

# Pregnancy and superior moral status: a proposal for two thresholds of personhood

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## ABSTRACT

In this paper, I suggest that, if we are committed to accepting a threshold approach to personhood, according to which all beings above the threshold are persons with equal moral status, there are strong reasons to also recognise a second threshold that would be reached through human pregnancy, and that would confer on pregnant women a temporary superior moral status. This proposal is not based on the moral status of the fetus, but on the moral status of the pregnant woman. It is not only the fetus which is an organism *sui generis*: the pregnant woman, also, is a unique being. Following almost any view on the moral status of the fetus, the pregnant woman should be regarded, herself, as more than a singular individual. She is, herself, 'more than one'. Pregnant women are also necessary for the continued survival of the human species, and there are important justice-based reasons to recognise the higher status. Furthermore, the recognition of a superior moral status for pregnant women does not imply that pregnancy should always be viewed as desirable, or imply any position on the permissibility of abortion. My proposal is not as radical as it might seem, as it does not require that pregnant women should always receive superior treatment, but only that they should to some extent. It could have a range of potential positive practical consequences. Finally, my approach does not threaten, but rather promotes, human equality.

## INTRODUCTION

Arguments on personhood often proceed based on a threshold concept, according to which all persons have an equal moral status, and a status which is higher than that of those entities below the threshold. Mainstream theories based on a threshold approach often rely on the possession of certain personhood-generating cognitive or psychological capacities, such as the capacity for practical rationality or consciousness, or the possession of features deemed necessary to qualify as a member of the human species. A significant advantage of a threshold concept, by contrast to a scalar concept, is that it can provide the basis for moral equality between all persons: when the threshold is reached, how well one might exercise a capacity, for example, or exhibit a feature, would not affect a person's moral status. In debates about personhood, it is usually accepted that at least almost all human beings after birth are persons, but there are debates about whether certain non-human beings might also be recognised as persons, and about whether certain human beings who do not possess the relevant capacities are persons. Certainly, the most contested area of debate, if not in philosophy

then surely among the general public, centres on the moral status of the fetus.

Some authors have also considered the possibility of a higher level of moral status than that possessed by current human persons, and that could be obtained by persons who have been cognitively enhanced through the use of new biotechnologies. This would be on the basis that the enhanced persons' personhood-generating characteristics, based on cognitive capacities, are at a sufficiently higher level to justify the recognition of a higher level of moral status. Allen Buchanan, for example, has considered, but doubted, the possibility that there could be 'postpersons' (ie, persons who reach a second, higher threshold), in addition to 'mere persons' (ie, persons as they exist now, who currently enjoy the highest moral status, but who would have a lower status than postpersons should the latter come into existence).<sup>1</sup> By contrast, Jeff McMahan has accepted that it is quite plausible that we could recognise that 'suprapersons' (in his terminology) would have a higher moral status than us, due to their enhanced psychological capacities.<sup>2</sup> The possibility of the existence of enhanced 'postpersons' or 'suprapersons' might seem risky for us, 'mere' persons, as there might be reasons for us to be treated less favourably, including through the potential sacrifice of mere persons for the benefit of those with a higher status. Nicholas Agar, for example, considers that postpersons could exist, but that the risks involved to mere persons means that we should not create them.<sup>3</sup>

In this paper, I will suggest that we might wish to accept what is, as far as I can tell, an entirely novel conception of personhood. My suggestion is that, if we do accept that we should adopt a threshold approach to personhood, there are also good reasons to recognise a second and higher threshold of personhood, but that this second threshold should exist for different reasons than those discussed above. My contention is that, in debates on the moral status of the fetus, we have failed to investigate a question which should in fact have been obvious all along, and which relates to the moral status of the pregnant woman.<sup>1</sup>

Surely, one reason for the difficult nature of the debates on the moral status of the fetus is that the latter cannot easily fit within a strict binary categorisation: it is, in reality, a 'unique organism',

<sup>1</sup>In this article, I refer to 'pregnant woman/women'. I am aware that some people prefer the expression 'pregnant person(s)/people'. I explain below the reasons for my choice of words, and also why I think that my proposal could likely be extended, so that it could apply now to any person who is pregnant.



