

## Comment on Tapley's "What is Wrong with Being a Pervert"

David L. Hildebrand  
University of Colorado Denver

### *Introduction*

When I received the name of the paper on which I had volunteered to comment, "What is Wrong with Being a Pervert," I must admit my life flashed before my eyes. I felt as if I had been assigned a paper designed to judge and damn me forever. All those years of perversion training, all that practice, all those divine instruments of lace and latex would undergo a devaluation not seen since the Great Depression. My PBD's—Perversion-Backed-Derivatives—were on the block for a moral and karmic write-down. Oh no!

It was with great relief, then, when I actually read the paper, and discovered that it was only perverted acts that harm which suffer under Dr. Tapley's analysis. Tapley would redirect 30 years of philosophical literature by connecting morality and perversion. Defining perversion as "sexual acts that harm" (2), Tapley argues that any harmful act with a sexual dimension constitutes a distinct "harm of its own." Sexual harms are morally worse than harms which, *prima facie*, might appear morally equivalent: rape is worse than stabbing and molestation is worse than severe bullying due to their sexual dimension.

Why are sexual harms morally *weightier*? Tapley (2009, p. 173) argues:

[A] sexual harm strikes at the most fundamental interests we have as persons. A setback in these interests makes forming a self, or having any other interests impossible. Such a harm strikes at what it is to be, as opposed to the other kinds of harms which strike at what it is to flourish.

Sexual harms undermine us more seriously than non-sexual harms because of their effects on what Tapley names three "sovereignty interests" which precondition one's having, recognizing, and authoring a self. The sovereignty interests are (1) bodily integrity, (2) minimal intellectual awareness, and (3) emotional freedom. These "sovereignty interests," Tapley argues, supplement Joel Feinberg's account of eleven "welfare interests" because they are even more foundational. That is, sovereignty interests must be

satisfied before one can worry about the presence or absence of Feinberg's welfare interests. What's more, Tapley contends, Feinberg's welfare interests are requisite only to a person's flourishing—whereas sovereignty interests are requisite to the self existing at all.

Tapley's argument then returns to the rape and molestation examples to elaborate briefly on why these harms are worse than stabbing and bullying. Sexual harms, she says, are more intimate and involved than the others because by frustrating the sovereignty interests they impede the creation or maintenance of what Tapley (2009, p. 176) refers, metaphorically, to "the bedrock of the person." Thus, sexual harms are worse.

### *Are Sovereignty Interests Really Prior to Welfare Interests?*

The first question to raise is "Are sovereignty interests really prior to welfare interests?" Tapley's account enumerates eleven of Feinberg's "welfare interests" and asserts that while they are all important, they are not fundamental. Indeed, they do not "go far enough" because they would protect flourishing rather than living in some more fundamental sense. I will make two points about this.

First, on my understanding, Feinberg's welfare interests do mean to protect life at its "bare minimum." This is why Feinberg (1984, p. 37) states that welfare interests are "the very most important interests a person has, and cry out for protection, for without their fulfillment, a person is lost." Harm to welfare interests, Feinberg (1984, p. 204) adds, likely damages one's "whole economy of personal interests." Such welfare interests seem, then, to be the basic requisites of a man's well-being though they cannot provide a recipe for the whole of that well-being.

Second, Tapley's project presumes that Feinberg's "welfare interests" have not reached down to fundamentals of human living. To me, it sounds like they have—particularly when he argues that we would be "lost" without these basic requisites. One way to judge whether Tapley's sovereignty interests underlie Feinberg's welfare interests is to examine her proposed interests in light of Feinberg's.

### *Tapley vs. Feinberg*

Tapley's (2009, p. 176) first sovereignty interest, "bodily integrity" is the "power to control what happens in and to our bodies" and ultimately "control over the boundaries of the physical manifestation of the self." Feinberg, however, does list a welfare interest in "the integrity and normal functioning of one's body" (Feinberg's third interest, following Tapley's

## *Comment on Tapley's "What is Wrong with Being a Pervert"*

enumeration). What else could Feinberg have meant by "integrity" than what Tapley means by it?

Tapley's (2009, p. 176) second sovereignty interest, "minimal intellectual awareness," intends to protect one's capacity or potential "to conceptualize the self" and "contextualize and give meaning to pleasure and pain." While Tapley claims in a footnote not to be "attempting an argument for personhood" her claim that this interest as foundational implies something metaphysical. Like Tapley, I resist making claims about the metaphysics of personhood; however, I am less reluctant to describe what a person needs to grow. I see Tapley's interests as derivable from several of Feinberg's welfare interests: the one protecting minimal intellectual acuity (fifth interest), emotional stability (sixth interest), and a modicum of freedom from interference and coercion (eleventh interest). As I am someone who finds his own identity shaped through transaction with others, I would add Feinberg's interest for normal social intercourse and sustained friendships to the list (eighth interest). Tapley's third sovereignty interest, "emotional freedom," is the "absence of absorbing mental anguish, fear, terror, present or remembered, actual or threatened." Like the second sovereignty interest (in intellectual awareness) this strikes me as something complex, derivable from Feinberg's interests in emotional stability (sixth interest), a tolerable social and physical environment (tenth interest), and freedom from interference and coercion (eleventh interest).

