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Derivative deprivation and the Wrong of Abortion

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Derivative deprivation and the wrong of abortion.

According to Marquis (1989), to decide whether killing a human foetus is wrong we need to start with a general theory of what makes killing an adult human organism wrong, when it is wrong. We can then see whether this wrong-making feature applies to foetuses. Marquis argues persuasively that what makes killing a human wrong is that by doing so one deprives it of a future of value.[1] By 'future of value' he means a future that involves experiences that are valuable to the individual who would have them, and would make their life, on balance, worth living. Since most foetuses will develop into individuals who will have a valuable future[2] if they are not aborted, most abortions deprive the foetus of a future of value, so most abortions are wrong.[3]

Although it is seldom noted, this view also offers a very plausible explanation of why it is wrong to inflict serious harm on the foetus short of killing it, either by physical abuse of the mother by someone else[4], or by excessive drinking, or smoking by the mother. That would be wrong on this view, when and because the injuries caused to the foetus reduces the value of its future – that is, deprives it of a better future than it otherwise would have had. If, for example, the foetus is

[1] Being deprived of a future of value is intended as a sufficient, but not a necessary condition of the wrongness of killing, so it does not follow that if killing an individual would not deprive it of a future of value, that killing would be permissible. This is important because of euthanasia. Consider someone whose remaining life will be short and painful. They know this, but decide they do not want to end it prematurely, and so do not need others to assist them to end their life. If any life lacks a future of value, this one does. But this does not mean that it is permissible to kill this person against their wishes. This is a variant of Strong's objection (2008). Marquis responded to this objection by clarifying the notions of a future like ours and a future of value, and making the latter restrict what sort of future of value is sufficient to make killing wrong. But all he needed to do was remember that having a future of value is only sufficient to make killing wrong. Other facts, such as the fact that one would not be respecting the wishes of the other person, or their autonomy, might also be sufficient to make killing wrong, and so might plausibly make killing someone who lacks a future of value against their will wrong.

[2] Sometimes Marquis states his view in terms of the future being of value, whereas at other times he states it in terms of a future that will be valued by the individual whose future it is. I am persuaded by Scanlon that these are quite different things (1998, p***), and that the future of value view is best understood in terms of futures of value, rather than valued futures.

[3] Marquis understands wrongness here as pro tanto wrongness, so the fact that you would deprive a foetus of a future of value does not necessarily make it wrong all things considered. That consideration may be overridden or outweighed by some opposing consideration. But the point is that the fact that you would be depriving an individual of a future of value gives a very strong moral reason not to kill that individual, and it requires a very weighty reason on the other side to defeat it, just as in the adult case.

[4] Of course part of what makes it wrong to physically abuse a pregnant woman is the harm caused to her. My point is just that the harm to the foetus by such abuse would be a further distinct morally salient feature.

seriously harmed because of excessive drinking by the mother, such that it will later suffer learning and behavioural problems, that harm would mean that its future life would not be as good as it otherwise would have been, and for that reason it was wrong to inflict that harm.

A standard objection to Marquis's 'future of value' view has come to be known as the identity objection.[5] According to the identity objection, if a psychological account of personal identity is true, then abortions do not deprive the foetus of a future of value for the following reason. If depriving a foetus of a future of value is sufficient to make abortion wrong, then the individual that is the foetus must be the same individual that will later have those valuable experiences, if it is not aborted. Otherwise those valuable experiences would not be experiences *it* would later enjoy. But since a foetus is not conscious till around 6 months, prior to that point, it cannot be the same person as the one who will later have those valuable experiences, according to the psychological theory of personal identity. This is because it lacks the capacity for consciousness,[6] and so cannot be psychologically connected to that later individual in the way that would make them identical. Since the foetus (prior to 6 months) cannot be the same person as the later person who will have valuable experiences, it cannot be the case that an abortion would deprive the foetus of that valuable future, for that future is not its future. So abortion is not wrong, or at least not wrong on the grounds proposed by Marquis.

In his reply to this objection Marquis noted that although the foetus cannot be identical with the person it will become, that does not imply that there is no other relevant way in which it is identical with the developed human it will become (2005, 106). Each of us is the same biological organism as the foetus from which we developed, and as long as we can allow that the organism has experiences then we have a relevant identity relation to make it true that the foetus will have a future of value.