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or an 'organism sui generis'.<sup>ii</sup> There is no other entity like the human fetus: it is in a category of its own. It is in one sense a separate and distinct being, and in another sense, necessarily part of the pregnant woman's body. Without her, the fetus does not, or ceases to, exist. However, what is not normally said in these discussions, and which is nevertheless also evidently true, is that the pregnant woman, also, has herself become an organism sui generis. There is no other human being like a pregnant human being. While no one would suggest that pregnant women are not persons, our enquiry should not stop there. We must also ask whether, because of their unique state and because of the potential status of the fetus, we should in fact recognise that they can reach a second threshold of personhood, where, as a consequence, during the period of pregnancy they would have a temporary superior moral status, and an equal moral status to each other, in the same way that 'mere' persons (if I use Buchanan's terminology) have an equal moral status to other mere persons. If we are committed to a threshold concept of personhood in the first place, it is my argument in this paper that there are strong reasons that we should.

It is important to note here that my enquiry is about the personhood of the pregnant woman, and not of the fetus. A wide range of views on the moral status of the fetus, and on the morality of abortion, would be compatible with my approach. Indeed, one of the major advantages of the recognition of a superior moral status during pregnancy is that it should help us make some progress around seemingly intractable debates on the moral status of the fetus and on abortion, while also leading to better and fairer treatment for pregnant women and all women.

The structure of this paper is as follows. I will first set out three reasons that could justify a second threshold conferring a superior moral status for pregnant women. I will then consider and reject three possible objections, based on equality, on the desirability of pregnancy, and on the ability of a single threshold to achieve the same desired ends.

### SUPERIOR MORAL STATUS IN PREGNANCY

I believe that the recognition of a superior moral status for pregnant women, following a threshold approach to personhood, appears to be justified by the following three reasons:

1. The fact that a pregnant woman is more than a singular person.
2. The important role of women, through human pregnancy, in creating human life and maintaining the survival of the human species.
3. Justice-based reasons which require countervailing measures due to the significant burdens experienced by pregnant women, and due to the burdens experienced by all women due to the possibility of experiencing pregnancy.

The strongest view is that all these three justifications are valid, and that together they support my approach. However, at the outset I should say that it is probably the case that the first of the above reasons is the most important, while the third is the least, and that I think it is possible that the first two are sufficient, or even only the first. I need not resolve this, as I believe all three justifications apply.

I should also say that my approach in this paper is confined to proposing the recognition of a superior status for pregnant

women, but I believe that, currently, the superior status could likely apply to any person who is pregnant: for example, to a man following a uterus transplant, if this were possible, or to a trans man, or an intersex person. However, the justifications for recognising the status for anyone other than a pregnant woman will be different, and would require more elaboration. Briefly, in the case of a pregnant person who is not a woman, my first justification above would apply, as it applies to any pregnant person, but the second and third justifications would not, although they could potentially be modified. The second justification is women-centred, but perhaps anyone who performs the same role can also benefit from this justification. For the third justification, I expect that pregnant persons who are not women could also suffer discrimination during pregnancy, but not necessarily in the same way as pregnant women, and so this might need more detailed analysis.

A further consideration is that if, in the future, men and women became pregnant in similar numbers (eg, hypothetically, if men became capable of easily becoming pregnant through a uterus transplant, and this procedure became common), there might be good reasons to not recognise a superior moral status for anyone at all. This is because my second and third justifications are based on gendered aspects. Perhaps these two justifications can be modified, as I say above, but I am not sure my argument would work if eventually no group at all was singled out for having a more important role in creation, and for suffering more discrimination. Therefore, if pregnancy was no longer considered to be predominantly a gendered state, I doubt my argument could support the recognition of a higher moral status for any pregnant person unless perhaps my first justification, on its own, was sufficient. For all these reasons I concentrate in this paper on pregnant women, as it is the gendered nature of pregnancy that can contribute to the recognition of, and the maintenance of, a higher moral status, even though, for the time being at least, I expect that the status could be extended to any person who is pregnant.

I should also emphasise that I do not take a stand on the reasons that justify the first threshold of personhood. As I mentioned above, there are different arguments that have been put forward for justifying (mere) personhood; dominant arguments are based on the possession of cognitive capacities, and there are also arguments based on features deemed necessary to be a human being, or based on relationship. I see no reason why the justifications for the first threshold of personhood need to be the same as those for the second. Although the arguments considered above about a second threshold based on enhanced cognitive capacities took this approach, I do not think it is necessary.

I will now explain these three different justifications in turn.

#### More than a singular person

My main justification for the recognition of a superior moral status is based on the fact that the pregnant woman is more than just one person. She might not be two persons, or a person with another person within her; while there are arguments that the fetus should be recognised as a person with full moral status, many people would disagree and the standard view, at least as reflected in many jurisdictions, is that the fetus only becomes a person at the time of birth. Nevertheless, and on nearly any view, a pregnant woman is a person who has, within her body, a being with at least *some* moral value, and who has at least the potential to become a person.

