

Abortion and the basis of equality: a reply to miller

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ABSTRACT

Miller has recently argued that the standard liberal and moderate positions on abortion are incapable of substantiating the claim that ‘all non-disabled adult humans are equal’. The reason, he claims, is that such accounts base the intrinsic moral worth of a human being on some property (or set of properties) which comes in degrees. In contrast to this view, he argues that moral equality must reside in some binary property, such as the property of being human. In this paper, I offer three criticisms of Miller’s position.

In a recent article for this journal, Miller puts forward a new and original argument against abortion. His central claim is that the standard liberal and moderate positions on abortion are incapable of substantiating the view that ‘all non-disabled adult humans are equal’.¹ The reason, he claims, is that such positions account for the intrinsic moral worth of a human being in terms of some property (or set of properties) which comes in degrees. However, if moral status is determined by some property which comes in degrees, and if non-disabled adult humans differ in degree with respect to this property, then it follows on such positions that non-disabled adult humans are not equal.

Consequently, Miller contends that human equality must rest on some binary property, that is, on some property which does not admit of degrees. And, according to Miller, the only property which can plausibly serve this function is the property of being human.² In this way, and despite their many differences, non-disabled adult humans are all moral equals. And, since fetuses are human beings too, they are entitled to the same right to life as any normally functioning adult. For this reason, abortion is impermissible.

In response, I offer three criticisms. First, I argue that there is no logical incoherence in thinking that moral equality can rest on a scalar property. Second, I contend that the permissibility of therapeutic abortions—in particular, the privileging of

the mother in such cases—engenders a problem for Miller’s view. For, if saving the life of the mother is preferred, then this concession commits him to the view that moral worth is indeed based on a scalar property. Third, and finally, I argue that there must be some reason or explanation for why our common humanity is valuable. But, insofar as this is granted, it seems the only plausible contenders will themselves be scalar properties. Thus, again, this undercuts any advantage Miller claims for himself in proffering an account of moral equality.

FIRST CRITICISM

As we have seen, Miller claims that if the basis of a human’s inherent value is a scalar property, then non-disabled adult humans are not moral equals. But there is some ambiguity in the term ‘moral equals’. First, sometimes the term is used in the sense of ‘equally good’, such that two or more things are equally good insofar as they share the same degree of realised goodness. In this sense, two people who perform exactly the same praiseworthy acts are ‘equally good’, assuming no other morally relevant differences between them.

On the other hand, the term might mean something like ‘equal rights’. Understood in this sense, two or more individuals may be moral equals despite their failing to be equally good in the comparative sense outlined above. Even if Tim performs more praiseworthy acts than Jim, the two are still moral equals in this sense insofar as they possess the same rights and to the same degree. It is this sense of moral equality which Miller intends, signalled by such words as ‘intrinsic’ or ‘inherent’ in expressions like ‘equal intrinsic value’ or ‘equal inherent worth’.

Thus, having distinguished these two senses, the question then becomes whether it is problematic to base moral equality—understood as ‘equal rights’—on a property which comes in degrees? Part of the problem with adequately assessing this question is the notion of ‘moral equality’ is a notoriously difficult to define.^{3–5} [6] Moreover, since Miller never provides an account of what he means by the term, it is hard to assess

the merits of his concern. For instance, in Chapter 5 of *Utilitarianism*, John Stuart Mill holds that the fundamental moral principle of equality amounts to everyone’s interests counting equally. Here Mill gives expression to the well-known utilitarian slogan ‘everyone to count for one, nobody for more than one.’ Understood in this sense, it seems clear that there is no logical incoherence in basing equal rights on a scalar property (namely, the strength of one’s interests). In this sense, two or more people are treated as ‘equals’ just in case equal interests are counted equally.

