The pharmaceutical industry is made up of over 100 companies and the 11 largest brought in $711.4 billion in profits from 2002-2012 (Rome). This industry is well known for its deceitful practices. The pharmaceutical industry manipulates the information provided to consumers for its own gain through three specific practices: ghost writing, selective publication, and “me-too” drugs. Ghostwriting is when a writer writes papers that are officially credited to another person. This is not specific to pharmaceutical papers, it is used in some university research; however, it is more problematic and unethical in these cases because the funding does not have to be revealed. Selective publications occurs when pharmaceutical companies are able to decide which information they would like to put into a paper. The main issue here is the fact that more positive results are published verses negative results. And finally, “me-too” drugs are newer drugs that come on the market and piggyback off of drugs that are already available. These drugs are essentially the same as the older drugs, but they extend the patent the companies have on the older drug and keep the revenue coming in. This is deceitful because this information is being withheld from consumers. I will argue that through these deceitful practices, consumers are being treated merely as means, instead of ends in themselves because they are not being provided with the information needed to be treated as an end. I will show how the pharmaceutical companies treat consumers merely as means in conjunction with Immanuel Kant’s Categorical Imperative (Kant, 34-35). I focus on his formula of humanity to show how lying and deceitfulness results in treating a person merely a means. Moreover, since the pharmaceutical companies are not providing all of the information needed by consumers to be ends in themselves, the pharmaceutical companies are wronging consumers with their deceitful actions.

1. Kant’s Formula of Humanity

In this section I explain Kant’s Formula of Humanity. I focus on this particular formula because it provides a good explanation of why deceitful actions are wrong. The formula of humanity states that each rational agent is to treat another as an end in themselves, not merely as a means. To treat a person as an end in themselves is to treat him as a person with his own plans and goals. On the other hand, to treat someone as a mere means is to treat him as a mere tool with no value beyond that. To better understand this formula, there are three points that need to be explained. First, we can use others as means to our ends. Obviously we use others in every aspect of our lives to further our goals: for example, the clothes we wear, the food we eat, the
cars we drive are all products of others’ skills and intelligence. What the formula of humanity prohibits is treating humanity as mere means to our ends; we must treat humanity as an end in itself. Second, humanity does not mean just humans. It is Kant’s way of describing our rationality. The third and final point is that the formula requires respect for humanity. Having respect for humanity means to respect the decisions made by a person. It includes Christine Korsgaard’s interpretation of Kant that the concept of reason in how to respect another (Korsgaard). She says that to treat another with respect is to treat him as if he were using his own reason, regardless if he is wrong or mistaken, we should assume he has done it with good reason. Having respect for a person also means that we owe him the attitude that he probably has good reason for his actions. It is his right that we do not take an attitude toward him that regards him as not in control of himself. This sets us up to understand how to treat another person as an end and not merely as a means.

To treat someone as an end is to recognize that a person is a free cause or a first cause. This means that a person decides for himself to what he will contribute. If he would like to contribute, then he himself will initiate the causal chain. For instance, if I am asked to come into work on my day off, I am given the chance to contribute to the causal chain; if I want to go into work then I will agree and initiate the causal chain. The alternative would be for my boss to assume that I want to work on my day off, put me on the schedule, and then call me when I do not show up at the appropriate scheduled time. In this instance, he would not be giving me the chance to initiate the causal chain. This is an example of treating someone as merely a means. I must be respected for this decision to not work; I could really use the money; however, my boss would have to assume that I choose not to with good reason.

To treat someone merely as a means is to treat him as a tool. A tool is not a first cause, but rather a mediate cause. The mediate cause helps to form the causal chain by acting as a link in it, or as a tool. This tool is used by the first cause to achieve its end. Korsgaard claims there are two essential characteristics of a tool: a tool is there to be used and it does not control itself—it does not direct its own nature, it is directed by something else (Korsgaard). Therefore, a person cannot be a mediate cause and be treated as an end. The first cause initiates the causal change, or determines what will happen. Therefore, anything that prevents you from making the initiating decision is one that treats you as a mediate cause, instead of a first cause. This is easier to see using the example of the lying promisor.
Consider this example: I ask to borrow $10 and I promise to pay you back. You agree, thinking that I will pay you back. However, I have no plans to ever repay you. I am making a lying promise to you to achieve my own personal end. I am the first cause and you are the mediate cause. As Korsgaard explains, I am using your reason like a machine, I push the right buttons to get what I want from you. You are the link in my chain to get my end, in this case, the $10. In this situation, to treat you as an end, I would have to supply you with the information that I would not be paying you back. You could be completely happy to give me $10; but I do not allow you to make that decision for yourself. I am taking you out of the equation, and instead, I am implementing the lie to get my desired end. This case shows how a person can treat another as a mediate cause.

Korsgaard raises a good point from this, “physical coercion treats someone’s person as a tool; lying treat someone’s reason as a tool” (Korsgaard). She is claiming that when someone lies, his reasons are used as a means to achieve a deceitful end. The reasons are the way that the liar gets what he wants; this is similar to how a person is used as a tool in physical coercion. The person is using his body to alter the other person to help achieve his own end. Reasons are used as the link in the causal chain to connect the initiator’s desires to his particular end. So if reasons can be used to deceive a person, then the lying promisor case demonstrates how lying is a deceitful action.

To come full circle, to treat a person as an end in himself is to acknowledge them as a rational being. A rational being gets to use their own reasons to think and ultimately choose what to do. To respect a person as a rational being is to present him with the facts, and let him decide if he is going to contribute to your end or not. In the end, it is his choice; you can try and convince the person with an argument but you can never use deception or force. There is never a good reason to take a decision out of another’s hand, as Korsgaard reiterates; it is only permissible to lie to a wrongdoer, but that does not apply to this argument.

From here it is easy to see how deceiving a person is clearly a case of treating someone as a mere means. When you lie to another person, you are always deceiving them, but when you deceive them you are not always lying. The lying promise case shows how a person can be deceived. When I ask you for 10 dollars and promise to pay you back, I am not allowing you to fully participate in the decision; this is a deceitful act because I am treating you merely as a
means. If I were to treat you as an end, I would tell you that I need 10 dollars and that I will not be paying you back. Then I would be allowing you to decide on your own if you would like to participate in this decision. And this would not be a deceitful act. According to Korsgaard, any attempt to control the actions and reactions of another person is treating them as a means; unless you appeal to reason, then you are not treating him as a means. This is treating him as a means because you make him into a mediate cause; no longer does he make decisions for himself based on his own reason, but instead you control his decisions. This is not treating him as a rational being with his own ends. This is how the pharmaceutical companies act; they do not lie to their customers, instead they do not give them the whole truth. Here is an example that will help to clarify what I mean by deceiving, I would call it the cunning shopping trip case.

Suppose my sister calls me and asks me to take her to the grocery store for a few items. But, while we are out, she asks to stop quickly at the mall, the library, and the pharmacy. When she initially called me, she knew that she needed to do more than run quickly to the grocery store, but she also knew that I would not take her if I knew she wanted to do all of these other errands. As a result, she told me only half of the truth; she told me that she only wanted to go to the grocery store knowing that I would oblige. In this case, she is not telling me the whole truth nor is she lying. But she is being deceitful because of this. She is not allowing me to contribute to the same end as her. Instead she is using me as a mediate cause to achieve her end. If she were to have told me from the beginning that she wanted to run all of these errands and I still agreed to take her, then she would have been allowing me to contribute to her end as a first cause. I would have been presented with information and reasons and then been allowed to make my own decision to contribute to her end. However, this was not the case, so she treated me merely as a means.

2. Applying the Formula of Humanity to the actions of Pharmaceutical Companies

Consumers of many prescription drugs are deceived because they are treated merely as a means. The practices of pharmaceutical companies are often deceitful because important information is withheld from the consumers that is vital to their making an autonomous decision.
There are three main ways by which pharmaceutical companies withhold information from consumers: ghostwriting, selective reporting, and “me-too” drugs.

Ghostwriting is very prevalent in pharmaceutical papers. The basic outline of this practice is as follows: pharmaceutical companies hire a medical education and a communication company to write a paper that favors their product, the hired company then hires a well-known academic to publish this paper under his name without disclosing the true origin (Moffatt, 18). The sponsors of the paper are able to dictate its content; whether it's to highlight or to establish a new disorder or to talk about the benefits of a new drug on the market. Ghostwriting is a deceitful practice used by pharmaceutical companies as a marketing tool. Since the true origins of the paper are not presented, the articles appear to come from a disinterested source (Schriger). So many papers are sponsored by the pharmaceutical industry, that other papers by ghostwriter are commissioned to look like they are from sources not associated with the pharmaceutical companies. The harm here comes from the information these articles convey. In the case of Fen-Pen, a diet drug, Wyeth marketed the drug by ghostwriting articles exaggerating the dangers of obesity and the effectiveness of Fen-Phen (Montaner). The drug was pulled from the market after it was linked to primary pulmonary hypertension and valvular heart disease. With the help of ghostwriting, pharmaceutical companies are also able to manipulate cited research. Ghostwriting enables pharmaceutical companies to write papers under false names, without disclosing origin, and pharmaceutical companies also fund a great deal of the research that is cited.

Richelle J. Cooper conducted a study of pharmaceutical advertisements and found that 58% of the original research cited was sponsored by or had an author affiliated with the product’s manufacturer. Between 1981 and 1990, 196 new chemical entities were approved by the FDA, 92% were developed by pharmaceutical companies (Angell). Industry sponsored research is a way that pharmaceutical companies deceive its consumers. It is deceitful because the results from industry sponsored research are more likely to be favorable for the researched drug (Ventola). When pharmaceutical companies sponsor the research, they have more control of how the studies are conducted. For example, they have control over the developmental strategy, trial design, trial implementation, interpretations of safety and efficacy, and its publication. Controlling these aspects, pharmaceutical companies are provided more opportunities to control the outcomes of the published studies. This has been proven in a study conducted by Melander et
al. In this study, the authors show that pharmaceutical companies are more likely to publish positive results more often than negative results.

Melander et al. compared published versions of trials for five selective serotonin reuptake inhibitors (SSRI) antidepressants. The studies that they looked at were ultimately submitted to the Swedish regulatory authority in order to get marketing approval. Melander et al. showed that studies demonstrating positive effects were published as standalone publications more often than negative or non-significant results. Along with that, the authors found that many publications used statistical methods that are more likely to yield positive results. For example, drug companies will compare the new drug to an older version with a lower dose. This will yield skewed results because the new drug will look more effective, when in reality, it is just unfairly compared to the older drug. Lastly, the authors found that 21 out of 42 studies were used to support two publications per study and three studies supported five publications each. This is problematic because consumers are lead to believe that there are more positive results and less negative side effects. This information is shown to the consumers through a specific type of advertising.