Contemporary analysis on the metaphysics of pregnancy can help us understand the nature of a pregnant woman, and what consequences this might have for personhood. As Anne Sophie

<sup>ii</sup>AG's Reference (no 3 of 1994) [1998] AC 245 (HL).

Meincke explains in a recent paper,<sup>4</sup> which builds on the work of others such as Elselijn Kingma, the dominant conception in the literature is the containment view, which, according to its standard interpretation, implies that during pregnancy there are two separate individuals: Meincke's enquiry relates to pregnancy for both human and non-human mammals, but here we can say that it is the pregnant woman and the fetus. According to the containment view, the pregnant woman provides the environment in which resides the fetus, but both beings are distinct. While Meincke's analysis is not based on personhood, the containment view would support the position that the fetus is—whatever its moral status—a conceptually separate entity, and the pregnant woman, herself, remains a separate and single individual.

Another view, explains Meincke, and as elaborated in the important work of Kingma, is the parthood view of pregnancy, whereby, in its dominant interpretation, the fetus is part of the pregnant woman, and therefore there is just one individual during pregnancy: the pregnant woman.<sup>5,6</sup> Given the significant entanglement between the pregnant woman and her fetus, the fetus cannot be sufficiently conceptually separated from her body so as to be recognised as a distinct individual.

As Meincke notes, current empirical knowledge cannot support the containment view. It is based on an Aristotelian understanding, which we now know is misguided, and which sees the female contribution to reproduction as passive (Meincke<sup>4</sup>, p1498). Speaking of a woman as a 'container' also ignores the fact that gestation can relate to the pregnant woman's identity (Meincke<sup>4</sup>, p1498). Many female philosophers have adopted a different view (Kingma<sup>6</sup>, p638). It is this sort of perspective that is in line with an unfortunate description in a recent case, where it was said that a pregnant woman who conceives following sexual crime is 'merely a receptacle' to carry the man's child.<sup>iii</sup>

A preference for the containment view might also explain why, as Meincke says, discussions in metaphysics (and I would add, largely in bioethics) centre almost only on the features of the fetus, with particular attention to its moral status, but without considering the relationship between the fetus and the pregnant individual (Meincke<sup>4</sup>, p1498).

However, according to Meincke, the parthood view is also inadequate, because it contains logical contradictions. It does not seem to admit of a way of telling the difference between different parts of the pregnant woman's body: for example, how a kidney differs from the fetus, that is, from a being who can leave a pregnant body and become an individual. It has difficulties, as well, in accounting for the numerical consistency at birth between the previously entangled fetus, and the child.

Meincke proposes a third approach, the process view: a pregnant individual is in the process of splitting as a 'bifurcating hypercomplex process' (Meincke<sup>4</sup>, p1497). Therefore, the pregnant individual is 'neither two individuals nor one individual but something in between one and two.' (Meincke<sup>4</sup>, p1497)

Importantly, I take this to mean that the pregnant woman herself is more than one individual. She is not simply an individual who contains a separate individual or part-individual within her. If she is pregnant with twins, she would be between one and three, but this does not mean that she is exactly two individuals, due to a principle of non-additivity (Meincke<sup>4</sup>, p1514).

Indeed, the process view is appealing because we know that pregnancy affects the whole body of the pregnant woman, not only her womb. Many of the pregnant woman's body parts are affected by the growing fetus. Organs are pressed for space. Breasts prepare to lactate. Fetal cells are present throughout the woman's body.<sup>7</sup>

I believe that Meincke's compelling approach, while not itself on personhood, can be used to support a view that pregnant women should have a superior moral status. If we believe that the threshold of (mere) personhood is reached for beings with high moral value, it is logical to say that a being who becomes more than one has reached a further, second, threshold. The pregnant woman, herself, is more than a singular individual: she does not merely contain another being, or contain a new part, but is herself numerically increased.

However, my proposal also seems to be compatible with at least some understanding of a parthood view, because one might say that, even if the fetus is not a distinct individual, it could be a 'part' which has special moral significance. In fact, although Kingma says that claims about persons should not be inferred from her claims about organisms, without further analysis, she also mentions that a claim about the fetus being a part of its gestator does not necessarily, on its own, mean that the fetus is not also a person (Kingma<sup>6</sup>, p610). In any event, whether or not the fetus is a person, I think there is a strong argument that, if the fetus is a sufficiently important 'part', this can support the recognition that the pregnant woman has a higher status.