[5] See, for instance, McInnery (1990), and Brill (2003)
[6] I expand on the notion of capacity used here later.

Vogelstein developed this response to the identity objection.[7] According to the psychological account of personal identity, I am identical with my mind, not with the biological organism that has that mind. The objection supposes that because the mind and the biological organism are different entities, if the mind has those experiences, the organism does not. At best only a part of the organism, the brain, has those experiences. But Vogelstein points out that the leading advocates of the psychological theory of personal identity – the constitution view, the embodied mind view, and the four dimensional view - all allow that the organism has experiences. So the best psychological theories of personal identity do not contradict Marquis's view that it is the organism that has experiences, and that the foetus can have a valuable future.

In his 2019 paper Brill claims that the best psychological account of personal identity is McMahan's embodied mind account (2019, 288). On this view the organism has experiences because a part of it (the brain) has certain properties. Consequently, the foetus is the same biological individual that will later have valuable experiences, even if it is not the same person that will have those experiences. So Brill accepts that in killing the foetus, one deprives it of a future of value. Where he differs from Marquis is that he does not believe that this deprivation makes abortion pro tanto wrong. To support this belief he distinguishes two ways in which an individual can have experiences and two senses in which it can be deprived of those experiences.

Brill claims that there are different ways of having valuable experiences, and this difference has moral implications. Following McMahan (2002, 93), he distinguishes between directly having some property and having that property derivatively. In all cases where a whole has some property because a part of it does, the whole only has that property derivatively, whereas the part has it directly. This is because the whole only has that property when and because the part has it. Brill accepts, therefore, that an organism can have experiences because a part of it (its mind) does, but

[7] Brill also accepts this response to the identity objection, or is at least willing to concede this in his 2019 (291). Although Vogelstein defends Marquis from the identity objection, he goes on to argue that his view is vulnerable to a different objection (2016, 427ff).

claims that the organism only has those experiences derivatively, whereas its mind has them directly.

As a consequence of these different ways of having valuable experiences, there are different ways in which an organism can be deprived of them. Brill distinguishes two notions of deprivation:

> Descriptive deprivation - "simply having something taken away"
>
> Normative deprivation - "undeservedly or wrongly having something taken away"[8] (2019, 292)

The descriptive sense has no moral implications. If I deprive my engine of fuel it will stop. But because it has only been deprived in the descriptive sense, it does not mean that it is a victim, or that it has been morally harmed, or wronged. This deprivation could only have these moral implications if the engine was deprived in the normative sense. But an engine is a mere thing, and as such is not the sort of entity that can be deprived in the normative sense.

Similarly, because our bodies have experiences only derivatively, they are not the sort of thing that can be morally harmed, according to Brill. Only we, not our bodies, can be deprived in the normative sense, because only we have those experiences directly, and so would be wronged if they are taken away. Our organisms cannot be deprived of their future of value "in a way that makes them victims" (2019, 291), and so they cannot be wrongfully deprived of them.

Brill tries to illuminate this idea with following scenario.

> Imagine a hospital room, where two people, Sara and Rodger, stand at the bedside of the living body of their friend, John, whom they believe no longer exists since his organism's

[8] Brill glosses this notion in various ways. Initially he says it means "undeservedly or wrongly having something taken away. This is being deprived in the sense of 'being robbed of' or 'kept from enjoying' or 'made to suffer a loss' (292). Slightly later he says that only we (the embodied mind) can be deprived in the normative sense of "wrongly or undeservedly having experiences of high value taken from us because, as the hospital bedside thought experiment illustrates, only we – embodied minds, consciousnesses, subjects, direct bearers of experiences – are morally harmable, or at any rate harmable in a serious way" (292). I take the point to be that an individual is normatively deprived if that deprivation constitutes a significant harm which is such as to make the deprivation pro tanto wrong.

higher brain was irreparably destroyed in a recent automobile accident, so he is in a permanent vegetative state (PVS):

> Sara [crying softly]: I can't believe he's gone. John loved life. He loved travel. He loved art. He loved philosophy. And, of course, he loved Christine and the boys. All that taken from him, unexpectedly, in a flash. It's so sad.
>
> Rodger [stroking the body's left arm]: Yes, and how sad it is as well for John's body here. With John gone, it's deprived of all of those valuable experiences and activities, too. What a great loss John's body has suffered. Poor thing. (2019, 292)

