**STRENGTHENING THE IMPAIRMENT ARGUMENT AGAINST ABORTION**

**PENULTIMATE DRAFT**

**ABSTRACT**

Perry Hendricks’ *impairment argument* for the immorality of abortion is based on two premises: firstly, impairing a fetus with fetal alcohol syndrome is immoral, and secondly, if impairing an organism to some degree is immoral, then *ceteris paribus,* impairing it to a higher degree is also immoral. He calls this *the impairment principle*. Since abortion impairs a fetus to a higher degree than fetal alcohol syndrome, it follows from these two premises that abortion is immoral. Critics have focused on the *ceteris paribus* clause of the impairment principle, which requires that the relevant details surrounding each impairment be sufficiently similar. In this article, we show that the *ceteris paribus* clause is superfluous, and that by replacing it with a more restrictive condition, the impairment argument is considerably strengthened.

**KEYWORDS**: impairment argument, fetal alcohol syndrome, abortion, future like ours, Marquis

**INTRODUCTION**

Perry Hendricks’ *impairment argument* is a recent, novel argument for the immorality of abortion. [1,2] Hendricks’ basic claim is that since non-lethally impairing a fetus is immoral *and* aborting a fetus impairs it even more severely, it follows that abortion is also immoral. Importantly, no reference is made to the contentious issue of the moral status of the fetus. So, if the argument is sound, it entails that abortion is immoral *even if the fetus is not a person*.

The core of the argument is *the impairment principle* (TIP): if it is immoral to impair an organism O to the nth degree, then, *ceteris paribus*, it is immoral to impair O to the n+1 degree. An organism is impaired to the n+1 degree just in case it has more impairments—more limitations—than the nth degree. TIP seems to be uncontroversial. A second premise is that it is immoral to impair a fetus by giving it fetal alcohol syndrome (FAS), which also seems uncontroversial. If we accept that aborting a fetus impairs it to the n+1 degree in comparison to giving it FAS (impairment to the nth degree), it follows that abortion is immoral provided the *ceteris paribus* clause holds.

The main criticisms of the impairment argument have focused on the difficulty of meeting the *ceteris paribus* clause—if this is not met, TIP is not satisfied and the impairment argument fails. Here, we show that the *ceteris paribus* clause is superfluous, and that by replacing it with a more restrictive condition, the impairment argument is considerably strengthened. We also consider several objections to our revision, ultimately concluding that they are not successful.

**THE IMPAIRMENT ARGUMENT TRADITIONALLY STATED**

The impairment argument goes as follows: it is immoral to non-lethally impair a fetus by, say, deliberately giving it FAS.[[1]](#footnote-0) This is an assumption that appears to be shared even by those who think that a fetus is not a person.[[2]](#footnote-1) (Importantly, as Hendricks points out, the impairment argument requires only that there is *some* instance of non-lethal impairment of the fetus that is immoral. It is not tied to the morality of giving a fetus FAS.) Let us say that to impair an organism is to *limit* one or more of its abilities. On this understanding of impairment, giving a fetus FAS impairs it since it limits its ability to develop properly. From this fact, Hendricks tries to derive the immorality of abortion. He does so by making use of what he calls *the impairment principle,* or TIP, explained above. In essence, the impairment principle states that if it is immoral to impair an organism to some degree, then it will be immoral to impair it to any higher degree (provided there is not some great good that comes about due to the latter impairment and not the former—this is the *ceteris paribus* clause).

Hendricks argues that, given current abortion methods, an abortion will always involve maximally limiting a fetus’s abilities, i.e. maximally impairing it. (If abortion killed a fetus instantaneously, it could be argued that its abilities were not impaired, however no existing abortion methods are capable of doing so.)[[3]](#footnote-2) Aborting a fetus always involves limiting more of a fetus’s abilities than giving it FAS, since a fetus with FAS still has some abilities while an aborted fetus will not have any (since it is dead).[[4]](#footnote-3) Since a fetus will be *maximally impaired* by abortion—all of its abilities will be limited in the process of abortion—having an abortion *always* impairs the fetus to the n+1 degree. Say that to impair a fetus by giving it FAS is to impair it to the nth degree. Since we have assumed that giving a fetus FAS is immoral, it follows from the impairment principle that, *ceteris paribus*, aborting a fetus is immoral, since it impairs it more than giving it FAS. Hendricks states this argument as follows:

1. If it is immoral to impair the fetus by giving it fetal alcohol syndrome, then, *ceteris paribus,* it is immoral to kill the fetus.
2. It is immoral to impair the fetus by giving it fetal alcohol syndrome.
3. *Ceteris paribus*, it is immoral to kill the fetus.
4. To abort a fetus is (in most cases) to kill it.
5. So, *ceteris paribus*, to abort a fetus is (in most cases) immoral.[2]

Now that we have a grasp of the impairment argument, we will show below that the *ceteris paribus* clause is vulnerable to objections. However, we will also show that if we understand the wrongness of impairing a fetus by giving it FAS *in terms of the fetus being deprived of its particular future of value*, that this problem dissolves and, in fact, the argument is greatly strengthened.

