Why the wrongness of intentionally impairing children *in utero* does not imply the wrongness of abortion

Abstract
Perry Hendricks' "impairment argument," which he has defended in this journal, is intended to demonstrate that the generally-conceded wrongness of giving a fetus fetal alcohol syndrome (FAS) shows that abortion must also be immoral, even if we allow that the fetus is not a rights-bearing moral person. The argument fails because the harm of causing FAS is extrinsic but Hendricks needs it to be intrinsic for it to show anything about abortion. Either the subject of the wrong of causing FAS is a person who does not exist in the case of abortion, or the wrong is negligible.

Perry Hendricks claims that his "impairment argument" proves that even if the fetus is not a person, abortion is immoral, where by "person" he means what bioethicists typically mean, that is, a being with clear moral standing who can be a rights-bearer. The argument has been criticized and defended in this journal in exchanges that, I believe, miss the most glaring flaw by diverting attention to his "impairment principle," which is at most a sub-premise and not part of the main argument.[1]

The most recent iteration of the argument, substantially unchanged from the first, is as follows:

1. If it is immoral to impair the fetus by giving it fetal alcohol syndrome (FAS), then *ceteris paribus*, it is immoral to kill the fetus.
2. It is immoral to impair the fetus by giving it FAS.[2]
3. *Ceteris paribus*, it is immoral to kill the fetus.

This argument cannot succeed because the circumstances that make premise 2 true, or at least plausible, render premise 1 entirely unpersuasive, and vice versa.

The second premise

Hendricks doesn't spend much time defending the second premise because he takes it as obviously true and a strength of his approach, appealing as it does to the horror felt equally by those on both sides of the abortion rights dispute of causing birth defects to one's child *in utero*. However, the sense in which it is true is not the sense he needs for his argument. Let us distinguish between an action being wrong *in itself* (intrinsically) and being wrong because of what it brings about (extrinsically). To illustrate the distinction, smashing a rock is not intrinsically wrong but may be extrinsically wrong if it is somebody's prized possession. In that case the wrong would be done, not to the rock, but to the rock's owner. For the impairment argument to work, both abortion and giving a fetus FAS must be intrinsically wrong: the subject of the wrong must be the fetus itself. If the subject of the wrong is *not* the fetus, then the strength of the argument is contingent on the actual subject of the wrong and the relationship between them and the fetus being the same in both cases. But not only is the wrong of giving a fetus FAS extrinsic, the subject literally cannot exist in the case of an abortion, and so the wrong of causing FAS can imply nothing about the morality of abortion. Let me explain. The intuitive appeal behind the impairment argument is that, indeed, the majority of people – even those who do not regard a fetus as a moral person - *would* agree that intentionally or even negligently causing FAS is gravely immoral. However, the reason they do is because they see the subject of the harm not as the fetus, at the time of the alcohol consumption, but the person it will (presumably) develop into. The only description of the

[1] Blackshaw BP, Hendricks P. Fine-tuning the impairment argument. J Med Ethics 2021;47(9):541–2. Blackshaw BP, Hendricks P. Strengthening the impairment argument against abortion. J Med Ethics 2021;47(7):515–8.
[2] Hendricks P. The Impairment Argument against Abortion. In: Agency, Pregnancy, and Persons: Essays in Defense of Human Life 162-175 (N. Colgrove, B. Blackshaw and D. Rodgers ed., 2022).

harms of FAS that Hendricks himself gives cite a child who is unable to count or tell time *in the seventh grade*.[3] In fact, given Hendricks' own analysis of impairment as ability limitation, he has failed to show that FAS actually impairs *the fetus*, because he has not identified any fetal ability that it limits.