One objection which might be made here is that, if (mere) personhood is based on cognitive capacities, or some other features, the fetus itself might not sufficiently possess these, and therefore, cannot augment the status of the pregnant woman. However, this seems to me like a false understanding. In whatever way that we evaluate the status of the fetus, even if it is only based on its potential status, I think it would seem to be sufficient to increase the status of the pregnant woman. It is true that the fetus's status, whatever it might precisely be, would no doubt need to reach a certain minimum level of moral considerability. We would not think, for example, that the live bacteria within the pregnant woman's body, or a tapeworm, which nevertheless might be thought to have some (even if very little) moral considerability, would augment her status. The fetus's status would be insufficiently low if it was equivalent to an eyelash over my right eye, or the nail on my big toe. But it would be absurd to equate the fetus's status to this. Arguments which minimise the importance of the fetus are often based on a desire to justify the morality of abortion, and extreme examples often do not attract much public sympathy. Mary Anne Warren, for example, famously compared obtaining an abortion to having a hair cut, and the fetus to a guppy,<sup>8</sup> and these examples were criticised by Bertha Alvarez Manninen, who says that an apparent disregard for nascent human life can put people off from being pro-choice (Manninen<sup>9</sup>, p34–35). Thus, if it was thought that mere personhood should be based on cognitive capacities, one might need to recognise that the fetus has at least some moral status due to the potential to develop these capacities. Alternatively, if mere personhood is thought to be generated for other reasons, there would also be a need to recognise, according to those reasons, at least some fetal status.

A further objection might be that, even if the fetus has some moral status, there is no reason to believe that this should increase the pregnant woman's moral status. If mere personhood is based on cognitive capacities, for example, we do not think that a person who is slightly more intelligent has a higher

<sup>iii</sup>The Northern Ireland Human Rights Commission's Application [2015] NIQB 96.



status. However, I think different analysis applies when there is a person who has within her body a separate being (or at least, a being who is separate in some sense) with its own potential to reach the personhood threshold itself (or, has already reached it). Some arguments on the moral status of the fetus do not consider the relevance of the fetus's location, or even mention it, as if its location is morally insignificant, and that it can be considered conceptually in the same way as if it were isolated in a box, in the air, or anywhere. I believe there are good reasons to think that the fetus's unique location is relevant to the pregnant woman's moral status, and that it is morally significant to have a human body inside one's own human body. To be clear, this understanding must rely in part on a metaphysical understanding of pregnancy. In other words, while existing arguments on the metaphysics of pregnancy can support the view that a pregnant woman is more than one individual, my proposal that a pregnant woman is more than one person is, again, based on an understanding of the metaphysics of pregnancy.

The reality is that, for any argument about personhood, there will inevitably be a core aspect of the argument that is metaphysical. A view that cognitive capacities matter for personhood, for example, will inevitably rely on certain assumptions or intuitions about why these matter. One advantage of my argument is that some of the difficulties that exist in the recognition of a second threshold of personhood for beings enhanced by biotechnology do not apply in the case of pregnant women. In considering what might be the consequences of having augmented personhood-generating capacities, Buchanan writes that it would seem to be the existence of an enhanced person, but 'not a new kind of being' that would possess a higher moral status (Buchanan<sup>1</sup>, p259). Indeed, if we think that the threshold of (mere) personhood is reached based on the possession of certain cognitive capacities, it is hard to argue that far superior capacities would justify the recognition of a second threshold, as this recognition seems to go against the concept of having a threshold in the first place, and would also raise the difficulty of identifying where this second threshold would appear. By contrast, the recognition of a second threshold reached in pregnancy does not lead to these difficulties. It is far more clear when the threshold would be reached, and it would be reached based on different reasons than those that lead to (mere) personhood. As I have said above, there is no reason to think that the reasoning that generates mere personhood should be the same as that which should generate a second category of personhood. A pregnant woman appears to be, in fact, precisely 'a new kind of being'. This novelty is not new to the human species—the novelty is, of course, both extraordinary and very ordinary. At the very least, she is a significantly different kind of being, and the difference is one that is morally significant.

It is true that the very precise moment that pregnancy begins, and ends, might be up for debate, or be at times incapable of determination. This could be addressed, however, by specifying fixed definitions, for example in relation to legal measures. Further, while in some cases the precise moment pregnancy begins or ends might matter greatly, most of the positive consequences flowing from the higher status would likely apply at times when a pregnancy is not in doubt.