**PROBLEMS FOR THE IMPAIRMENT ARGUMENT**

There are two key issues with the impairment argument that need to be resolved if it is to form a persuasive argument for the immorality of abortion. We have already noted the first issue—the difficulty of showing that TIP’s *ceteris paribus* clause holds when moving from FAS to abortion. The second is various counter-examples to TIP that have been raised.

The *ceteris paribus* clause of TIP requires that ‘the relevant details surrounding the impairment in the antecedent are sufficiently similar to the relevant details surrounding the impairment in the consequent.’[1] This is the aspect of TIP that is most vulnerable to criticism, since it is unclear what details are relevant, and how sufficiently similar they must be between the antecedent and consequent. Hendricks provides some scenarios to illustrate the *ceteris paribus* clause, but his examples actually serve to illustrate how problematic the *ceteris paribus* clause can be. For example, the clause is said to not be met when one impairment produces a valuable good but the other does not, such as in capital punishment, self-defence and euthanasia—cases where killing is plausibly thought to be moral. This judgement, however, is dependent on what is meant by ‘good’, and opens up a controversial debate of whether valuable goods are also obtained by abortion, an approach taken by Bruce Blackshaw, Claire Pickard and Joona Räsänen.[3,4,5] This means that the success of the impairment argument is contingent on what goods one believes accompany abortion and FAS, and how one weighs the goods. This threatens to weaken the impairment argument: it will no doubt be contentious what goods accompany abortion and FAS, and how they are to be weighed. And it is very difficult to give a satisfactory defense of one’s position on these issues. Dustin Crummett provides a criticism that is a variation of this approach: instead of comparing goods, he argues that pregnancy is significantly more burdensome than refraining from drinking alcohol for nine months, and so again, the *ceteris paribus* clause is not met.[6] So, TIP’s rather broad *ceteris paribus* clause brings substantial philosophical baggage, and the impairment argument will be significantly strengthened if its reliance on this clause can be eliminated.

**FIXING THE IMPAIRMENT ARGUMENT**

Our approach is to replace the *ceteris paribus* clause with a clause that has narrower scope—we will require that the same *reasons* impairment is regarded as immoral for the nth degree are also present for impairment for the n+1 degree. This seems unobjectionable—if an impairment is immoral for reasons R at the nth degree, then, if R holds for impairment at the n+1 degree, we can conclude that this impairment is also immoral. More formally, we can restate TIP as the *Modified Impairment Principle* (MIP): if it is immoral to impair an organism O to the nth degree for reason R, then, provided R continues to hold (or is present), it is immoral to impair O to the n+1 degree. Importantly, MIP does not entail that if R is the reason why impairment to the nth degree is immoral, that it is also the reason why impairment to the n+1 degree is immoral. For example, if it is immoral to impair O for the reason that it is painful, then *provided it is still painful*, it is immoral to impair O to a higher degree. However, it does not necessarily follow that it is immoral to impair O to a higher degree *because* it is painful.

Unfortunately, the impairment argument as originally conceived fails to satisfy both TIP *and* our MIP. It implied the wrongness of FAS is grounded in the limitation of the fetus’ capacity to develop *future* abilities: it produces a child who ‘is (among other things) unable to count and unable to tell the time’.[1] However, critics[3,4] have argued that in the case of abortion, there will be no future individual to have its abilities limited, and so both the TIP *ceteris paribus* clause and our MIP reasons clause are not satisfied. Some other explanation of the wrongness of inflicting FAS that also holds for abortion is required for the modified impairment argument to succeed. This explanation will also need to avoid counter-examples that have been raised against TIP, such as that of animal abortion.[3] It seems clearly immoral to deliberately impair animal fetuses such that the animal subsequently lives in constant, agonizing pain, but it is not clear that aborting animal fetuses is immoral. This is analogous to the FAS scenario and human abortion, and so unless some relevant differences can be found, it would seem to cast significant doubt on TIP—and on our suggested MIP.