Pharmaceutical companies broadcast the favorable results through direct-to-consumer advertising. Direct-to-consumer pharmaceutical advertising (DTCPA) is an attempt made by a pharmaceutical company to promote its prescription products directly to patients via the popular media. DTCPA is broadcasted throughout mass media; including television, print, radio, and the Internet. These advertisements are virtually unavoidable. DTCPA is an attractive method for pharmaceutical companies to broadcast their research finding because of the amount of time consumers watch the television or listen to the radio. Based on average television viewing in the United States, the average adult is exposed to 100 minutes of DTCA each year for every one-minute spent with a doctor.

It is not surprising that pharmaceutical companies want to publish favorable results. Ghostwriting allows pharmaceutical companies to fund research and then publish favorable results, while masking their true origin. My point here is that pharmaceutical companies have an ever prevailing hand in the information that consumers are given about prescription drugs. If a product appears good and helpful to consumers, then it will be more profitable. However, since
unfavorable information is published less frequently, then the consumers are being reduced to a mediate cause. The pharmaceutical companies are attempting to control the consumers’ reactions to advertised drugs. The ads that consumers see contain endorsements generated by the companies’ that created the drugs. That is clear deception. The facts are not being put before consumers in an honest fashion. Rather they are just given the favorable results of studies, not both the positive and negative results needed to make an informed decision. An accurate decision can be made when a person is given the positive and negative aspects of the proposed option. Without both sides, the person is only being given half of the truth; an honest decision cannot be made in this situation. This parallels my example of my sister and I going shopping. She intends to do many errands while only telling me she wants to go to the grocery store. I cannot give an honest answer if I want to take her to the grocery store because she does not give me all of the information about what this mini trip entails. This parallels the effect that pharmaceutical companies have on consumers when the most favorable study results are published. Therefore, the pharmaceutical industry is treating the consumers merely as a means because the consumers are not given the full information about the drugs to decide if they want to initiate a causal chain.

These are drugs that have been changed in some way but are no more effective than drugs already on the market to treat the same condition. This is a problem for example, from 1998-2002, the FDA approved 415 new drugs, 14% of these were truly innovative, 9% were old drugs that had been changed in some way that yielded significant improvement, and 77% were “me-too” drugs. Pharmaceutical companies have great incentives to produce “me-too” drugs. Another issue involves the ways in which pharmaceutical companies use “me-too” drugs.

One reason that pharmaceutical companies are eager to produce “me-too” drugs is that these drugs extend a profitable patent. Pharmaceutical companies have blockbuster drugs that bring in a big portion of their revenue. It is difficult to follow a blockbuster once its patent runs out. So to avoid losing the profits and the market it has already created with its blockbuster, the pharmaceutical company comes up with a “me-too” drug. This is essentially the same drug as the blockbuster, just slightly different. Pharmaceutical companies do not want to lose their customers, so when a new drug comes out, the companies want to shift their customers to that new drug. When a patent of a drug expires, the generic manufacturers are allowed to create
generics\textsuperscript{2}. The pharmaceutical industry wants to prevent this as much as possible to avoid a loss of revenue. A perfect example is Nexium, a heartburn drug of the proton pumps inhibitor type, created by AstraZeneca that came onto the market in 2001. It came on just as AstraZeneca’s blockbuster drug, Prilosec, was scheduled to go off patent. Prilosec healed 84% of stomach sores in its patients suffering from chronic heartburn and had around $6 billion in annual sales worldwide. It was highly unlikely that AstraZeneca would be able to get a better drug on the market. So instead, AstraZeneca opted to invest $120 million into studies of esomeprazole, an enantiomer of omeprazole that showed promise to improve Prilosec’s omeprazole, with hopes to show that esomeprazole, later to be called Nexium, would be more effective than Prilosec. Two of the four studies did not show any improvement of Nexium over Prilosec. The other two studies did show that Nexium was more effective; however, this was with Nexium at double the dose of Prilosec. And finally, only one study showed that Nexium was 3% better than Prilosec at healing ulcers at an equal dosage. Even still, Nexium was approved in 2001. The FDA permits this because to get a patent of a new drug, the pharmaceutical Company just has to show that the new drugs are as “effective” as the drugs already on the market.

The second reason pharmaceutical companies have great incentives to produce “me-too” drugs is to get into the market to compete with a competitor’s blockbuster drug. The market for profitable drugs proves to be lucrative and expandable, so other drug companies want to come in and make a profit too. Merck’s Mevcor was the first drug introduced to lower blood cholesterol levels. In 1987, it truly was innovative based on the research; Zocor, Lipitor, Pravachol, etc. quickly joined it. No one is essentially different from the other at comparable doses, but to get a foot into the market, these companies structure their research to get slightly different outcomes. For example, a statin could be tested for how well it prevented future heart attacks in people who have already had one. These medicines are not new products, the studies are just manipulated to show something different.

“Me-too” drugs are another way the pharmaceutical companies deceive their customers. Instead of accepting the loss of revenue from a blockbuster drug and having it go to a generic drug, a pharmaceutical companies try to keep making money on it. Consumers are lead to believe that the new drug is better than the replaced one. Therefore, consumers pay the higher
price for the new drugs. For example, when Nexium was introduced into the market, it was $5 per 20 mg pill. Prilosec was only $4 per pill before it expired and the generic omeprazole prescription was from $1.1 to $3.8 per pill. It seems absurd that a person would pay $5 when he could get the generic for twenty percent of the price. “Me-too” drugs are not only deceptive because they piggy back off of the current market drugs, but in particular because the consumers are not being provided with all of the information about this practice.

“Me-too” drugs are patent extenders for the pharmaceutical companies. These “new” drugs are put onto the market just as the old drug is about to come off of the patent; as explained above with Nexium and Prilosec. Although this practice seems to be a waste of time and research, consumers are deceived because they are lead to believe that the new drugs are going to be better. If pharmaceutical companies are going to keep making “me-too” drugs, then these companies need to inform the consumers that the newer drugs are not really more beneficial. The pharmaceutical companies have the burden of proof in this situation. The consumers should not have to educate themselves about the new products; the pharmaceutical companies have the responsibility to provide the consumers with this information. This might be easier to understand when applied to the cunning shopping trip.

When I agree to take my sister grocery shopping, I am agreeing to taking her to the grocery store; I am not agreeing to take her all around the town to window shop. I should not have to ask where we are going, if she wanted to go to other stores, she should have to either inform me of her plans ahead of time or ask me if I was willing to make the additional stops. Once again, the pharmaceutical companies are treating their consumers as mediate causes. This is apparent because the consumers are not given all of the information needed to make an autonomous decision. The amount of information needed to make an autonomous decision is enough to not be blindsided when new information is uncovered. For example, suppose you need to go to the dentist to get two teeth removed. The dentist says that he can do one tooth today and another one tomorrow; it will minimize your pain and you will be a lot happier. Imagine that he keeps enhancing the idea of getting these teeth out on separate days. You are a bit unsure about what to do, but you trust your dentist and agree to do this over two days. Fast forward, to the second day and you are going to pay at the reception desk and the receptionist is surprised that
you did the two days when you could have had them both out on one day. You would be shocked to realize that it would have saved you hundreds of dollars. This is vital information that you would have needed to make an autonomous decision. The dentist treated you as a mediate cause because he did not tell you all of the information that was needed for you to make a decision that was right for you. He could have thought that it was better for you to do it over two days or maybe he wanted the extra money; but he was not allowing you to make that decision for yourself. This is why pharmaceutical companies need to present their consumers with all of the information needed for them to make an autonomous decision. The pharmaceutical companies do not allow the consumers to make a decision about which drug they would prefer. Some consumers may want to stay on the older drug because it is cheaper and some may want the newer one just because it is newer. But that is not up to the pharmaceutical companies to decide. The pharmaceutical companies are responsible for disclosing all information.

3. Objections and Replies

There are three main objections to my arguments: that pharmaceutical companies have the same producer versus consumer relationship as do all product supplying companies, the second is that pharmaceutical companies produce a product to make a profit, and third that pharmaceutical companies do not have to supply all of the information, but rather the consumers have to educate themselves. My reply for all three is generally the same claim; pharmaceutical companies produce a product that is highly specialized. This product is more like a service and for this reason should not be thought of as a normal consumer good.

The first objection could be that the pharmaceutical companies have a producer versus consumer relationship with consumers. I would reply by suggesting that we shift our thinking of the current relationship of pharmaceutical companies and consumers to one of pharmaceutical companies providing a highly selective product. I suggest this because pharmaceutical companies provide products that are highly specialized and like a doctor are only called upon in a time of need. We get prescriptions when there is something quite wrong, wrong enough for us to seek out the attention of a doctor. Consider the example of pain relief, we could go straight to our doctor for prescription pain medications; however, most of us try over-the-counter options first. This is because we wait until the situation is severe enough to seek out the attention of a doctor. We use the service of a doctor to receive a prescription, a highly selective product, to
heal or soothe our ailments. This is why our relationship with pharmaceutical companies cannot be consumer versus producer. We go to pharmaceutical companies to provide a service that nothing else can provide. It is highly specialized and not a usual product, if it were, we would be able to get it over the counter.

The second objection could be that pharmaceutical companies act like all other companies when they produce to make a profit. However, my reply would be that this is wrong because their product is highly specialized. This is very similar to the first objection, but, here I am arguing that since the product is highly specialized then it should not be produced and advertised for a profit. One could argue that a shampoo company does the same type of advertising, trying to appeal to the consumer, to make a profit. However, it is not the same as pharmaceutical companies because I am more able to choose to contribute to the end of the shampoo company. Take for example that my favorite brand of shampoo is John Frieda. It works the best on my hair and I swear by it. I do not mind contributing to the end of the company that makes this shampoo because I love the product. Yet, if I go to buy more shampoo and find that they have raised the price, then I can decide if I want to contribute to their end or not. I can buy a cheaper alternative or even make my own shampoo if I want to. But this is not the case with the drugs that pharmaceutical companies produce. I do not have a choice if I do not want to contribute to their end. I do not have this choice because the drug is something that I need to survive. In some cases, consumers could probably live without a prescription, but it would greatly hinder their lives. They would not be able to live out their lives as they choose. These people would not be able to live autonomously. Altogether, it is clear that there is a different relationship at play here. Pharmaceutical companies produce a product that is highly specialized and monopolized and this product affects the lives of its consumers; so it is not the same to say that they can advertise like other companies for a profit.