A further possible objection to my view is that no human being can in fact be understood as an entirely separate individual, and that therefore the pregnant woman would not have a unique state as more than singular. Based on a view that individuals are relational, and necessarily interdependent for both their survival and their flourishing, there might never be a clear dividing line between different people. Certainly, there is significant

dependence between human bodies.<sup>10</sup> However, the literature on relationality does not seem to deny that we can identify individuals, and indeed count them numerically, but only that individuals, or selves, come into being through, or are defined by, relationships.<sup>11–14</sup> If we could not identify individuals at all, there would be very serious consequences, for example, in holding individuals responsible for their actions. It is hard to see how we could convict an offender. There seems to be no suggestion that those of us who are more gregarious have numerically increased.

A relationality-based argument which would seem to be incompatible with the approach I am examining in this paper is that we should not have a concept of individual persons at all, but rather focus on promoting caring relationships because it is these that have moral value. This is one interpretation that I think can be made of a recent paper by Jonathan Herring on relational personhood.<sup>15</sup> Another interpretation is that he is calling for a recognition that personhood is generated because of caring relationships, rather than because of cognitive capacities or membership in the human species.

The latter interpretation poses no problem to my approach, as the reasons that justify a first threshold of personhood need not be of the same kind as those that generate the second. The former interpretation would be outside the scope of my enquiry. Perhaps we should not follow a threshold concept of personhood at all, but my approach here is based on the prior acceptance that we do. In any event, however, my feeling is that thinking more about the nature of pregnancy might nevertheless shed light on other enquiries of this nature, if we did want to make these instead, although, in the case of pregnancy, more thought might need to be given to the extent that pregnancy can be viewed, in general or in individual cases, as a caring relationship.

### Women and creation

A second justification for the recognition of a superior moral status for pregnant women is that pregnant women are performing a role which is of supreme importance: that of creating new human life, and maintaining the survival of the human species.

It is true that, for our survival as a species, our creation through pregnancy is insufficient. The newborn baby will not survive for long without significant care, and its mother is not the only one who can provide this. As writers on relationality emphasise, we are profoundly interdependent throughout our lives. If we believe that pregnant women are valuable due to their role in our continued survival, we might also wonder whether we should recognise a higher moral status for surgeons, good Samaritans on the telephone line, or effective altruists donating sufficient funds to feed an otherwise hungry child.

I believe that these examples can be distinguished, on the basis that any of the relevant beneficial acts need not be performed by any particular individual in order to maintain the existence of the human species, nor by an individual within a certain group. We need people to care for babies, but a wide range of people can do so. However, if pregnant women no longer existed, our species would become extinct. An individual pregnant woman is not, herself, necessary to maintain the species, but the existence of pregnant women as a class of persons is indeed required.

Another point to make is that men are, of course, also necessary for the survival of the human species. One spermatozoid is necessary for the development of a fetus, but then so is oxygen, water and nutrients, all of which are taken by and within the pregnant woman's body to actually create and develop another human individual. Almost every particle of the body of the fetus,

and of the newborn baby's body, has been constituted entirely by the pregnant woman's body. A man's contribution to the reproduction process is also short, and does not need any particular ongoing protection.

We might, however, ask how we should view my proposal if there were significant changes in human biology. At the beginning of this paper, I explained how my argument might no longer work if, for example, men and women one day became pregnant in similar numbers, and therefore, if women no longer played the same central role in the creation of new human life. Suppose we consider a variation of Judith Jarvis Thomson's famous thought experiment about the ailing violinist, who can only survive if he is plugged into the bloodstream of another human body for nine months.<sup>16</sup> This example is meant to defend the permissibility of abortion on the basis that, even if we thought that the fetus is a person, we should not think that the pregnant woman should necessarily be morally required to sustain its life, because it is assumed that we would not think that the person providing life support needs to continue to keep the violinist alive, even if the violinist is a person.

But suppose, as a variation of this example, that the violinist's illness was not rare, and could affect not only violinists, but all persons, so that none of us could survive unless we were plugged into another person's bloodstream at some point for nine months. This modified analogy is one that is presented by Don Marquis, who suggests that we would, in fact, in such a case likely require a right to bodily support.<sup>17</sup>

Now suppose, additionally, that everyone needed to be plugged in before they reached puberty, such that this form of life support would be necessary for the continued existence of the human species. Might we, in this case, now recognise not only a right to bodily support, but also a temporary superior moral status to those who are sustaining the lives of others, given that the life supporters are now performing a task necessary for the survival of the human species, akin to that performed by pregnant women?