I suspect, however, that Miller would take issue with the utilitarian conception of equality. Nonetheless, there similarly does not appear to be any logical incoherence in basing a deontological conception of equal rights on a scalar property. For instance, as formulated by Kant in his *Categorical Imperative*, we should only act on those maxims which we can at the same time will as universal laws. The reason is that, for Kant, non-disabled adult human beings are ends-in-themselves, that is, they are autonomous beings capable of governing their own actions and making their own decisions. Maxims which do not treat human beings in this way run afoul because they propose using an end-in-itself as a mere means. However, for our purposes, the point to observe is that what generates the contradiction in a failed universalisation is not the degree to which the person wronged has exercised their autonomy; rather, it is the mere possession of an autonomous nature which generates the contradiction. Whether one has exercised or used this nature well is irrelevant. We do not get, for instance, more of a contradiction (whatever that means) when we increase the degree to which the person wronged has consistently exercised their autonomy, or exercised it well. Thus, for these reasons, there does not appear to be any incoherence in the idea of basing equal moral rights on a scalar property.

SECOND CRITICISM

A second criticism concerns therapeutic abortions. Suppose we have a situation in which the mother will die in the next few weeks if an abortion is not performed now. Furthermore, suppose the fetus will survive if the mother can hold on for a few more weeks (although this will eventually lead to her death). In such cases, I contend, it is permissible

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for the mother to have an abortion. More importantly, it is permissible to prioritise the mother's interests in such a case; it is not as if we should flip a coin.

Now, Miller's comments suggest he understands moral equality as the possession of the same rights to the same degree. Since it is our common human nature which grounds moral equality, and since the fetus is a human being, it follows that the fetus has as weighty a right to life as any other adult human being. Indeed, this means it has a right to life as strong as the mother's. However, if our previous judgement is correct, then it seems two human beings—moral equals on Miller's view—can fail to possess the same rights to the same degree. The fact that it is permissible to privilege the mother in such cases implies the fetus's right to life is not as strong as the mother's. But, insofar as Miller's view implies the opposite, it appears to be mistaken.ⁱ

Now, why is it permissible to prioritise the mother in such cases? The reason, it seems, is that the mother is further along in her psychological development: she can reason, make decisions, and is aware of her circumstances. In contrast, the fetus has not yet developed such traits. If this is correct, if the mother does indeed

ⁱSome opponents of abortion contend that therapeutic abortions need not always be cases of intentional killing. This strikes me as incorrect, but in any case we would then be weighing a decision between letting the fetus die or letting the mother die. The question then is why it is preferable to save the mother rather than the fetus? It is at this point that the considerations in the text—such as psychological development—become relevant.

deserve priority in such cases, then it seems that Miller's own account must concede that scalar properties—such as the extent of the fetus's psychological development—are relevant to a human being's moral worth.

THIRD CRITICISM

Finally, Miller claims that human equality is grounded in our common human nature. But why is our common human nature valuable? What about our humanity gives us intrinsic moral worth? It seems there must be something about our human nature which underwrites this claim. For instance, it might be that when human beings are fully developed they have certain psychological capacities, such as rationality or autonomy. But, these are scalar properties, and thus resting moral equality on human nature in this way would still anchor it in a scalar property.

It is at this point that underlying theological motivations may emerge. It is sometimes said that human beings are made in the 'image of God'. Thus, perhaps, human beings are not valuable because they are rational, but because they have been made in God's image. But here again our problem reemerges. For what, exactly, is it that we resemble when we bear this image of God? If this is yet again just taken to be our rationality, then we are back where we started. To this extent, then, it seems Miller has been hoisted on his own petard.ⁱⁱ

ⁱⁱIt is difficult to imagine which binary property could ground the intrinsic worth of human beings. The best that I can come up with is being declared by God—that is, human beings are intrinsically valuable moral equals because God declares that we are. But this strikes me as unsatisfactory

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for a number of reasons. First, I do not find divine command theories tenable. Second, such divine declaration would appear to be arbitrary, for if God had some reason for picking out human beings as special, this again would generate our problem: what is it about human beings which leads God to declare the equal intrinsic worth of human beings? In any case, there is not sufficient space to explore these considerations here.