Brill claims that Rodger commits a category mistake: "thinking that a transfer of great loss occurs from a mind deprived of valuable experiences to the organism that contains it." (292) Unlike John's mind, "John's organism… is not pitiable since it – not essentially a subject, but only possibly containing a subject and having subjective experiences in a derivative sense during certain phases of its existence – is not the sort of thing that can be seriously morally harmed." (292) Brill thus concludes that:

> "under a psychological theory of personal identity, our organisms are not the sort of thing that is capable of having serious moral harm inflicted on it – as the hospital bedside thought experiment shows. This means, in other words, that our organisms, in this case, cannot be victims. And if they cannot be victims, then non-sentient foetuses, which are essentially organisms, cannot be victims. And if non-sentient foetuses cannot be victims, then what on Marquis's view primarily makes killing wrong – 'the loss to the victim of the value of the victim's future' – does not apply to non-sentient foetuses." (293)

The foetus is just an organism, like John's body in a PVS, so we cannot deprive it (in the normative sense) of future valuable experiences, because this essentially biological entity is not the sort of thing that can be morally harmed, any more than John's body is a fitting object of pity.

I will now raise two objections to Brill's view, and thus defend Marquis's account of the wrongfulness of abortion. First, I will reject the idea that if the organism has experiential properties when and because a part of it, the brain, has certain properties, then it can only be deprived of those experiences in the descriptive sense. If the organism genuinely has those experiences, then why is it not wrong to deprive the foetus of its future experiences?

Second, Brill's claim that non-minded organisms like foetuses cannot be morally harmed has various implausible consequences. I mention two such implications, but it can easily be seen how these can be multiplied. These implausible consequences cast further doubt on Brill's view that the way in which human organisms have valuable experiences means that it is not wrong to deprive the foetus of its future experiences.

Derivative properties

What is it for a property to be derivative? From what McMahon and Brill say it seems that a derivative property (F) is one that something possesses when and because it (or a part of it) has some property (G). F and G may be the same property, as in the case with the car honking when and because a part of it honks. But F need not be the same as G. Objects have a certain colour property when and because their surface has certain reflectant properties, and we have certain experiences when and because there is certain neurological activity in our brain. So what McMahan and Brill call direct and derivative property possession seems to be a particular instance of a more general dependence relation which we may call, following Audi, the ground and constitutive manifestation of some property (see Audi, 1994) .

Things instantiate a certain property F in virtue of possessing some properties G. G is the ground of the relevant property, and F is its constitutive manifestation. So, for example, my hair manifests a certain colour property in virtue of certain properties of my hair follicles, which are its grounds. So my hair colour is what McMahan would call a derivative property. It has the colour it does when and because a part of it, its follicles, have certain properties. Similarly having an

experience consists in instantiating a particular property, which requires a characteristic grounding, and that grounding is certain properties of the organism's parts (e.g., neural activity in the brain). The idea of grounds and constitutive manifestation of some property is all that is needed for McMahan to allow that organisms have experiences. The constitutive manifestation of my experiences in the organism as a whole is grounded in certain properties of a part of that organism, its brain.

But once we understand this distinction in the way described above, it becomes completely unclear why we should assume that if an organism has experiences derivatively (to use McMahan's language), it can be deprived of them only in the descriptive sense as Brill claims. Consider a form of attribute dualism, according to which the human organism has experiences, and those experiences are grounded in states of the functioning brain. The body has those mental properties derivatively in the sense that it manifests them when and because a part of it (the brain) has certain properties that ground those experiences. But that these experiential properties are grounded in this way has no moral implications If human experiences were constitutive manifestations of the their grounding properties, it would not follow that the organism cannot be deprived of those experiences in the normative sense. On this view, the human organism is genuinely conscious, and has genuine experiences - for according to attribute dualism, it is the body that has mental states - and some of those experiences will be valuable. So if you were to deprive it of some of those valuable experiences, that would be pro tanto wrong. That those experiences would be what McMahan and Brill call 'derivative properties' would be irrelevant. It would be a point about the underlying metaphysics which has no moral implications one way or the other, so long as the organism really has those experiences, which according to attribute dualism, and the embodied mind view, it does. This example shows that there is nothing about the *very idea* of experiences being dependent on grounding properties that implies that the individual that has them cannot be normatively deprived of those experiences. If the individual organism genuinely has those experiences it would be wrong to deprive that individual of them, no matter what the underlying metaphysics.