A solution is suggested by Hendricks’ original explanation for the wrongness of inflicting FAS—that it affects the individual in the future by limiting their cognitive abilities. We have noted that this explanation fails because in the case of abortion, no future individual exists. Fortunately, there is an alternative explanation available that is plausible. Don Marquis’ well-known argument for the immorality of abortion (the ‘future like ours’ argument’) grounds the wrongness in the *deprivation of an individual’s future*. According to Marquis, the greatest loss we can suffer is the loss of our life—it deprives us of ‘all the experiences, activities, projects, and enjoyments which would otherwise have constituted one’s future.’[7] This loss is why killing us is wrong, and more generally, why killing any individual human is wrong: it is wrong because the victim is deprived of a future containing valuable experiences typical of humans—a future of value, similar to our own, that she would have had if she had not been killed. This reasoning applies no matter what age an individual is when killed: so long as the individual has a future of value—whether it is an adult, child, or even a fetus—it is immoral to deprive it of its future. So, by Marquis’ reasoning, abortion is immoral because it deprives the fetus of a ‘future like ours’ (FLO) that it would otherwise have enjoyed.

We can appropriate Marquis’ FLO reasoning to account for the wrong of impairment, including FAS, and show that it also applies for abortion, thus satisfying our MIP, which we have suggested should replace the original TIP. Let us take abusive head trauma in infants as an example. This can cause intellectual disabilities, cerebral palsy, cortical blindness, seizures and behavioural problems.[8] An infant that has been abused in this way will not have the future it would have otherwise had—its future will be damaged, encompassing fewer valuable experiences, activities, projects and enjoyments. Utilising Marquis, we can explain the wrongness of abusive head trauma as a deprivation of an infant’s FLO, replacing it with a FLO containing fewer things of value. Similarly, a fetus with FAS will suffer various physical and cognitive deficits, and has been deprived of its original FLO. This is a plausible explanation of why it is immoral to inflict FAS on a fetus.

Additionally, it is important that an account for the immorality of inflicting FAS explains why it is immoral *at the time of impairment*: if, for example, the mother is hit by a car months after giving her fetus FAS and the fetus is killed, preventing future cognitive impairments arising, it is clear that it was still immoral for her to impair it. Deprivation of a FLO provides a plausible explanation for this: it is at the time of impairment by FAS that the fetus’ future was altered and it suffered the deprivation of its FLO—the fetus experiences the *present* loss of a future that it would otherwise have had. By contrast, permissive accounts such as Jeff McMahan’smust ground the wrong of inflicting FAS on the frustration of the fetus’ future interests—and still maintain that to prevent those interests arising in the first place via abortion is not immoral (and is not frustrating those interests).[9] Moreover, accounts like McMahan’s imply that if a fetus is *not* carried to term—if it is never born—it is not immoral to give it FAS, since it did not have future interests that were frustrated. This entails that a mother that intentionally gave her fetus FAS but later lost her fetus due to chance (e.g. a car accident, see above) did not act immorally: she did not frustrate the interests of a future person by giving her fetus FAS because it would never become a future person. And hence McMahan’s theory, unlike FLO, has difficulty accounting for the immorality of giving a fetus FAS when the fetus is never born. Thus, we have reason to favor the FLO explanation of the wrongness of giving a fetus FAS.

So, in the case of FAS, the fetus is deprived of its original FLO, leaving it with a future that is significantly worse. Let us now consider abortion, which Hendricks argues is impairment to the n+1 degree. Abortion results in the fetus ceasing to exist, completely depriving it of a FLO, and means that the same reason we gave for the wrongness of impairing a fetus by giving it FAS also holds in the case of abortion.

Importantly, our MIP is satisfied in this case: the reason *why* inflicting FAS is immoral—deprivation of a FLO—is unaltered for abortion. Thus, MIP is met, and the *ceteris paribus* clause is not threatened since there is no such clause. Additionally, by understanding the immorality of giving a fetus FAS in terms of the deprivation of its FLO, we have also eliminated counter-examples that involve animals, since animals do not have a FLO, even though they have futures. So, this simplifies the defence of the impairment argument considerably.