A third objection might be that the consumers should be the ones to educate themselves if they want all of the information. However, consumers should not have the burden to research all of the necessary information. Even if they do take on that burden, the information is not well publicized. So, it would be difficult for the consumers to get the information needed to make an informed decision because it is difficult to get that information. The research and findings are embedded in journals that are either not easily accessible to most consumers, but this information can also be difficult to understand. If consumers want to look into which drug is better, they will
find articles probably written by ghost writers or articles with research funded by the pharmaceutical companies. This creates an endless cycle. The information needed to make an autonomous decision needs to come from the source, the pharmaceutical companies. We go to the doctors because they are trained to know the symptoms and provide a diagnosis/treatment. They give us information that we cannot get ourselves because it is highly specialized. We can easily Google which car we think is better because we can look at the specs. We can see what motor it has or special technological upgrades. We can use the information given to make a decision that is best for our lives. This is not the case with prescription drugs. Consumers do not have the option to find the information out for ourselves. Therefore it is not a valid objection that the consumers should find the information out for themselves because it is unattainable.

Altogether, pharmaceutical companies wrong consumers with two deceitful actions: first these companies publish favorable results through ghostwriting and selective reporting and second, they focus their attention on creating “me-too” drugs to keep up their profits. Both actions are deceitful because pharmaceutical companies are not disclosing the whole truth to consumers. This prevents the consumer from making an informed decision. An informed decision can only be made when all of the facts are presented to him and he is left to make a decision based on that information. This was illustrated by the cunning shopping trip example. My sister clearly deceives me into supporting her end by leaving out the vital information that she had multiple errands to run, not merely the one she disclosed to me. I could not accurately contribute to her end because she did not give me all of the information. “Me-too” drugs are deceitful in the same way because the pharmaceutical companies have the burden to provide the consumers with the information instead of the consumers conduct their own research. Pharmaceutical companies need to provide the consumers with the information because the products are highly selective, much like going to doctors. We expect our doctors to give us all of the information needed to make an informed decision. Since the consumers do not have all of the information needed to make an autonomous decision, they are being treated merely as a means. Kant shows with his formula of humanity that we are wronging others if we do not treat them as ends in themselves. Since pharmaceutical companies treat consumers merely as means, the consumers are being wronged.
This is an excellent paper. It was well written and researched. I learned a lot from it. Your application of Kant is accurate, and your cunning shopping trip example is both fun and illustrative. I am only telling you what you already know, but fix the references. See some of my comments above—anything you disagree with, disregard. The paper is in very good shape already and only needs a few very minor tweaks.

Best wishes,

JF
Reference:

4. Korsgaard, Creating the Kingdom of Ends, 141.
5. Korsgaard, *Creating the Kingdom of Ends*, 139-140.
14. Generic drugs are drugs that are comparable to the name brand item.
Selecting for Disabilities: Selection versus Modification (Draft)

Joshua Shaw

[Note for PAPC Working Group on Ethics. My submission is longer than it should be. Feel free to focus on parts of it. The paper’s main arguments are contained in §2 and §3. §4 is more tangential—some high altitude, fly-by-the-seat-of-your-pants philosophizing. Feel free to focus on §2 and §3.]

1. Introduction

A 2006 article in Fertility and Sterility sparked controversy when it revealed that 3% of the preimplantation genetic diagnosis (PGD) clinics it surveyed could report cases where parents used PGD to identify embryos that presented markers for disabilities such as deafness and dwarfism for implantation (Baruch et. al, 1055). Critics argued that parents who use PGD to select for disabilities act unethically by inflicting disabled lives on their children. Advocates in the deaf community responded by claiming that deafness should be considered a distinctive culture, and that deaf parents are within their rights to use assisted reproduction to give birth to deaf children.

This essay considers one argument used to defend parents who use PGD to select for deafness and other disabilities.¹ Some argue a distinction should be drawn between genetically modifying embryos to possess disabilities and using PGD to select embryos that present markers of them, and that the former is unethical because it inflicts avoidable harms onto the resulting children whereas the latter is permissible because it merely allows children with potentially impaired abilities to have a chance to exist. My goal is to raise doubts about whether a meaningful moral distinction can be drawn between modification and selection in the debate over selecting for disabilities.

¹ See Melissa Seymour Fahmy’s “On the Supposed Moral Harm of Selecting for Deafness” for a superb overview of the debate over selecting for disabilities.
I point out that arguments that distinguish modification from selection can be understood in two ways. One is to read them as presenting a *No Harm, No Foul* argument. Another is to read them as presenting a *Harming Versus Letting Be* argument. Neither succeeds, however, either in establishing a meaningful moral distinction between modification and selection, or in showing that the second is morally permissible in contradistinction to the first.

2. **No Harm, No Foul**

I begin with what I believe is the intended interpretation of arguments which distinguish genetic modification from genetic selection to defend parents who select for disabilities. I shall call this the *No Harm, No Foul* argument.

No Harm, No Foul’s strategy is to use the nonidentity problem to argue that genetic selection does not harm the resulting child.\(^2\) The nonidentity problem is a puzzle in ethics that arises in cases where (1) a choice will bring about the existence of a future person (2) whose existence will be flawed (3) yet worth living (where it is better for the individual to exist than not). An often-used example is parents who chooses to conceive a child knowing it will face hardships, such as mental disabilities (Brock 270) or a “bad start in life” (Parfit 358), that could be avoided if they delayed pregnancy. Many would find it appropriate to criticize parents who inflict avoidable hardships in this way. However, it is difficult to explain *how* they have harmed their children. If a fourteen-year-old waits until later in life to become a parent, to use Parfit’s example, her child may have better opportunities, owing to her maturity, financial resources, and so forth, yet her son or daughter will also be a *different person*, created at a different time, using

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\(^2\) Derek Parfit is often credited with introducing the nonidentity problem in *Reasons and Persons*. See Parfit 359. For his part, he credits Greg Kavka as his inspiration. See Kavka 93-223 for what Kavka calls “the paradox of future individuals”
different gametes, than the child she would have conceived at fourteen. Supposing then that she chooses to become pregnant at fourteen, it is difficult to explain how she harmed *this* son or *this* daughter since the alternative for this individual is not to exist.

Some argue that similar considerations apply to selecting for deafness. A parent who uses PGD to select embryos that present deafness cannot be said to harm the resulting child since the alternative is not to exist. “The deaf child,” Julian Savulescu writes, “is harmed by being selected to exist only if his or her life is so bad that it not worth living” (Savulescu, 772). Clearly deafness is not such an extreme case—a violation of what has come to be called “the nonexistence condition” (Steinbock 85). Thus, if there is anything morally wrong with selecting for deafness, it cannot be based on a harm done to the child in question. Mark Greene and Steven Augello describe this as a “no harm, no foul argument” (Greene and Augello, 133). Parents who use PGD to select for disabilities cannot be said to harm their children, thus they cannot be said to morally wrong them. No harm, no foul.

Some ethicists have used this approach to argue for a moral distinction between genetic modification and genetic selection. I quote from Melissa Seymour Fahmy:

The first thing to note is that the ordinary account of harm will not be useful in the deaf case…. As many authors have acknowledged, the child in question is not injured or made worse off by the selection or resulting birth, given that the only alternative for the child would be to no exist at all. This is an important distinction between genetic selection and genetic modification. In cases of selection, the resulting child has not been *made* deaf, or *designed* to be deaf; rather, a particular gamete or embryo has been chosen in virtue of its possessing the genetic marker for deafness (Seymour Fahmy, 129).

A similar point is suggested by Matti Häyry:

Put simply, parents who select a deaf embryo… *give that specific potential person a chance to live*, with the qualities that individual happens to have. By contrast, parents who deafen a hearing child… *change the qualities of an already existing individual*. (Häyry, 510).
Häyry challenges the claim that letting parents select for deafness is morally equivalent to letting them deafen a hearing child. Deafening a hearing child harms it because it “changes the quality of an already existing individual,” whereas selecting for deafness doesn’t harm the individual but allows a “potential person a chance to live.” Seymour Fahmy’s suggestion is that genetic modification amounts to prenatal deafening since it too “makes” a child become deaf, imposing a condition that may limit the child’s opportunities, whereas genetic selection merely allows embryos with certain genetic markers to exist.

It’s unclear, however, whether the nonidentity problem supports this distinction between modification and selection. Consider Greg Kavka’s slave child case, in which a couple agrees to conceive a child who will be sold into slavery for $50,000 (Kavka 100). Clearly, it’s unethical to conceive a child for the purposes of selling it into slavery. Yet the alternative for the slave child is not existing, and slavery, though horrible, is arguably not so bad that a slave would be better off not existing. The slave child case amounts, therefore, to something like a paradox—a case where most would want to say that the child is harmed by their parents but where, apropos the nonidentity problem, it is difficult to explain how they can be since they are not made worse off by their parents’ decision.

The slave child case strikes me as situation where parents use unassisted coital reproduction to “make” or “design” a child with express intent of imposing a hardship onto her. Yet the nonidentity problem applies. Moreover, it is not difficult to create a modified version of it that includes genetic modification. Imagine a science fiction riff on Kavka’s slave case—one where parents use their gametes to create “batches” of children via IVF to sell into slavery and use modification to ensure the children will have disabilities, such as deafness, because disabilities render slaves more dependent on owners, and buyers are willing to pay more for this
service. Here, there is no question about parents “making” or “designing” a disability, or “changing” an embryo’s genetics, yet the nonidentity problem applies since the children are, arguably, not made worse off given that the alternative is not existing.

Here I find helpful to borrow an observation Bonnie Steinbock makes about the nonidentity problem. Steinbock notes that nonidentity cases have an all-or-nothing element that distinguishes them from other examples of prenatal harming. A mother can reduce the risks of various birth defects by refraining from smoking or drinking during pregnancy. But the slave case and the fourteen-year-old-mother case are scenarios where the only way to spare a harm from befalling an individual is to prevent their birth. “It’s a life of disadvantage,” Steinbock writes, “or no life at all” (Steinbock, 84). It’s this all-or-nothing element that produces the nonidentity problem. For most people share the intuition that hardly any conditions are worse than not existing, and, consequently, the nonidentity problem seems as if it can excuse reckless and injurious reproductive decisions.

The point I wish to emphasize is that the nonidentity problem is neutral with regard to other moral considerations, such as whether parents play a direct or indirect role in causing the hardships that befall their future children, or the motives behind their choices. It doesn’t matter whether the parents’ decisions are based on malicious self-interest (the slave case) or negligence (the fourteen-year-old) or parental love (deaf parents who genuinely wish to share their culture with their children). Nor does it matter what reproductive methods are used. It can be coital reproduction (the fourteen-year-old, the slave child case), a combination of IVF, PGD, and artificial insemination (selecting for deafness), or a combination of IVF, genetic modification, and artificial insemination (my modified slave case). So long as the alternative for the resulting child is not existing, the nonidentity problem will apply.
Now, someone could argue it is precisely because genetic selection involves all-or-nothing choices that the nonidentity problem applies, whereas the same cannot be said of genetic modification. A parent who uses PGD to identify genetic markers for disabilities is faced with a choice: implant these embryos or do not. By contrast, a child who is “designed” to possess a disability through modification could object that her parents were not faced with an all-or-nothing choice. There was a third option: they could have taken steps to produce the same child but refrained from modifying its genetics. Genetic modification is therefore more like what happens when mothers smoke or drink excessively during pregnancy, where they increase their child’s risk of suffering hardships and where these harms could be avoided by not smoking or not drinking.