Brill tried to persuade us otherwise with his hospital bedside thought experiment. But it is not clear how the absurdity of mourning John's loss and John's body's loss follows. If various states of the brain ground mental states that are constitutively manifested in properties of the body, then the person is the embodied mind, not a part of the body. The brain does not have experiences in addition to the body, but has properties that ground the experiences of the person as a whole. There is just one subject of experience, and just one subject who has been deprived of those valuable experiences.[9] So there is only one individual to pity.

Implausible implications.

I have argued above that once the direct/derivative distinction is understood as a particular instance of a distinction between grounding properties and the constitutive manifestations of those properties, there is no reason to suppose that the organism cannot be normatively deprived of its experiences just because its experiences are grounded in properties of the brain. Indeed, there is reason to suppose that this account of the metaphysics of experiences has no moral implications of the sort Brill claims. I will now argue that Brill's view that non-conscious organisms cannot be wrongfully deprived has implausible implications which cast further doubt on Brill's conclusion.

The first implausible implication of Brill's view is that it implies that there is nothing wrong in inflicting significant harm on the foetus short of killing it, prior to birth. I noted at the start that one of the advantages of the future of value view is that it can explain why it is wrong to harm a foetus in a way that would significantly reduce its quality of life as an adult. This would be wrong on the future of value view because it would significantly reduce the value of the foetus's future. This seems to me to be correct. Consider the following case.

[9] It should be noted here that if there is a problem, it seems to be a problem with McMahan's theory of personal identity, for if the point Brill wants to make with this thought experiment is valid, it would seem to illustrate what Olson calls the 'overcrowding problem' with psychological theories of personal identity (Olson 2003, 330). The idea here is that if the self is distinct from its body, and its body has experiences as well as the self, then for every experience there seems to be two subjects of experience.

In the UK, pregnant mothers are advised by the National Health Service not to come into contact with cat litter, because of the risk that they could catch toxoplasmosis, which may harm the foetus. If the foetus is infected in this way it could develop seizures, hearing loss, or intellectual disability, in later life. So although the chances of being harmed in this way is quite small, a mother who ignores this advice risks serious harm to the foetus. Suppose that a pregnant woman does ignore this advice, and as a result, the foetus suffers the sort of serious harm mentioned above. It is very hard to resist the view that she acted wrongly, or at least that she had good moral reason not to ignore the medical advice. That reason seems to relate to the harm done to the foetus, and how that will affect it in later life.

Brill must say that in this case, being deprived of a better future than it otherwise would have had is only deprivation in the descriptive sense, because the foetus is a mere organism, like John in a PVS. Consequently, he would say that the mother did nothing even pro tanto wrong by ignoring the medical advice and continuing to change the cat litter, even though this caused serious harm to the individual the foetus would develop into. All he could say is that it is not prudent, because of the health risks to the mother, and perhaps because bringing up a child with such problems will probably be harder and distressing for her. This view is hard to accept.

Perhaps that is too quick. Brill might respond that the woman is still morally criticisable on the basis of manifesting a certain vice or absence of virtue. Consider someone who goes hiking in a state park and stomps on some wild flowers, thereby destroying them. The flowers are not conscious organisms, so cannot be wronged, but the stomping might still be pro tanto wrong. The reason seems to be that the stomping manifests either an indifference to the interests of other hikers, or a lack of respect toward something that has intrinsic value. The same kind of reasoning might underlie our moral judgement in the case of the pregnant woman who ignores the medical advice, even if Brill is correct that the foetus cannot be wronged.[10]

[10] I thank the anonymous reviewers for raising this point.

This does not seem to me to be a good response. Suppose the foetus is analogous to the flowers in the respect that it cannot be wronged. It could still be wrong to harm it. Why is this wrong? One reason in the flower stomping example is that by destroying the flowers one deprives others of the benefit of enjoying them, and so this would manifest the vice of inconsiderateness towards others. But that would not apply to the case of harming the foetus. If causing such harm is wrong, it is wrong because of what it deprives the harmed individual, not because of what it deprives others. The adult it grows into might rightly resent its mother's behaviour during pregnancy because of the effect such behaviour had on him and his life.