What about cases where killing may be not be considered immoral, such as capital punishment, self-defence and euthanasia? Marquis points out that for euthanasia, the recipient typically does *not* have a future of value ahead of them, and so according to Marquis’ reasoning, euthanasia is not immoral. Of course, capital punishment and killing in self-defence *do* involve the loss of an individual’s FLO, and so they need to be explicated, otherwise we still have counter-examples to the MIP. Here, Marquis notes that killing adult human beings is only justified in extreme situations where the individual’s loss of life is outweighed by threats to *other* individuals’ FLOs. For example, in self-defence, we permit someone to kill in order to protect their *own* FLO. One important reason for capital punishment is to prevent an individual from killing again. In the case of abortion, it is extremely rare that pregnancy threatens a woman’s FLO, and it is only in these rare cases that abortion *may* not be immoral—at least according to Marquis’ reasoning. Marquis notes that the deprivation of a FLO may not be the only reason that killing is wrong, and so in the scenario where the woman’s life is threatened by her pregnancy, it may be that there are other reasons why abortion would still be immoral.

**OBJECTIONS**

As we have noted, the criticisms of Pickard, Räsänen and Crummett [4,5,6] are predicated on the original impairment argument’s *ceteris paribus* clause, and so they are circumvented by its removal. This includes Crummett’s claim that someone sympathetic to Thomson’s famous violinist argument will not find the impairment argument persuasive.

It might be objected that by appropriating FLO to account for the immorality of giving a fetus FAS, we have dissolved the significance of the impairment argument: if the argument makes use of FLO, then it seems that it is no better than Marquis’ argument. And hence our defense of the impairment argument comes at a great cost, namely, the argument’s significance.

This objection, however, is mistaken, for our appropriation of FLO does not wed the impairment argument to Marquis’ argument—it does not commit us to the thesis that depriving an organism of FLO is *the reason* why abortion is immoral. Our modified version of the impairment argument only requires that the reason why inflicting FAS is immoral is also present for abortion—it does not commit us to an explanation as to *why* abortion is immoral. Suppose, for example, that it is immoral to impair an organism by cutting its finger, and suppose further that the reason this is so is because it limits its ability to use its hand. Now, cutting off the organism’s entire arm impairs it to a higher degree and it also limits its ability to use its hand (i.e. the *reason* it is immoral to impair to a lower degree is present). However, it does not follow that it is immoral to cut off its arm *because* it limits the use of its hand—the reason *might* be because e.g. it limits its ability to use its arm, or perhaps because it deprives the organism of its health, etc.[[5]](#footnote-4) So, the impairment argument just tells us thatabortion is immoral, and that this follows from our MIP conjoined with the fact that giving a fetus FAS is immoral. Thus, our modified impairment argument does not commit itself to a controversial ethic of killing, which is one of the virtues Hendricks had claimed for his original version of it. In other words, while we have claimed to show why giving a fetus FAS is immoral, we have not claimed to show *why* abortion is immoral: the immorality of abortion simply follows from MIP and the immorality of giving it FAS.

Finally, it is worth pointing out a bonus of understanding the immorality of giving a fetus FAS in the way we have described: it provides more support for Marquis’ argument against abortion. This is because, as Hendricks argues, giving a fetus FAS is immoral *even if the fetus never comes to be born.* However, as we have contended, the only way to explain this fact is by appealing to the deprivation of the fetus’s original FLO; there are no other plausible explanations of its wrongness. And thus, we have good reason to think that depriving an individual of their FLO is immoral. And since Marquis’ argument is predicated on this thesis, we now have more support for his view.

**CONCLUSION**

In this article, we have reviewed the main criticisms of the impairment argument against abortion. We have shown that the problems raised can be resolved by the replacement of its *ceteris paribus* clause with a narrower clause based on the reason for the immorality of the impairment. As a result, the impairment argument is considerably strengthened. An added bonus of this discussion is that Marquis’ argument is strengthened as well: our defense of the impairment argument has provided additional support for the view that depriving an individual of a future like ours is immoral, a thesis that Marquis’ argument is predicated on.

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1. Hendricks argues that this is true even if the fetus is never born. He argues that if a mother has knowingly given her fetus FAS she has acted immorally, and this is true, he thinks, even if she loses her fetus on account of being hit by a car later on in her pregnancy. We will follow Hendricks in making this assumption, and discuss it briefly subsequently. [↑](#footnote-ref-0)
2. E.g. Claire Pickard, no friend of the impairment argument, says that it is immoral to give a fetus FAS.[4] [↑](#footnote-ref-1)
3. Bruce Blackshaw argues that killing is not impairment;[10] Hendricks responds by claiming that because all current abortion methods do not kill instantaneously, they bring the fetus to what he calls the ‘bridge of death’ where its abilities are maximally impaired.[2] [↑](#footnote-ref-2)
4. This is a rough characterization of Hendricks’s argument. For more details, see [1,2]. [↑](#footnote-ref-3)
5. We are not saying that this is the actual reason why cutting off an organism’s arm or finger is immoral. This is just an example. [↑](#footnote-ref-4)