This is a reasonable reply. It is also, I think, the argument Savulescu, Häyry, and Seymour Fahmy intend to make, their rhetoric about “making,” “changing,” or “designing” disabilities notwithstanding. Unpacked, the argument is not that modification differs morally from selection because it causes or imposes a harm, but that selection cannot count as a harm because the child is not made worse off, given that the alternative is not existing, but that the same mitigating consideration does not apply to modification, thus modification can count as a harm. Parents who use selection can claim “no harm, no foul.” Parents who use modification cannot.

There are problems with this argument. The first is that it can be refuted through stipulation. Notice that the same observation applies to Kavka’s slave case. The child sold into slavery can object that her parents were not faced with an all-or-nothing choice—sell her into slavery or not create her—for they could have created her but not agreed to the slavery contract. Kavka’s reply is to stipulate that a different child will be produced if the parents do not agree,
either because they will not bother to conceive unless they profit from it, or because the timing and conditions under which they conceive will be different, resulting in a different child (Kavka, 100 n. 15). The same can be said of my modified slave case. Simply assume for the sake of argument that the parents won’t implant any of their genetically modified embryos unless they profit by selling the resulting children into slavery. The nonidentity problem would apply to these children even though they were created using genetically modified embryos, for each would be better off living a disadvantaged life than not existing.

No Harm, No Foul also leads to counterintuitive conclusions. For the argument does not exactly show that it is morally permissible to select for deafness but only that it is conditionally permissible given certain technological limitations. Imagine it becomes possible to use gene therapy to prenatally treat some forms of deafness. The decision to select for deafness would no longer be all-or-nothing. For the resulting deaf child could object that her parents were not faced with the choice of giving her a disadvantaged life or no life at all since they could have availed themselves of gene therapy. No Harm, No Foul leads therefore to an odd conclusion—selection is permissible in comparison to modification only on the condition that modification is not possible. Were it possible to modify embryos such that we could produce or remove markers for disabilities, parents could be said to harm children by not using modification to prenatally treat them, and modifying and selecting for disabilities would be equally wrong since both flout this obligation.

Seymour Fahmy tacitly acknowledges this point. At one point in her essay, she addresses the criticism that selecting for deafness violates the resulting child’s right to an open future. She rejects this criticism. However, she notes in her reply that in “the absence of gene therapy, there is no possible future in which the child in question could exist without also being deaf” (Seymour Fahmy 130, my italics). This reference to gene therapy is telling. It indicates that a child’s right to an open future is violated when parents do not use medical technologies to treat deafness, such cochlear implants or gene therapy should it become possible. However, this casts doubt on whether a meaningful moral distinction can be drawn between modifying embryos to possess disabilities and using PGD to select for them. Were it possible to treat deafness through gene therapy, both would equally violate the right to an open future.

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3 Seymour Fahmy tacitly acknowledges this point. At one point in her essay, she addresses the criticism that selecting for deafness violates the resulting child’s right to an open future. She rejects this criticism. However, she notes in her reply that in “the absence of gene therapy, there is no possible future in which the child in question could exist without also being deaf” (Seymour Fahmy 130, my italics). This reference to gene therapy is telling. It indicates that a child’s right to an open future is violated when parents do not use medical technologies to treat deafness, such cochlear implants or gene therapy should it become possible. However, this casts doubt on whether a meaningful moral distinction can be drawn between modifying embryos to possess disabilities and using PGD to select for them. Were it possible to treat deafness through gene therapy, both would equally violate the right to an open future.
Finally, it’s unclear whether the nonidentity problem vindicates the claim that parents who select for deafness do not wrong their children. Much has been written on the nonidentity problem, more than I canvas, but I would suggest that the secondary literature actually clarifies why it is wrong to select for deafness, and, moreover, why there is no significant moral difference on this issue between selection and modification.

One widely-held response to the nonidentity problem is to argue that analysis of it reveals that we wrong future persons when we violate what Steinbock calls “the substitution principle” (Steinbock, 41, 91). The substitution principles states, roughly, that we are obligated to not bring individuals into existence who will experience serious hardships if this outcome can be avoided by bringing other individuals into existence who will be spared them. For example, suppose future generations will face serious hardships if we do not conserve a natural resource. Suppose also that conserving it will lead different persons to be born, who will not face these hardships. It follows from the substitution principle that we are obligated to bring about the existence of the second group by conserving the resource. Similarly, the decision to select for disabilities violates the substitution principle, for it entails bringing individuals into existence whose impairments will constrain their life opportunities when others could be brought into existence by selecting different embryos.

Moreover, it follows from the substitution principle that nothing morally significant rides on the distinction between modification and selection. Indeed, this distinction appears to be a riff on a pair of cases used to illustrate the so-called “No Difference View” (Parfit 367, Steinbock, 87). Consider two scenarios. In the first, a woman who is pregnant, Angela, neglects to take a medication that will prevent her baby from being born with mental retardation. In the second, a woman who is considering pregnancy, Betty, is told to briefly delay becoming
pregnant until she no longer needs to take a medication that causes mild retardation. She refuses to wait. Many would say there is no significant moral difference between these cases, even though Angela harms her child whereas Betty may not since delaying pregnancy will result in a different child. The substitution principle explains why both act wrongly. Perhaps it is true that Angela harms her child. Perhaps it is true that Betty does not. Yet both flout their obligation to avoid bringing an individual into existence who will experience significant hardships when they can, without imposing substantial burdens on themselves, bring another individual into existence who will be spared them.

Notice how easy it is to construct similar cases for modification and selection. Imagine an “Angela” who causes her child to be born with mild mental retardation through genetic modification. Contrast her with a “Betty” who uses genetic testing to select only those embryos that present markers for mental retardation. Both violate the substitution principle. Far from absolving Betty of her culpability, by giving her grounds to deny she has wronged her child, the nonidentity problem sheds light on why Angela and Betty act equally wrongly, and, by extension, why nothing morally significant rides on the distinction between genetic modification and genetic selection for the debate over selecting disabilities.

Admittedly, this criticism assumes the truth of the substitution principle. However, the substitution principle has some claim to be relatively uncontroversial. Steinbock notes that both of the leading approaches to resolving the nonidentity problem accept it (Steinbock 41). Parfit espouses it on the basis of a consequentialist “non-person-affecting” solution. Jeffrey Reiman argues for it on the basis of a Kantian/Rawlsian “person-affecting” solution. Regardless of which framework one endorses, both lead to a conclusion that (1) denies that genetic selection
for disabilities is morally permissible and that (2) sees no significant moral difference on this issue between modification and selection.

3. Harming Versus Letting Be

Let me consider a second interpretation of the argument that there is a moral difference between modification and selection, and that modifying embryos to possess disabilities is unethical but using PGD to select embryos that present them is not.

I noted earlier that there is a rhetorical ambivalence in some formulations of No Harm, No Foul. Genetic modification is said to be unethical because it “makes” or “designs” or “changes” a being to possess a disability. Along these lines, consider this quotation from Seymour Fahmy:

What I wish to draw attention to is the direct causal connection between the parental decision to end a child’s formal education and the narrowing of the child’s options… Because a wider future was possible for these children prior to the parental decision, the decision can be said to render their future less open than it would have otherwise been.

The same cannot be said with regard to selecting for deafness. (Seymour Fahmy 130).

Seymour Fahmy’s aim is to challenge Dena Davis’s claim that selecting for deafness violates the resulting child’s right to an open future.4 Her intended argument is, I think, No Harm, No Foul. However, I am struck by her emphasis on the “direct causal connection” between parental decision and violations of the child’s right to an open future. Later, she states that the selecting for deafness does not “deprive the resulting child of opportunities he or she would have otherwise been able to pursue” but only elects to give birth “to a child with impaired abilities that may entail more limited future options” (Seymour Fahmy, 130). Such statements are at least suggestive of a different argument—one that has less to do with contesting whether the child is

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4 See Davis 64 for this criticism. See Feinberg 126 for more on the right to an open future.
harm or deprived of opportunities and, instead, raises doubts about whether culpability should be ascribed to the child’s parents.

Let me call this the Harming Versus Letting Be argument. Harming Versus Letting Be does not allege, based on the nonidentity problem, that a disabled child produced though genetic selection cannot be said to be harmed. Instead, it questions whether culpability should be ascribed to the parents. Amish parents who restrict their children’s education violate their right to an open future because this decision directly causes their children to have fewer life options outside of the Amish community. The same cannot be said of parents who use PGD to select for deafness, for PGD indicates that the resulting deaf child already possesses genetic markers that entail more limited life options. Parents who elect to implant an embryo that presents deafness do not rob the resulting child of an opportunity to hear music, or to participate in spoken communication, our primary method for communicating, they simply allow a child who in some sense is already deaf to experience life.

It’s worth noting that this argument avoids possible counterarguments to No Harm, No Foul. For example, one response to the nonidentity problem has been to introduce the idea of “non-comparative” harms—the idea that people can be harmed even when they are not made worse off. Seana Shiffrin gives the example of being struck in the head with a gold brick, where, presumably, one can claim to be harmed even though one may not be worse off if one comes to possess a fortune (Shiffrin, 120-135). Elizabeth Harman has argued on the basis of such considerations that parents who knowingly choose to bring disabled children into existence, when they can avoid doing so, non-comparatively harm them since these children will experience “pain, mental or physical discomfort, disease, deformity, [and] disability” even though they may not be “worse off” (Harman, 139). A proponent of a non-comparative account
of harm could challenge No Harm, No Foul, then, by insisting that selecting for deafness non-comparatively harms the resulting child.

This reply may not apply, however, to Harming Versus Letting Be, which accepts that a deaf child *can* be harmed but denies that the child’s parents are culpable. What PGD reveals is that the resulting deaf child *already* has been harmed by their genetics. The parental decision to implant the child’s embryo does not cause this possibly non-comparative harm. To use Häyry’s words, it simply lets a “*specific potential person [have] a chance to live*, with the qualities that that individual happens to have” (Häyry, 510).

