does respect for embryos entail respect for gametes? *Theoretical Medicine and Bioethics* 2004;**25**:199–208; Jacqueline D. Two kinds of potentiality: A critique of McGinn on the ethics of abortion. *Journal of Applied Philosophy* 2001;**18**:79–98; Koch-Hershenov, R. Totipotency, twinning, and ensoulment at fertilization. *Journal of Medicine and Philosophy* 2006;**31**:139–64; Oderberg D. Modal properties, moral status, and identity. *Philosophy & Public Affairs* 1997;**26**:259–76; Stone J. Why potentiality still matters. *Canadian Journal of Philosophy* 1994;**24**:281–93; and Warren MA. Do potential people have moral rights? *Canadian Journal of Philosophy* 1977;**7**:275–89.
55. In her 1982 postscript to *MLSA*, while Warren begrudgingly acknowledges this concern she continues to insist that infants are in several crucial respects more like fetuses than “full” persons. At times in the postscript and her later work *Moral Status* the tension is palpable as it appears that she wishes to grant them some type of intermediate moral status but she recognizes doing so would undermine her argument for all members of the moral community possessing equal rights.
56. See note 1, Warren 1973, at 58.
57. On this point, see Nussbaum M. *Love’s Knowledge: Essays on Philosophy and Literature*. New York: Oxford University Press; 1992:54–106, 148–68, 261–86.
58. See note 1, Warren 1973, at 58–9.
59. See note 1, Warren 1973, at 76.
60. Some of the better studies of the topic of intergenerational justice include: Barry B. Justice between generations. In: *Law, Morality, and Society: Essays in Honor of H.L.A. Hart*. Clarendon: Oxford University Press, 1977:268–84; Jonas H. *The Imperative of Responsibility*. Chicago: University of Chicago Press; 1979; Feinberg J. The rights of animals and unborn generations. In: *Rights, Justice, and the Bounds of Liberty: Essays in Social Philosophy*. Princeton: Princeton University Press; 1980:159–84; Parfit D. *Reasons and Persons*. Oxford: Oxford University Press; 1984; Daniels N. *Am I My*

Parents' Keeper: An Essay on Justice Between the Young and the Old. Oxford: Oxford University Press; 1988; Broome J. Discounting the future. *Philosophy & Public Affairs* 1994;23:128–56; Sher G. Transgenerational compensation. *Philosophy & Public Affairs* 2005;33:181–201; Wolf C. Intergenerational justice. In: Frey RF and Wellman CH. *A Companion to Applied Ethics*. Oxford: Wiley Blackwell Press; 2005:279–95; Wenar L. Reparations for the future. *Journal of Social Philosophy* 2006;37:396–405; Reiman J. Being fair to future people: The non-identity problem in the original position. *Philosophy and Public Affairs* 2006;35:69–92; and Mulgan T. *Future People: A Moderate Consequentialist Account of Our Obligations to Future Generations*. Oxford: Oxford University Press; 2009.

61. I would also argue that the question of whether X will remain X in becoming Y is important to how we now characterize X. I will not explore this question in depth here but save it for another time.
62. In addition, Warren acknowledges, “it is probably inappropriate to describe a woman’s body as her property, since it seems natural to hold that a person is something distinct from her property, but not from her body. Even those who would object to the identification of a person with his body, or with the conjunction of his body and his mind, must admit that it would be very odd to describe, say, breaking a leg, as damaging one’s property, and much more appropriate to describe it as injuring oneself. Thus, it is probably a mistake to argue that the right to obtain an abortion is in any way derived from the right to own and regulate property.” See [note 1](#), Warren 1973, at 44.
63. Beckwith F. Personal bodily rights, abortion, and unplugging the violinist. *International Philosophical Quarterly* 1992;125:105–6.