The first premise

But, one might object, why does it matter that the wrong of causing FAS is extrinsic? It's still a serious wrong, and won't abortion have even worse extrinsic effects? Well, no. The extrinsic effect of an abortion is *preventing a person from existing*, which is not wrong any more than chastity is wrong. It also means that the person who would be the subject of the harm of the FAS cannot be the subject of the purported harm of abortion because in the latter case they do not exist. So if the wrong of causing FAS is, as I have argued, extrinsic, this means that the first premise is wholly unconvincing. The subject of the wrong of the antecedent of that conditional doesn't exist to be wronged in the consequent. The statement is a kind of strange non-sequitur. Indeed, the practices of IVF clinics evince that preventing a person from existing by destroying an embryo is regarded as less immoral than allowing that embryo to become a person with impairments. It has long been standard procedure to recommend "selective reduction" of embryos introduced into a client's uterus as part of fertility treatments if more than one or two implant, precisely because of the risk of fetal impairment if too many fetuses compete for the resources of one womb. That is, in a direct rebuttal to the first premise of Hendricks' argument, impairment is deemed worse than death. More strongly, it has been argued[4] that it is immoral *not* to abort in these situations, because of even an increased risk of impairments (like cerebral palsy), and I have found the overwhelming majority of students sympathetic to this argument.

Second premise again

Can an argument be made that there is (also) an *intrinsic* wrong in giving a fetus FAS, absent any effect on a later person? If there is, it certainly does not rise to any level sufficient to constrain the rights of the pregnant individual. To show this, I will exploit a fictional product imagined by Hendricks himself: "drug D" which, "when injected in an organism at any stage of life gives it the equivalent of FAS."[5] But to make sure that we are assessing the harm of FAS on the non-person fetus and not on a later person, let us add that drug D's effects only last *in utero*, so that at birth, all effects wear off, and the organism is now as if it never had FAS. Now, imagine we inject an embryo with this drug before implanting it. Where is the wrong? One might speculate that in its later stages the fetus suffers, but this certainly would not happen in the first trimester, and besides, Hendricks himself explicitly denies that impairment need involve harm[6] so it remains a mystery why this act should be immoral.

What can Hendricks say in response? Well, he does insist that "to give a fetus FAS is immoral *at the time of the consumption of alcohol*" and the pregnant drinker's action does not "magically become immoral at some later time".[7] But this is compatible with the immorality being extrinsic, and does not show that the subject of the wrong is the fetus that exists at that time. Imagine an evil sperm donor who subjects the donor sperm to a kind of undetectable radiation that will cause any persons who result from use of that sperm to have various severe impairments. While he definitely does something wrong at the time he irradiates the sperm, it is not the sperm that is the subject of the wrong but any resulting

[3] Hendricks 2022, 163.
[4] Pence G. The McCaughey Septuplets: God's Will or Human Choice? In: Brave New Bioethics 39-43 (2002).
[5] Hendricks P. Even if the fetus is not a person, abortion is immoral: The impairment argument. Bioethics 2019;33(2):245–53, 248.
[6] Hendricks 2022, 163.
[7] Hendricks 2019, 246.

persons (and destroying the sperm would be obviously not be immoral). The wrong in this case, just as in the case of giving a fetus FAS, is extrinsic.

But surely, one might retort, it is still the case that that the fetus and the later child are *one and the same organism*. However, this point cannot save the argument. An acorn and the oak tree it grows into are the same organism at different stages, but the wrongness of destroying an oak tree for fun does not imply the wrongness of doing the same to the acorn. Furthermore, this move just accentuates the fact that the organism harmed by FAS is one that has a person stage, which explains the severity of the wrong, whereas the organism that is aborted never has a person stage. So once again we should reject premise 1, as the wrongness of causing FAS cannot tell us anything about abortion.

Conclusion

Either giving a fetus FAS is not clearly immoral (premise 2 fails), or, if it is, it is only insofar as it is a means to the end of giving a child FAS, in which case it can tell us nothing about the morality of abortion (premise 1 fails). Either way, Hendricks' impairment argument fails to demonstrate that abortion is wrong to any degree that should trouble a person seeking one.