My concern about this argument is that it is troublingly reminiscent of the fraught distinction between killing and letting die in the debate over euthanasia. Historically, many have held that it is morally worse to cause another person’s death as opposed to allowing them to die, and, consequently, that doctors should never directly assist patients in taking their lives but may allow them to die if patients choose to discontinue medical treatment. In one case, it is argued, a doctor harms a patient, violating their duty of nonmaleficence, whereas in the other the doctor is akin to a bystander, and the patient is harmed by their medical condition. Similarly, Harming Versus Letting Be claims that parents who use genetic modification cause harms to befall their children, whereas those who use PGD are like bystanders who use PGD to identify *already harmed* potential children.

James Rachels demonstrated some time ago, however, that nothing morally significant rides on the distinction between killing and letting die. He gives the example of a pair of killers, Smith and Jones, who plot to murder a child to receive an inheritance (Rachels 79). Smith drowns the child in a bathtub. Jones intends to do the same but discovers the child has already fallen and watches as the child drowns. Most would agree that Smith and Jones act unethically,
and equally so, even though Smith causes the child’s death whereas Jones lets it happen, a conclusion which suggests that nothing morally weighty rides on the bare distinction between killing and letting die.

A similar argument can be made against Harming Versus Letting Be. Consider three science fiction scenarios:

1. New Gilead is a theocratic dictatorship in which women are considered morally inferior to men. The government regulates reproduction to keep the number of women at a minimum. Because X-bearing sperm are heavier than Y-bearing sperm, centrifuges are used to separate the two, and Y-bearing sperm are almost exclusively used to inseminate handmaidens, a caste of female untouchables who are used as living incubators.

2. New Gilead is a theocratic dictatorship in which women are considered morally inferior to men. The government regulates reproduction to keep the number of women at a minimum. Because sperm-sorting methods are not 100% reliable, preimplantation genetic screening is used to ensure that XY embryos are almost exclusively implanted into handmaidens, a caste of female untouchable who are used as living incubators.

3. New Gilead is a theocratic dictatorship in which women are considered morally inferior to men. The government regulates reproduction to keep the number of women at a minimum. Gene modification is used to convert most XX embryos into XY, which are implanted into handmaidens, a caste of female untouchables who are used as living incubators.

Is 3 necessarily morally worse than 2 or 1 because the wrongdoers cause embryos to undergo changes that support their sexist eugenics program? I don’t see why. All three act from the same motives, with the same ends in view. All three appear to be equally reprehensible. Moreover, it seems ridiculous to suppose that wrongdoers in 1 and 2 could mitigate criticisms by insisting that they don’t really “cause” more men to be born but only “allow” them a chance to exist.

There are good reasons be skeptical, therefore, of harming-versus-letting-be. It may be the case that decisions to directly cause harms are statistically more likely to be accompanied by vicious motives, or are more likely to yield larger amounts of suffering. But in and of itself nothing morally significant rides on the bare distinction between causing harms and letting them
befall others. This point becomes easier to recognize with more extreme genetic disorders that violate the nonexistence condition. Couples who are carriers of Tay-Sachs disease have a one-in-four chance of giving birth to child with it. Presumably, it is unethical for them to take this risk through unassisted coital reproduction. But, so too, it would be unethical to use embryos which PGD reveals as having Tay-Sachs as one of four multiples in a round of IVF. Should the former be considered more unethical because the couples engage in a physical act that may be said to more directly cause a child to be born with Tay-Sachs, whereas the latter only runs a risk of allowing a potential child who already has Tay-Sachs to exist? On the contrary, both appear to be equally irresponsible, for both violate the nonexistence condition, a conclusion that implies that nothing morally significant rides on whether a parental decision causes an unborn child to one day experience a hardship or allows the child to experience one, all other things being equal.

4. The Moral Standing of Embryos

My goal has been to challenge the idea that a morally significant distinction can be drawn between genetically modifying an embryo to present a disability and selecting embryos that present them. One way to interpret arguments for this perspective is to read them as invoking the nonidentity problem to insist that parents who select cannot be said to harm their children. Another is to read them as distinguishing between harming and letting be to claim that culpability for the hardships that befall the children cannot be ascribed to their parents. Neither of these arguments succeeds, however, either in establishing a relevant moral distinction between modification and selection, or in showing that the second is more permissible than the first.
However, the instinct to draw these distinctions is not irrational. It is symptomatic of our uncertainties about the moral status of embryos. Human embryos have existed, of course, for as long as there have been humans. But the technologies we use to analyze, create, and interact with them are fairly recent developments, and, to a degree, embryos as objects of moral reflection are a new discovery. The debate over selecting for disabilities, and over selection versus modification, is symptomatic of our ongoing uncertainty about what moral descriptions befit human embryos. I wish to end, at any rate, by exploring this suggestion.

I noted that No Harm No Foul seeks to extend the nonidentity problem to the debate over selecting for disabilities. The nonidentity problem results from our conflicting intuitions about how to conceptualize obligations to future persons—persons who do not exist, whose existences will be brought about by our choices, and whose lives will be flawed but worth living. Are embryos created through IVF future persons? Certainly, many believe that fertilized eggs are not persons but will become them, once implanted, some time prior to birth. The decision to select an embryo that presents deafness could be said to cause a person to exist, one who may face hardships but whose life is worth living. This sounds like a nonidentity case.

Yet there are interesting dissimilarities between embryos and future persons. Typically, the hardships at issue in nonidentity cases postdate the decision that brings about a future person’s existence. Indeed, the hardships that burden future persons are supposed to be at least partly caused by the decisions that led to their existences. Choosing to become pregnant at an early age may cause a child to have a bad start in life. Choosing to deplete our resources may cause the next generation to face serious disadvantages. Yet in selecting for disabilities the hardships the resulting child will face can be described as if they preceded the decision that leads to the child’s existence. PGD reveals the embryo as already presenting markers indicative of
deafness. The decision to select for implantation *postdates* the discovery that an embryo has them.

Moreover, some ethicists have proposed in response to the nonidentity problem that future persons should not be conceptualized as *particular* individuals. For example, we may have a responsibility to future generations to invest in a health care system that minimizes morbidity rates. Reiman notes that this obligation extends to the “properties” future persons will be born into, “not which particulars they are apart from that, since they are not yet particular individuals” (Reiman, 85). However, PGD allows us to describe embryos as though they are particular individuals, male or female, disabled or nondisabled, possessing specific compliments of genetic traits.

Embryos are unique, therefore, in that they have qualities that invite two very different moral descriptions, akin in some ways to future persons and in others to presently-existing individuals. The arguments I considered earlier reflect this ambivalence. No Harm, No Foul alights on the fact that embryos are similar to future persons to insist they cannot be harmed by selecting for deafness. Harming Versus Letting Be stresses their resemblance to presently-existing individuals to insist that parents are not culpable for the hardships that befall them.

Indeed, the situation is more muddled, for we also describe embryos as though they are mere *things*, lacking moral standing, or, at most, *symbols* of human life that merit a diminished, intermediate degree of moral regard (Steinbock 270-272). Based on this description, it is permissible to engage in research on embryos precisely because they cannot be said to be individuals. For prior to the development of the so-called “primitive streak” they can develop into twins, and thus lack biological individuation. Both of the above impulses, in turn, may seem misplaced—the impulse to describe embryos as *future persons* and the impulse to describe them
as *particular individuals*. Both look like cases of what Reiman calls “retroactive empersonment,” our tendency to treat people who do not exist “as if they have interests before they exist or even timeless” (Reiman 70).

This confusion about which moral descriptions apply to embryos complicates the debate over selecting for disabilities. For different arguments will seem reasonable as one shifts from one to another. Consider this case:

A team of researchers hopes to develop a form gene therapy that will be used to prenatally treat some forms of deafness. Their research will require them to modify human embryos. They are careful to only use embryos that have not developed the primitive streak, and which therefore cannot be said to be genetically unique individuals since twinning can still occur.

For one phase of the project, the researchers hope to learn how to modify embryos that do not present markers for deafness such that they present them—a milestone that will help them develop techniques for removing these markers. They are successful. Initially, they planned to destroy the genetically modified embryos. Assume it is still possible, however, to implant them. Some feel that doing so would be unethical since the resulting children will be born deaf. Others point out that it is better to live with deafness than not live at all.

Admittedly, this case is wildly unrealistic, a science fiction fabrication. Nonetheless, it illustrates the tendency shift between descriptions when discussing embryos. At the start, the embryos are described as mere things—biological matter to be used for research. By the end, they are future persons—beings who may not be harmed by being selected for implantation since the alternative is not existing. Yet they are also genetically modified, even though the tendency has been to claim that the nonidentity problem, which relates to future persons, justifies only selection but not modification. Moreover, someone might object, apropos Harming Versus Letting Be, that modifying the embryos constitutes a direct harm to the resulting child. Yet the whole point of restricting research to embryos that lack the primitive streak is to avoid this criticism—to restrict it to cases where it cannot be said to enact harms against individuals.

This paper rejects attempts to distinguish modification from selection in the debate over selecting for disabilities. Nonetheless, it seems to me that this debate is symptomatic of larger
confusions about human embryos as objects of moral consideration. Are embryos analogous to future persons? Does their particularity make them more like presently-existing individuals? Or are they mere things or “symbols” of human life? Or, for that matter, are they morally comparable to all three? Are they perhaps morally *suis generis*? An important caveat to my arguments is that they are tentative; it may be the case that we simply don’t know yet how to talk about embryos as objects of moral consideration.
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Introduction

What is good for a thing is what constitutes or contributes to its flourishing, thriving, doing well, or living well. It is good for blueberry bushes to be planted in soils that are somewhat acidic, for the acid in the soil conduces to the nutrition and growth of blueberry bushes. It is not good for domestic cats with access to the outdoors to be de-clawed, because the lack of claws will frustrate their efforts to defend themselves against other animals. It is good for humans to complete projects or activities that are important to them. Goodness for a thing in this sense is generally referred to as the thing’s well-being.¹

While it is good for blueberry bushes to be planted in acidic soils, it is not good for cats to be planted in acidic soils. A cat is not the type of thing that grows in soil, let alone well. While it is good for humans to complete projects that are important to them, doing so is not good for blueberry bushes. Blueberry bushes are not the type of thing that has projects or completes them, at least not in the sense in which humans have goals and consciously take actions toward achieving them.

¹ Not everyone will agree that plants are properly subjects of well-being (or welfare subjects), entities for which things can be good or bad in the same sense in which things can be good or bad for humans. Those who do not agree need not stop reading, for nothing I argue will depend on the claim that plants are welfare subjects.
These observations suggest that what is good for a thing depends on the type of thing that it is. This thought has its roots in Aristotle’s search for the human good. In looking for the human good, he rules out the life of mere pleasure and gratification. While humans can engage in that sort of life, so can beasts, so a life of mere pleasure and gratification cannot be the distinctly human good, or at least not all of it (*Nicomachean Ethics* (NE), 1095b16-20).