I think there would, indeed, be some good reasons for recognising a higher status, although, nevertheless, the scenario involving the life supporters is not entirely analogous to the case of pregnant women. In my hypothetical scenario, both individuals would be fully formed, whereas a fetus is in the process of being created by the pregnant woman. The pregnant woman both creates new life, and maintains the survival of the species. The life supporter contributes to the latter, but not to the former.

Furthermore, my two other justifications for the higher status of pregnant women might not apply. We might not think that the life supporter has numerically increased, as it would seem that the two individuals would still be conceptually separate, even if one could not live without the other. Moreover, and as I will now consider further in the next section, my argument is partially justified based on a need to provide justice for women, and this depends on the gendered, and imbalanced, harms associated with pregnancy. Therefore, such justice considerations would not apply in my hypothetical scenario, provided the likelihood of becoming a life supporter was no higher for women.

### Justice for women

My third justification is based on the need to address gendered harms to women due to the imbalanced burdens women experience because of pregnancy, and therefore due to the need to provide justice for women. From the outset, I should say that I believe that the first two justifications for the recognition of a superior status are stronger, as they point to a conceptual and morally significant distinction in the state and the role of the

pregnant woman. The third justification would also be insufficient on its own because there are many other groups of people who also suffer discrimination, and most discrimination should be addressed on the basis of the (mere) equality of all persons, if we are committed to a threshold concept of personhood.

The recognition of a superior moral status for pregnant women can, in particular, help counter (or even, ideally, entirely counter) the many disadvantages and burdens that pregnant women face, but also that women in general can face due to the possibility of pregnancy, and even if, for example, they would not be able to conceive.

My suggestion is not as radical as it might seem. It does not require that pregnant women take all the resources away from others, or always jump to the front of the queue. They need not be considered to be far superior than mere persons, but only superior enough to meet a second threshold. Therefore, their treatment need not always be significantly more beneficial than that of mere persons, but there should be, at the very least, a noticeable difference in the way that they are favourably treated overall.

There are a wide range of positive changes that could take place, and I will not attempt here to provide an exhaustive account. At a minimum, there would be strong reasons for higher quality maternity care. In the context of surrogacy arrangements, there would be reasons to provide a more respectful acknowledgement of the role of pregnant women, including through the rejection of an approach that sees the pregnant woman as merely a 'carrier' or 'container' of another person's child,<sup>18</sup> and through the recognition that gestation can contribute to the child's identity.<sup>19,20</sup>

There could also be a stronger response to address cases of abusive treatment of pregnant women, and violence against them, including obstetric violence, during pregnancy and childbirth.<sup>iv</sup> With respect to the murder of a pregnant woman, I think that, *ceteris paribus*, it would be more morally serious, but the response could vary by jurisdiction; if the sentence for murder will necessarily be a life sentence, for example, there could be an increase to the minimum term the offender must spend in prison.

I also think that the recognition of a superior moral status for pregnant women should mean that related measures should be taken to support women before they are pregnant, as well as after, even though the superior status itself need not be extended. This is on the basis that, if pregnant women are superior beings, it is just to provide for measures to allow women to achieve this status, if they wish to have it, and to enter it in a more favourable state, and to not face adverse consequences from having it, following the end of a pregnancy. Some of these measures could benefit women who might never want to be pregnant, or who cannot, because they too can face discrimination based on the assumption that they might become pregnant.

On the basis of a wider approach, we might, for example, take more measures to combat discrimination in the work place, and even, perhaps, more assistance from society in raising children.<sup>v</sup>

I must also emphasise that my above points do not imply that a pregnant woman could not choose herself to end her pregnancy, and therefore, lose her status. On the contrary, given that it is the woman who benefits from the higher status, my approach

<sup>iv</sup>See for example: Pickles C, Herring J. *Childbirth, Vulnerability and Law: Exploring Issues of Violence and Control*. London: Routledge; 2021. 272 p.