So far I have argued that Feinberg's welfare interests seem basic to minimal living, and Tapley has not convinced me why they are not this basic. Tapley's sovereignty interests do not seem more fundamental than Feinberg's; rather, they seem like complexes built out of several of them. Without metaphysical arguments about the nature of personhood—which she ruled beyond the compass of her paper—I cannot see how she can justify her claim that sovereignty interests underlie welfare interests. Her paper's late assertion that damages caused by rape and molestation harm "our psyche," "our Cartesian I," and "the core self, this bedrock of the person" belie her claim not to wax metaphysical, and offer some insight into her deeper convictions about the nature of persons (Tapley, 2009, p. 177). But surely more could be said.

### *Are Sexual Harms Really The Worst?*

Let us change gears for a moment, and set aside the distinction between "welfare" and "sovereignty" interests. Tapley's overarching goal is to argue that sexual harms are morally special because they have a special

potential to thwart human development. Let us question what is so special about sex.

In “How Bad is Rape?” Harriet Baber argues that rape’s moral and psychological seriousness deserves both earnest attention and action, but that other harms do greater damage to a person’s vital interests. Considering the environment and obstacles with which an average person can expect to cope, a huge variety of harmful conditions and events can thwart one’s most fundamental interests—fundamental interests which are not sexual in kind.

Baber suggests several examples: (a) conditions of desperate material poverty—lack of food, clothing, or shelter experienced by the poor in Africa or the homeless in America; (b) conditions of constant and extreme political oppression, where citizens live in terror of secret police, warrantless searches, imprisonment, even torture; (c) incidents where someone has been maimed or crippled so as to damage and permanently limit physical health; (d) false imprisonment for many years; and (e) conditions where economic survival can only be gained through work which is unpleasant, routine, regimented, and underpaid.

In every case she lists, the harms are chronic and costly, both physically and mentally. Each can deprive someone of the life they would have lived. Rape, however, is different because it is episodic:

Rape interferes with a person’s freedom to pursue his own projects and is, to that extent, a harm. It does not, however, render a person altogether incapable of pursuing his ulterior interests.... While rape diminishes one’s liberty, it does not diminish it to such an extent that the victim is precluded from pursuing other projects which are in his interest. (Baber, 2002, p. 308)

While rape is certainly traumatic, trauma is not limited to rape. Other violent crimes—a stabbing, certainly—will also result in trauma. But because sexuality is one among many important aspects of the average person’s identity, being raped does not violate a welfare interest. She writes,

There is no evidence to suggest that most rape victims are permanently incapacitated by their experiences nor that in the long run their lives are much poorer than they otherwise would have been. Again, this is not to minimize the harm of rape: rape is a grave harm, nevertheless some harms are graver still and, in the long run, more harmful. (Baber, 2002, p. 308)

## *Comment on Tapley's "What is Wrong with Being a Pervert"*

Baber's point is that rape's sexual dimension cannot make it comparable to those harms which, in many cases, last a grueling lifetime.

The amount of time workers must spend at their jobs deprives them of the freedom necessary to the effective pursuit of their other projects.... [B]eing compelled to work is worse [than rape]...insofar as it chronically deprives the victim of the minimal amount of freedom requires it to the pursuit of other important interests which are conducive to his well-being. (Baber, 2002, p. 312)

A life of drudge-work violates the intellectual integrity of women and men, requiring just enough attention to fetter workers' intellects—but not enough to be interesting—such economic alienation violates intellectual integrity. In short, rape is a traumatic episode from which most (not all) victims recover. Alienated drudgery often amounts to the intellectual and physical decimation of an entire lifetime. Baber's point is, *pace* Tapley, that we can be severely harmed in non-sexual ways.

### *Conclusion: "Perversion" and "Sexual Harm"*

I wish to end on a brief terminological note. It remains unclear whether "sexual harm" and "perverted act" are equivalent in Tapley's mind. At one point Tapley defines a "perverted act" as "a sexual act that harms." At later points, a "sexual harm" is defined as "one arising from perversion." But these two definitions are not equivalent, and so Tapley's paper misleads in at least two regards.

If a "perverted act" is just "a sexual act that harms." then common understandings of perversion—a departure from sexual normalcy—must be forsworn. Her paper cites as exemplary cases rape and molestation. But *qua* act, rape is sexual intercourse (normal) plus violent coercion (harmful). *Qua* act, molestation may or may not be perverse (e.g., simple fondling—which, between consenting adults, would be "normal") plus disparity in age and/or coercion (harmful). Why not just avoid the word "perverted" altogether?

If the second definition is intended, then "sexual harm" arises from "perversion." Here, sexuality and perversity cannot be the same thing. Here, perversity is somehow primordial—some state of character fecund enough to spawn sexual harms. This opens the debate onto a large literature on perversion not germane to most of this paper.

**Works Cited**

- Baber, H.E. (2002) How Bad Is Rape? In Alan Soble (ed.), *The Philosophy of Sex: Contemporary Readings, Fourth Edition* (pp. 303-316). Lanham, Maryland: Rowman & Littlefield.
- Feinberg, Joel. (1984) *Harm to Others: The Moral Limits of the Criminal Law*. New York, NY: Oxford University Press.
- Tapley, Robin. (2009) What is Wrong with Being a Pervert? *Southwest Philosophy Review* 25(1): 173-9.