Similarly, while humans and blueberry bushes alike can live lives filled with things that conduce to good nutrition and growth (acidic soil for blueberries and a balanced diet and adequate exercise for humans), nutrition and growth is not all there is to a good human life (*NE*, 1097b32-1098a2).

In this paper, I follow this Aristotelian line of thought with the goal of introducing and defending the suitability of two different theories of well-being, one for non-human animals and one for humans. The view developed, inspired by Aristotle’s insight and some work of Tamar Schapiro on animals, will provide a clear distinction between the sorts of actions of which humans are capable and the sorts of activities in which animals engage. Once that distinction is made, it will be a short step to tying the well-being of a human or non-human animal to the type of action or activity of which it is capable.

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2 Thus, I claim that welfare is variable, that is, varies from one sort of welfare subject to another. See Section 3 for a discussion of variabilism. The view I defend might be considered a very thin sort of perfectionist theory according to which what is good for a thing depends on the nature of the thing, where I take the relevant natures of living things as sketched along the Aristotelian lines. My view falls short of a thicker sort of perfectionism according to which there is an objective list of things that are good for humans and an objective list of things that are good for non-human animals (or one list for all welfare subjects, if the objective list theory is an invariabilist theory).

3 There is little in the well-being literature proper that addresses non-human animal well-being. One refreshing recent example is Moore’s (forthcoming) article in the journal *Analysis* outlining an objective list theory of animal well-being. There is also surprisingly little explicit discussion in the animal ethics literature of what animal well-being is. For example, the most explicit and extensive treatment of theories of animal well-being in the 1008-page *Oxford Handbook of Animal Ethics* seems to be Streiffer and Basl’s (2011) discussion that spans fewer than four pages. DeGrazia (1996, Chapter 8) explicitly discusses animal well-being, but refrains from adjudicating between subjective and objective theories. Mostly one finds writers in the animal ethics literature making assumptions about what constitutes the well-being of animals. Many writers assume a hedonistic view according to which pleasure is good for animals and pain is bad for them. See, for example, Norcross (2004) and Rachels (2011). Rollin (2005; 2006, esp. pp. 118-129; 2014) advances a view of animal welfare whereby an animal living according its *telos* (or
Without further machinery in place, the theses of this paper can only be stated roughly. Humans and non-human animals both have desires and the ability to engage in activity on the basis of those desires. In addition, humans have a rational capacity not held by animals. So humans are and animals are not are capable of offering reasons for their desires. Fulfilling their desires is what constitutes the well-being of animals. The well-being of humans, on the other hand, is constituted by the fulfillment of those of their desires for which they can offer reasons.

1. Human and Animal Capacities

On Aristotle’s conception, the soul (psuchê) is the life-giving principle, or what accounts for the difference between living things and non-living things. The type of soul that a living thing has accounts for its distinctive sort of life. A plant engages in a life of nutrition and growth, and so has a nutritive soul. Animals, in addition to living in this way, have an ability to form desires resulting from sense perception and engage in self-movement. Animals, therefore, have souls teloi) is what is good for it. It appears, however, that the telos may be a theoretical spare wheel. Rollin seems to think that an animal living according to its telos does well because it produces a positive subjective experience (not limited to physical pleasure), such as when a horse runs, and that an animal prevented from living according to its telos does poorly because it produces a negative subjective experience or prevents a positive one, such as when confined hogs are prevented from rooting and foraging. Peter Singer, as a preference utilitarian (as opposed to a hedonistic utilitarian) has a view similar to the one developed here, but only for animals that conceive of themselves as having a future, according to which it is good for them to get what they desire (2011, pp. 100-103). Some moral theorists do a better job when they address animal well-being incidentally. For example, as Rice (2016, p. 382) puts it tidily, Hursthouse (1999) claims that an animal “flourishes as a member of its species to the extent that it achieves its natural ends in the ways characteristic of that species” – though caution is needed since as Rice (2016, p. 382) also notes, Hursthouse does not present her account of animal flourishing as an account of animal well-being. Nussbaum (2006, Ch. 6) develops a view of animal well-being in parallel with her capabilities approach to human welfare. For more discussion of the existing literature on animal welfare, such as it is, see Rice (2016). The view developed here, as I said in footnote 2, is a weak sort of perfectionism more along Aristotle’s “distinctive property perfectionism,” where the distinctive property for animals is desire-and-self-movement and for humans it is reason. This is distinguished from Hursthouse’s “characteristic” perfectionism or Nussbaum’s “capabilities” perfectionism. Finally, in the scientific literature on animal welfare, one generally finds a mish-mash of intuitive judgments about well-being without careful conceptual analysis typical of philosophical theorizing. See, for examples, the papers in McMillan (2005). Fraser (2014) imposes some organization on the mish-mash. There is potential for cross-fertilization between philosophy and science in this area – at least as much as there has been cross-fertilization between philosophical and psychological discussions of human well-being.
with (at least) two parts, or capacities, the nutritive part and the desiderative part. Humans do these things, but also have an ability to reason that neither plants nor animals have. So in addition to the parts of a non-human animal’s soul, human souls have a rational part. (See *NE*, Bk. I, Ch. 13 and Shields (2016).)

Aristotle is not the only philosopher to think that humans have desiderative and reasoning capacities. Plato does, too, arguing that we can establish that the soul has appetitive and rational parts because we can simultaneously be pulled in one direction by appetite and in another direction by reason (*Republic*, 439a-e). Hume rejects the idea that desire and reason can conflict, but agrees that humans have these capacities, or similar capacities, of reason and passion (e.g., *Treatise*, Bk. II, Pt. III, Sec. III). Kant also embraces a distinction between reason and mere inclination, arguing that for an agent to act on an inclination, her reason has to endorse the inclination and make it her will (see Kant (1793, 6:24) cited by Schapiro (2011, p. 148)). There are disagreements among these philosophers on the roles, functions, and conceptions of desire and reason. Nevertheless, we can follow this tradition quite broadly in assuming that humans have two separate capacities, desire and reason, and I will assume this.

Set this picture of human capacities to the side temporarily; the use I make of this general picture of capacities will be clear in a moment. Consider now four ways in which our bodies can be moved. First, our bodies can be caused to move by forces entirely outside of ourselves, such as when we are pushed into another person by the wind or pulled to the ground by a bear. Inanimate objects are capable of moving in this sense, as a sheet of metal roofing can be torn from a building by the wind and a bag of garbage can be pulled by a bear.

Another way our bodies can move is by automatic response to stimuli. My eyes have a responsive disposition to close when bright light is shined in them and my body has a responsive
disposition to shiver when my body temperature is lowered. Plants and animals also move this way, as a sunflower face moves toward the sun and a dog paw withdraws when the quick is accidentally cut during nail trimming. Inanimate objects also move automatically in response to stimuli, as when a piece of iron expands when heated. This second kind of movement based on responsive dispositions is different from the first kind based on forces outside of the object moved. In the case of a responsive disposition, the change in the object is produced from within as a response to an external stimulus or environmental condition, but in first sort of case, the change is produced entirely without the object.

A third way our bodies can move is in response to a stimulus, but in a way that does not amount to the mere operation of a responsive disposition. Schapiro (2009, pp. 246-247) gives the following kind of example and analysis of the movement of our bodies through the engagement of desire. I have worked up a great thirst mowing the lawn on a hot summer day, and desperately desire some water. I return the mower to the shed, where my bottle of water is sitting on a table near the back. It seems to beckon me, presenting itself as to-be-drunk. I walk toward the bottle, reach and lift it, unscrew the cap, bring it to my lips, and drink. In this case, my bodily movements are under my control in a way they are not when my eyes slam shut in response to a bright light. In response to the light, my body moves itself. In response to the desire for water, I move my body. So this activity in response to the desire is not the manifestation of a mere responsive disposition.⁴

⁴ I am helping myself here to a conception of desire according to which it is not a mere responsive disposition, for reasons that Warren Quinn (1993) gives in his well-known discussion of the man with a desire to turn on every radio he sees. Desires function as justificatory reasons, so they cannot be mere urges or motivational compulsions like radio man’s. Scanlon (1998, Chapter 1, Section 8) attempts to assimilate desire and reason, conceiving of desire as involving an insistent tendency to perceive certain considerations as reasons. Schapiro argues that this is to assimilate desire and volition and overlook “the fact that desires are not attributable to us in the same way that actions are” (2009, pp. 245-246). The discussion following in the text follows Schapiro (2009, Section III) in steering a middle course between the mere dispositional conception of desire and the Scanlonian rationalist conception by positing two distinct human capacities of desire and reason. On this conception, as I go on to explain.
I follow Schapiro (2009, pp. 247-250) in contending that animals also engage in this sort of activity based on desire.\(^5\) A cat sees a mouse poke its head through a hole in the wall. The cat waits, possibly for many minutes, until the mouse comes out of the hole. When it does, the cat chases the mouse. Just as the water presented itself to me as to-be-drunk, the mouse presents itself to the cat as to-be-chased. Just as I moved my body in response to the desire for water, the cat moves its body in response to the desire for the mouse. Just as my response to the water is different than my eye’s response to bright light, the cat’s response to the mouse is different from the reflexive way her body moves to right itself when falling through the air. We might say that the cat and I control our responses to the water and the mouse, but our reflexes control us in my eye-closing and her body-righting. On the one hand, the cat and I can desire things and engage in self-movement in response. On the other hand, we are both extra-volitionally moved in response to the stimuli that cause my eye to slam shut and her body to right itself.

So humans and animals alike have this capacity to respond to the world. It is the capacity of desire and self-movement characteristic of the desiderative part of the Aristotelian soul. To respond in this way is to engage in a sort of self-directed activity, but of a sort that falls short of full-blown action, as we will see momentarily. When we act purely out of desire, we act like an animal acts, which is to say, not in a manner engaging or reflective of our rational capacity. Instances of acting in that manner include drinking in response to a desire for water; reaching for a donut in response to its appeal to us; moving closer to a fire in response to our desire for warmth; engaging in activities expressive of our affection or passion for loved ones such as

\[^5\] The roots of Schapiro’s view are found in Korsgaard (2005), whom Schapiro credits.
reaching for our child’s arm as he is about to place it on the hot stove and such as sexual activity; 
and (following Schapiro (2011, p. 161)), going with the flow on the dance floor by letting 
ourselves be moved by the music.