<sup>v</sup>See for example: Kittay EF. *Love's Labor: Essays on Women, Equality and Dependency*. 2nd ed. New York: Routledge; 2020. 218 p.

supports putting the interests of the pregnant woman first, although people might disagree as to what those interests are. According to some arguments, this would mean the provision of liberal access to abortion, which is safe and free of stigma. Others might think that it is often against the pregnant woman's own interests to have an abortion, or to have an abortion past a particular stage of pregnancy. While my approach could support a wide range of positions on abortion, it would always support good treatment for pregnant women. The reality is that, whatever one's views on the morality of abortion, there is a very great deal more that can be done to support pregnant women in both wanted and unwanted pregnancies. The debate on the morality of abortion unfortunately overshadows the many areas where there should be more agreement.

Arguments which recognise the second threshold of personhood would therefore need to be framed on the basis that any proposed course of action gives pregnant women a more beneficial treatment than mere persons, at least in some significant ways.

This recognition would only be the beginning. Certainly, there might be disputes about the specifics, such as, for example, what precise levels of resources should be allocated for maternity care, but these are not unlike existing disagreements about decisions on resource distribution which affect mere persons. If my proposal is accepted, these discussions should be able to progress on stronger moral foundations.

### THREE OBJECTIONS

Now that I have set out the main reasons which I believe justify the recognition of a superior moral status for pregnant women, I will consider three possible objections to my approach: that it threatens human equality, that it worryingly suggests that pregnancy should necessarily be desired, and that it is unnecessary because pregnant women can obtain, through mere personhood, the same beneficial treatment.

#### Equality

The equality objection is this: the recognition of a second threshold of personhood suggests that certain people are more valuable than others, and this undermines human equality.

I believe that I have already given, above, sufficient reasons to demonstrate that my proposal does not threaten, but rather promotes, human equality. If we value (mere) human persons highly and equally, it is only logical that we value more persons who are both more than singular, and who are the ones who create other persons.

When people consider the consequences brought by the recognition of personhood, it is often thought that we would need the most stringent reasons to not kill persons. We might think, for example, that several (nonperson) non-human animals could be sacrificed to save the life of one human person. However, this does not mean that we could sacrifice two (mere) human persons to save the life of one pregnant woman. While a pregnant woman is more than singular, she is not necessarily equal to two. Furthermore, while killing has permanent consequences, pregnancy is a temporary state, and therefore, the arguments on killing are not significant here. Arguments about the avoidance of physical harm to pregnant women, or about other forms of better treatment, including through resource allocation, would be more appropriate.

A further objection based on equality is that, if we start identifying some persons as superior than others, there is no reason to stop with pregnant women, and we will fall on a slippery slope.

I do not think this is a risk. Pregnant women are unique, and the threshold is easily identifiable—indeed, it is easier to identify convincingly than the first threshold.

#### The desirability of pregnancy

The second objection is this: since I am claiming that pregnant women have a superior moral status, I am necessarily claiming that pregnancy is desirable and that women should wish to become pregnant, whereas in fact we know that this is not always true, and for good reasons.

This would be a misunderstanding of my approach. The recognition of a superior moral status for pregnant women does not imply that anyone should wish to be pregnant.

Imagine there was a way for some persons to become transformed into Winged Creatures, with large and formidable wings. Suppose as well that the flight of these creatures enhanced the happiness of those above whom they flew. We might recognise that this transformation was so significant that it should lead to the recognition of a higher threshold of personhood, and that the creatures had a superior moral status. For many Winged Creatures, their newly acquired wings would be wonderful: flying would be a joy, spreading happiness would be a joy, and there would be some people who would want to experience this more than anything in the world. Nevertheless, we could also understand that there would be others who would wish to avoid the transformation at all costs. Perhaps the wings are at times uncomfortably heavy, and surely for many people the idea of flying is frightening. Some might feel that the transformation threatens their identity, and they would regret their former and familiar self. Let us say as well that the wings are costly and time-consuming to maintain: as impressive as they are, it might seem irresponsible for some people to grow them, if they cannot afford the time, hassle and money for their upkeep. For a small number of Winged Creatures, the wings might cause too much strain on the heart and endanger their lives. Some people would ask for their budding wings to be clipped as soon as possible.

Of course, my analogy is not perfect. In many ways it is clearly not like pregnancy. (Although that is surely partially because pregnancy is not entirely *like* anything else.) We would not consider, for example, whether the wings themselves are persons. But I do think that it can help us to accept that human pregnancy can be regarded as a state which confers a higher moral status, without for that matter requiring us to believe that any person should necessarily wish to enter into, or remain in, or certainly much less be coercively forced into, such a state. Thus, my argument would not, as mentioned above, be inconsistent with support for abortion; however, it could be used to support harsher penalties against someone who causes a woman's abortion against her will. It also means that we certainly need not think that women should be pregnant as often as possible. Clearly, we should continue to think that rape, and genocidal rape, are horrible crimes, whether or not they lead to pregnancy; for the avoidance of doubt, if a woman becomes pregnant unwillingly, the fact that she obtains a higher moral status does not at all mean that the pregnancy is desirable.