Turn, finally, to the fourth way in which our bodies can be moved. I can move myself in 
response to a desire, not as I act like an animal in going for the water, but in a way that engages 
or is reflective of my rational capacity. I can make a decision in a way that considers and is 
responsive to features of the object of my desire. The idea that full-blown action requires the 
engagement of reason is not a foreign one. For example, Anscombe (1963) insists that my 
body movement falls short of a full-blown action if I cannot provide a satisfactory response to 
the query “Why? What’s the good of it?” about the object of my desire. As Schapiro remarks, 
“the deepest difference in our conceptions of nonhuman and human animals … is that nonhuman 
animals cannot hold themselves or be held accountable for what they do, whereas human animals 
can” (2009, p. 249). Westlund (2003) agrees with this conception of human action, arguing that 
autonomous human action involves this readiness to stand behind one’s actions and justify them 
to oneself and others. In a restaurant, I order a spinach salad. In response to my dining 
companion’s inquiry why I ordered that, I say that it is delicious and nutritious. Indicating those 
features of the object that make it choiceworthy for me is a manifestation of this distinctly human 
capacity to offer reasons for our actions. While my dog, Rufus, can also make a choice between 
spinach salad and fried mozzarella sticks, she merely acts on her strongest desire and cannot 
articulate a reason for her choice. This ability is what makes human action distinctly human. An 
activity or movement is not an action in the fullest sense until reason stands behind desire in this 
way.6

6 This is not a completely uncontroversial thesis, of course. In addition to those just cited, see Schapiro (2011) for a 
defense.
With this fourth category of bodily movement in view, let me go on for a bit about the sort of choice dogs make, and how it differs from the sort humans make. Rufus can make rudimentary decisions too, but those decisions are only the result of acting animalistically on the balance of her desires, not the result of the engagement of reason. For example, I have trained her not to eat food dropped on the floor. Sometimes she begins to move toward a dropped food item but stops herself. She has, in a very rudimentary way, decided not to eat the food. This is because she has been conditioned to do this. If she leaves the dropped food, I reward her with a treat. If she eats the dropped food, she gets that reward and a punishment from me (No!). Her desire for the single reward from me is greater than her desire for the reward from the floor plus the punishment from me. This explanation appeals only to her animalistic action on the basis of desire to get things like food and avoid think like reprimand. It does not appeal to her capacity to justify her action to me or to herself in response to a request for a reason for the action. She does not have that capacity. As Shapiro puts it, “there is conceptual room for a distinct kind of agency that does not presuppose justificatory capacities and … this kind of agency plausibly characterizes [action from] human inclination from the perspective of one who experiences it” (2009, p. 250). That is, when I act like Rufus acts, animalistically on the basis of inclination or desire, I engage in a sort of self-movement, but in a way that falls short of full-blown human action because it “is no more laden with justificatory thought than is my inclination to drink when thirsty” (Schapiro, 2009, p. 251).

We might put this by saying that Rufus’ desires are causal reasons for her action. My desires are causal reasons for my actions as well, but I have a capacity that Rufus lacks, a capacity to act on and offer justificatory reasons for my actions. The offering of justificatory reasons is made possible by my reasoning capacity. Again, on this view with roots in Plato,
Aristotle, and Kant, in a well-functioning human, reason is the seat of decision.\(^7\) Again, Kant claims that to act on an incentive requires incorporating it into one’s will through the endorsement of reason (1793, 6:24). Plato agrees, claiming of an individual that “[o]nly then does he act” (Republic, 443e) when he is just, which is to say that the parts or motivational drives of the individual – reason, appetite, and spirit – are in harmony and sticking to their own tasks, with \textit{reason} ruling the other parts (443b).

2. Human and Animal Well-Being

I started by saying that what is good for a thing depends on the kind of thing that it is. Keep assuming that, at least for now, for the sake of argument. I have just been claiming that animals – and I have in minds animals such as dogs, deer, mice, snakes, turkeys, and cattle – are the sort of things that have desires and engage in activity on the basis of those desires. I have also been claiming that humans – at least normal adult humans – are the sort of things that do that, but also the sort of things that have the decisional and justificatory capacity of reason. So an account of well-being for animals will take seriously their desiderative capacity, while an account of well-being for humans will take seriously their desiderative and reasoning capacities.

I claim that since animals are of the sort of thing to have desires and act on them, what is good for such a being is to act on its desires so as to get the object of its desires. For an illustration, consider deer. Deer desire food. They have an ability to condition their behavior to this desire by returning frequently to reliable food sources and then changing their behavior to seek other food sources when that first food source is depleted, in order to satisfy their desire for food. Deer desire to engage in reproductive activity. Male deer go to great ends to obtain mates.

\(^7\) Hume, of course, disagrees with this reason-governed conception of human action, declaring that reason serves passion. See again \textit{Treatise}, Bk. II, Pt. III, Sec. III.
when female deer are in estrus. Deer desire not to be caught by wolves, deer desire not to be approached by humans, and young deer desire play. It is good for deer to get those things they desire.

It is not good for deer to fly like birds or learn theoretical physics. Deer do not desire these things. They do not desire these things because, although they are the sort of thing that forms and acts on desires, they are not the sort of thing that forms and acts on desires for flying like birds or learning theoretical physics. Since a deer is not the sort of thing to desire and act on the desire to fly like a bird or learn theoretical physics, those things are not good for a deer.

Deer are also the sort of thing that engages in the type of life of nutrition and growth that plants engage in, but deer are not merely that sort of thing. So our account of well-being appeals to the fuller capacities of deer to do not mere nutrition-seeking and biological development as plants face the sun and set down roots, but to form and act on desires. Similarly, humans are also the sort of thing to have desires and act on them, but humans are not merely that sort of thing. So our account of well-being for humans will have to appeal to the fuller capacities of humans.

As outlined above, in addition to the capacity to form and act on desires, we humans have the ability to reason in the sense of justifying our actions to ourselves and others when acting on our desires. We act in the full sense when reason incorporates the prompting of desire, when reason is in harmony with and backs up desire. This incorporation, harmony, and backing up occur when we take actions on the basis of those of our desires for which we are able to offer justificatory reasons. To give a justification of the sort that the agent needs to be able to offer in order to act in this full sense is, again following Anscombe (1963), to give a characterization of the object of his desire that makes it comprehensible to others what he sees as good, attractive, worthwhile in the object of desire.
Since human agents are the type of thing that acts on desires that can be justified in this sense, it is good for such agents to do that. If a person desires to take a walk on the beach, it will be good for her to do that if and only if she can characterize the object of her desire in such a way that makes it clear to others what she finds attractive or worthwhile in the object of her desire. If she can articulate, “It’s a cool and breezy morning, so a brisk walk will be invigorating,” then she meets this requirement. She can explain what she sees as positive in the object of her desire. She can make it comprehensible to others what she regards as good in it.

If an agent has a desire the object of which he cannot justify in this minimal sense, then satisfying the desire is not good for him. Suppose he says he wants to tie his left shoe before his right shoe, but that when asked why, he sputters, “I just want it, that’s all.” We press and ask whether it is a habit that it would be painful to break or perhaps a ritual with symbolic value. Is it how his father taught him to tie his shoes and he thinks it disrespectful to disobey a parent without good reason? He replies that none of these reasons apply and that he just desires this for no reason. He desires it, full stop. Then, on the view I am advancing here, he undergoes no well-being benefit by tying his shoes in his preferred order and he suffers no deprivation or harm if he is prevented from tying his left shoe first. He has a bare desire that is not incorporated into his will by the justificatory capacity of his reason. Such a desire is not relevant to well-being.

If this is right, then when humans act merely animalistically on their desires, the objects of those desires are not good for them unless they are able to articulate to others what they regard as good in those objects. Indeed, it is not easy to think of a case in which we are not able to justify our animalistic desires. We desire food, drink, sex, fleeing danger, shelter from rain and snow, shade from sun, and warmth in cold weather. It is hard to imagine an agent acting animalistically on such desires who cannot offer justifications, such as that food relieves one’s
hunger, that drink quenches one’s thirst, that sex feels good, and so on. Yet there are such cases. Consider an agent mindlessly eating a snack item as she watches television. We ask if they are good. She replies, “Not really. I don’t know why I’m eating them. I’m still full from dinner, and I’m getting uncomfortably full eating this junk. There’s no reason for me to be eating this.” In this case, she is mindlessly and animalistically acting on a desire to eat these items. By her own admission, there is nothing good for her about the object of her desire.

This, then, is a brief sketch of two theories of well-being, one for animals and one for humans. The theories are predicated on the difference in capacities between animals and humans. I stress that I have only sketched these theories. The version of the desire theory of well-being for humans adumbrated here has been developed at length elsewhere (Bruckner, 2016). The focus of this paper is the difference between animal and human well-being and giving an account of this difference, not a full development of either theory. Let us turn to defending the account on offer against some objections.

3. Objections

Objection: I claimed that since animals are of the sort of thing to have desires and act on them, what is good for such a being is to act on its desires and to get the objects of its desires. According to this objection, this claim is clearly false. Dogs desire chocolate, say, but in large quantities it is toxic to dogs, so clearly not good for them. Rats desire to eat rat poison. Again, it is not good for them.

Reply: Although chocolate is not good for dogs overall or on balance, chocolate is nevertheless good for dogs. Even though it has a negative impact on their well-being, it has a smaller, positive impact as well. This is an important point to see about the intent of the theories
sketched here. The claim is not that acting on any given desire is good on balance or overall for an animal, but only that it is in some way good. Similarly, smoking cigarettes, when desired and given a desirability characterization by a human (“It is relaxing”), is in some way good for that human, though likely not good overall or on balance.

Objection: One might object that I have not given an account of animal well-being because it is quite questionable to say, of many animals, that they have desires. For example, do barnacles desire to stick to the undersides of boats, reproduce, and obtain food? Or are barnacles more like iron, with certain responsive dispositions not under their control, or like plants with the capacity for nutrition and growth? How about coral polyps, the individual animals that make up a coral? Do they desire to capture and ingest small animals with the tentacles surrounding their mouths, or are they like the bimetallic strip of a thermostat, which tends to react by differential expansion and contraction when exposed to certain environmental stimuli? It is very plausible to claim that barnacles, coral polyps, and myriad other animals do not have desires. So it is very implausible to claim that I have given an account of the well-being of animals.

Reply: Suppose it is true, as it probably is, that there are some animals that do not have desires. The theory of animal well-being sketched here is not a theory of well-being of those animals. The theory of well-being sketched here is a theory of well-being of animals with desires. I do not know exactly which animals those are (I doubt anyone does), but there are clearly some, such as the ones mentioned above.

There are also humans who do not have the reasoning capacity necessary to offer the sort of justificatory reasons I have said are required for the object of a desire to be good for the desirer. Among such humans are infants, humans with severe brain injuries, and humans who suffer from advanced dementia. The theory of well-being sketched here is not a theory of the
well-being of those humans. The theory here is of the well-being of people like you and me and the vast majority of people we interact with from all social, economic, educational, geographic, racial, gender, age, and other demographic categories.

Of course, to reply this way is to be entirely consistent with what I have said from the beginning, that a theory of well-being for a thing has to be matched to the sort of thing that it is, with its capacities as we find it. It seems reasonable to think that infants, humans with brain injuries, humans who suffer from advanced dementia, and others, are welfare subjects, that is, that their lives can go well or badly, that things they do or that happen to them can be good or bad for them. It is also reasonable to think that the sort of life that is good for someone who suffers from dementia is very different from the sort of life that is good for an infant and that both are very different from the sort of life that is good for you and me. It is no objection to my theory of well-being for normal adult humans that it does not apply to some humans with sub-normal capacities. So, it is no objection to my theory of well-being for desiring animals that it does not apply to other types of animals without a desiderative capacity.

Objection: Eden Lin has argued in two recent papers (2017 and forthcoming) against the supposition I have made and relied upon here, that what is good for a thing depends on the type of thing that it is. I wish to consider and respond briefly to two of his central arguments.

First, Lin argues against a principle that supports my supposition that what is good for a thing depends on the type of thing that it is. This is the principle he calls Inaccessibility Excludes Goodness: “If a subject $S$ is incapable of possessing (or otherwise being suitably related to) tokens of a kind $K$, then $K$ is not a basic good for $S$” (forthcoming, ms p. 6). This principle, if true, underwrites such claims as that theoretical contemplation is not a basic good for Fido, the dog, because Fido is incapable of engaging in theoretical contemplation.
To argue against this principle, Lin asks us to consider Anhedonic Annie, who is incapable of feeling pleasure. He claims that pleasure could still be a basic good for Annie, even though it is inaccessible to her. This is because to say that pleasure is a basic good for her does not imply that she feels any pleasure at this or any nearby world. “It merely implies that for any pleasures, if she were to experience them, each of them would be basically good for her” (forthcoming, ms p. 6). This counterfactual could be true, even though pleasure is inaccessible to Annie. On a similar analysis, “theoretical contemplation could be a basic good for Fido, even though it is inaccessible to him” (forthcoming, ms p. 7). Thus, Lin claims, inaccessibility does not exclude goodness.

To bolster his argument, Lin gives an analogy with morality. Consider an agent who is incapable of lying. Lin claims that it does not follow that lying is not prima facie wrong for this agent just because this agent is incapable of lying. We can claim, he says, that lying is prima facie wrong for this agent because all such a claim implies is that “for any acts of lying, if this agent were to perform those acts, each of them would be prima facie wrong” (forthcoming, ms p. 6). So lying can be prima facie wrong for this agent even though he cannot perform any lying acts. Lin takes this analogical case to support his claim that pleasure can be good for someone even though she is incapable of feeling it. If this analogical reasoning is good, then it undermines the Inaccessibility Excludes Goodness principle.

I agree with Lin that the analyses of the prima facie wrongness of lying and the goodness of pleasure stand and fall together. But strange and doubtful things follow from Lin’s analysis of wrongness, so I think the analyses fall. It follows that lying is also prima facie wrong for Fido. As well, adultery is prima facie wrong for Fido, assuming that adultery is prima facie wrong for moral agents. If patricide is prima facie wrong for moral agents, then, again, the fact that moral
agency is inaccessible to oak trees does not rule out patricide being prima facie wrong for oak trees. These claims border on absurdity. They strike our ears as category mistakes, like saying that the number ten is of a beautiful color or that generosity, when fried, makes an excellent window covering. This is a reason to doubt Lin’s reasoning.

Lin responds to an objection of this sort. A first response appeals to the claim that it is not impossible for a dog to be a rational agent while remaining a dog (forthcoming, ms p. 9). Similarly, we would have to suppose that an oak tree could be a moral agent while remaining an oak tree. I doubt there are possible worlds with such dogs or oak trees just as much as I doubt there are worlds where fried generosity makes a good window covering. A second response claims that, even if theoretical contemplation and moral agency are necessarily inaccessible to dogs and oak trees, it might still be the case that if, per impossibile, Fido were to engage in theoretical contemplation, it would be good for him. Lin explains that if there are no possible worlds where dogs engage in theoretical contemplation, then this conditional is vacuously true on the standard possible worlds semantics, with the result that necessary inaccessibility would entail goodness, a result Lin wishes to avoid. So to make this counterfactual conditional true, but not vacuously true, we would need an alternate semantics for counterfactuals (forthcoming, ms pp. 8-9). Suppose we had such a semantics in hand. Still, we would be left with the result that theoretical contemplation could be good for dogs, lying and adultery wrong for dogs, and patricide wrong for oak trees. So we would be left with the question whether to accept a semantics with these results or to reject the semantics to avoid this result. So Lin has not yet given a strong enough reason to reject the principle that inaccessibility excludes goodness.

Turn now to a completely different argument that Lin gives against the idea that different theories of welfare could be true of different types of things. Briefly in the paper I have been
discussing (forthcoming) and more fully in an earlier paper (2017), Lin considers the possibility, which he wishes to reject, that one theory of welfare could be true of a newborn human, say, and another theory true of a normal adult human. The particular target in the more recent paper is any theory of welfare that “requires a fair amount of cognitive or psychological sophistication on the part of [a] subject” (forthcoming, ms p. 15), sophistication not held by newborn humans. The theory of human well-being sketched here and developed more fully by Bruckner (2016), is sophisticated in Lin’s sense. The theory requires, in order for the object of a desire to be good for one, that one have the capacity to provide a justification of the object of desire, in the sense sketched earlier.

Consider Lin’s argument against the Person-Centered Theory (PCT) according to which the relevant sophisticated capacity is valuing:

Since many newborns are positive in welfare even though they do not value anything, PCT is false of newborns. Now, consider a human being who acquires the capacity to value things at the normal stage in her development, but who fails to exercise this capacity for some time after she acquires it. Imagine that, prior to acquiring the capacity, she was high in welfare. For the sake of specificity, imagine that hedonism is true of humans who are too young to value things, and that our subject had a very favorable balance of pleasure over pain prior to acquiring the relevant capacity. Furthermore, suppose that the conditions in virtue of which she was high in welfare persist after she acquires the capacity: she retains just as favorable a balance of pleasure over pain after acquiring it. If acquiring that capacity makes PCT true of her, then from the time at which she acquires it until the later time at which she begins to value things, no particulars are basically good for her. This implies that between those two times, her
welfare is, at best, zero. This is implausible. After all, none of the facts in virtue of which she was previously high in welfare have changed. A subject surely could not go from being high in welfare to being neutral or negative in welfare simply in virtue of acquiring a capacity. (forthcoming, ms pp. 20-21)

As Lin points out, this argument applies, mutatis mutandis, to all sophisticated theories, including mine.

In response, notice that the scenario Lin describes is indeed puzzling if we suppose that the welfare subject acquires the sophisticated capacity all at once. In that case, at midnight on her eighteenth birthday, say, the subject transforms from one of whom hedonism is the correct theory of welfare to one of whom the sophisticated theory is correct, in virtue of acquiring the sophisticated capacity at midnight. As Lin convincingly argues, it would indeed be baffling how she could go from positive in welfare to zero simply in virtue of acquiring a capacity that she has not yet exercised. Even if we suppose that, at noon the next day, she exercises the capacity with respect to all of the things that contributed to her welfare before the acquisition of the capacity, it is implausible that her welfare is zero for the intervening twelve hours, but positive before and after that period.

Unfortunately for Lin, such sophisticated capacities are not acquired all at once, but instead require habituation in Aristotle’s sense. Once we see this, the puzzle Lin raises evaporates. Take my favored capacity of giving reasons for the object of one’s desire. Learning to articulate reasons for the objects of desire is like learning to read a foreign language. One does not just wake up one day with the capacity to read French. One exercises it in bits and pieces as one acquires the capacity, by reading words in French, then short sentences of various sorts, then longer and more complex sentences. Similarly, one does not just wake up one day
with the capacity to offer reasons for the objects of desire. One exercises it in bits and pieces as one acquires the capacity by providing rudimentary justifications such as that the ice cream is yummy, as opposed to yucky like peas. Later one learns to understand and provide more complex justifications, such as that Heaven is good and Hell is bad, that telling the truth will make you go to Heaven and lying make you go to Hell, so this is why you want to tell the truth about how the vase got broken.\(^8\) Just as it becomes true of one gradually that one has the capacity to read French, it becomes true gradually that the sophisticated theory of welfare applies to one. There is never any point at which the one theory turns off and the other turns on, so there is never any point at which one goes from positive in welfare to zero. Lin’s puzzle evaporates.

Indeed, not only is the wind taken out of the sails of Lin’s central argument against sophisticated theories by recognizing that capacities are not acquired all at once, but reflection on the reasoning in the previous paragraph reveals that there is not even any sense to be given to a never-exercised capacity to give reasons for the objects of one’s desires. Because acquiring the capacity to read French requires a gradual period of habituation, because it must be developed through exercise, one is never in the state of having a never-exercised capacity to read French. There is no sense that can be given to possessing the never-exercised capacity to read French. Imagine someone saying: “I am fully capable of reading French, but I have never read a single sentence or word in French.” Similarly, there is no sense to be given to possessing the sophisticated capacity in question but never having exercised it. One does not count as having that capacity if one has not exercised it. Imagine someone saying: “I am fully capable of conceiving and articulating what is good about the objects of my desires, but I have never before

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8 Childless, my repertoire of child-involving examples is limited and unimaginative.
conceived and articulated what is good about the objects of any of my desires.” So the very scenario Lin presents in which someone has the never-exercised sophisticated capacity cannot be made sense of.

Conclusion
I have offered a picture, admittedly in very broad strokes, of a very thin perfectionist theory of human and non-human animal well-being, according to which what is good for a thing depends on the sort of thing that it is. The distinctive property that marks animals out as the sort of things they are is the capacity to form and act on desires. The distinctive property that marks human persons out as the sort of things they are is the capacity to act on and offer justificatory reasons. Even if the details of my argument are substantially wrong, I hope at least to have contributed to starting a discussion to fill the large gulf that exists in the well-being literature. This is the gulf where robust theories of animal well-being belong.

Works Cited


Surely what I say here is not true of all capacities, such as the capacity to run a mile, which one might certainly have without ever having exercised it. I suspect that what I say here is true of all of the sophisticated capacities to which sophisticated theories of welfare appeal. For my case here, it is enough if what I say is true of my favored capacity of giving reasons for the object of one’s desires, which I claim to have established.

See footnote 3 for a characterization of the state of discussion of theories of animal well-being.