However, it is true that the second justification for my proposal, based on women as creators, is based on the fact that pregnancy itself *is* good, in *general*, even if not in every individual case, because if pregnancy were no longer possible (and if there were no new developments allowing for alternative techniques to create human beings), our species would cease to exist. But this does not mean that any individual should become pregnant, nor does it need to encourage the creation of as many human beings as possible.

It might be that, in the future, pregnancy will no longer be necessary for the continued existence of human beings. Perhaps, for example, ectogenesis will become a reality, or even become the only option available for human reproduction. While this might seem like it would bring a number of advantages, including the removal of many burdens for women, it could also mean, according to my proposal, that women would lose the possibility of obtaining a superior moral status. If human pregnancy no longer existed, and was entirely replaced by artificial gestation, women would lose their role as potential superior beings. They would only ever be mere persons, like everyone else. For some women, this might be desirable, but for others, I suspect it might feel as though something important will have disappeared. The recognition of a superior moral status for pregnant women can make better sense of the type of loss that ectogenesis might bring.

### The need for a superior status

A third objection is this: even if there are reasons to treat pregnant women more favourably than other people, it is not necessary to recognise that they have a superior moral status in order to do so, and any existing disadvantages suffered by pregnant women can be addressed while recognising only one threshold of personhood.

It is true that under our current liberal approach in society, we can allocate a greater share of resources to those with greater needs. It might be thought that if pregnancy brings about additional burdens for women, these can be addressed through the same types of remedial measures we use to address other forms of disadvantage, and without the need to recognise a second threshold. It is also true that pregnant women might suffer discrimination which is not necessarily worse than that suffered by some other groups.

However, my proposal is not justified only because of the discrimination against pregnant women, which relates to my third justification, but also based on my first two justifications. When other disadvantages to certain groups are addressed, the objective is usually thought to be equalisation, on the basis that each person is equal: every person should receive a same or very similar level of access to resources or opportunities. If pregnant women are mere persons, we might support measures such as those we have now, to redress inequality: funded maternity care, free prescriptions, paid time off work, or protections from job loss. But my proposal is that we should do more, because pregnant women are more than equal. We need not think that pregnant women are far superior, or that they should have far superior treatment, but my three justifications for the second threshold suggest that their treatment should, at least in some ways, be noticeably *more* favourable. In other words, not only is it an injustice to pregnant women if they are treated unequally, but it is also an injustice if they are treated merely equally, because justice for superior beings requires not equal, but superior treatment.

### CONCLUSION

In this paper, I have suggested that there are strong reasons to recognise a superior moral status for pregnant women, if we follow a threshold concept of personhood, but a better question might be, in the end—why not?

Perhaps the strongest alternative to my approach in this paper is to say that a second threshold of personhood reached because of pregnancy should be recognised simply because its existence is self-evidently true. Many of us share a common intuition that

pregnant women are special, and should be treated with greater care.

It might be that, ultimately, we find it hard to accept that any person is superior, even temporarily, because it undermines our fundamental commitments to equality. But if a pregnant woman is more than one person, the lack of recognition is in fact an injustice. One equals one equals one equals one. But more than one is not equal to one.

At this point I should end by reminding the reader that I have proceeded in this paper entirely on the basis of the starting assumption, which I did not defend, that we accept to follow a threshold approach to personhood. It might be that, in truth, it is misguided to think of personhood in this way. Perhaps we should be wary of the fact that many theories based on a threshold concept have seemed to exclude more than they have included, and have historically been used to justify many forms of harmful treatment, although it must be said that my suggestions should rather lead to far more beneficial treatment overall instead.

My feeling is that, whatever approach we take to examining the moral status of human beings—and whether or not we follow a threshold approach, and whether we are examining the status of pregnant women or of anyone else—our understanding can be improved if we think further about the nature of pregnancy, in ways which we have not yet sufficiently explored. We did not come into existence as a violinist, or as a burglar, or as a person-seed drifting through an open window,<sup>16</sup> or as a fish.<sup>8</sup> Hypotheticals aside, the reality is that we all came into this world through the body of another human being, and surely that should matter, if anything at all matters, in thinking about why any of us should matter at all.

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