If what makes it wrong to stomp on the flowers is that it manifests a failure to respect the non-instrumental value of the beautiful flowers, then that would only apply to the foetal harm case if the foetus were something with non-instrumental value that is worthy of moral respect. But that is just what Brill denies. So it is not clear that Brill can respond to this objection in this way.

But this case highlights a more general problem for Brill. If he allows that it is wrong for the mother to ignore the medical advice, he would have to concede that it is wrong to inflict the greater harm of aborting the foetus. Regardless of what makes her behaviour wrong, *if* it is pro tanto wrong to harm the foetus by ignoring the medical advice, it must be pro tanto wrong to inflict the greater harm of killing it. So if there is some way that Brill can allow that it is wrong to cause a lesser harm of damaging the foetus, he would have to accept that it is wrong to inflict the greater harm of killing it. What the flower stomping example shows is that an act could be wrong even if no one is wronged by it. If that is right, then the foetus does not have to be a moral victim (ie, someone, or something that is wronged) for one's behaviour towards it to be wrong.

Secondly, consider a variation on Brill's hospital bedside thought experiment. According to the embodied mind account of personal identity, we are essentially minds, and the identity conditions over time is the continuity of a functioning brain with the capacity to support a mind. If, therefore, someone is in a PVS because of serious and irreparable damage to their brain, the person

has ceased to exist. This is because the organism no longer has a conscious part, and the brain no longer has the capacity to support a mind. All we have, on this view, is the organism. Suppose that he is on a life-support machine because of his brain injuries. Because John has permanently lost the capacity for consciousness we may rightly think it is permissible to end his life by turning off the life-support machine. According to the future of value view this is permissible because the individual organism no longer has any future of value, and so would not be deprived of this (in any sense) if it were killed.[11]

Now imagine a future where the sort of brain damage that would now cause a PVS could be repaired. Suppose it could be repaired by growing a replacement for the damaged part of the brain from stem cells in a laboratory. We could even imagine a scenario in which all of the mental states of what we may call 'Future-John' prior to his accident could be 'reinstalled' once his brain is repaired,[12] so when the damaged part of his brain is replaced, he would be the same person as he was before, according to psychological theories of personal identity. Suppose that this procedure requires some time to prepare, say nine months. I am imagining that the damage to the brain to Future-John is identical to the damage Present-John suffered in Brill's hospital thought experiment, so is such that in the present it would put someone into a PVS. But because of future advances in technology, this damage would only be temporary. So Future-John would only be in a temporary vegetative state (TVS), and would only need to be on the life-support machine for nine months. Nonetheless, because this damage is just as severe as the damage that would now put him into a PVS, during the nine months that Future-John is in this state, he is not only completely unconscious, but lacks even the capacity for consciousness, because he lacks a functioning brain that would ground that capacity.[13] Present-John and Future-John's damaged brains are intrinsically identical.

[11] Note that because the future of value view only provides a sufficient condition of the wrongfulness of killing, killing someone in a PVS might be wrong on other grounds. But that is not relevant to the present discussion.
[12] Perhaps there is a way of downloading these mental states into a super-computer, and because Future-John knew he was going to do something very dangerous he took the precaution of downloading his memories prior to doing the activity that ultimately led to his brain damage.
[13] This makes it different from sleeping, where the individual still has the capacity for thought, and indeed still has desires, beliefs, etc.

What makes Future-John's condition a TVS rather than a PVS, has just to do with extrinsic changes – that is, differences in the world around him, rather than differences in him. So on the embodied mind account, Future-John ceases to exist for the nine months he is in a TVS, just as Present-John ceases to exist for good. All that exists is the organism.

If it is permissible to turn off the life support machine supporting Present-John because he is in a PVS, why is it not permissible to do so in a future where those same injuries would only put him into a TVS? The only relevant difference seems to be that Future-John, but not Present-John, would be deprived of a future of value. But Brill would have to say that during the nine months in which John is in a TVS, his body is not the sort of thing that could be deprived of that future in the normative sense. So by killing it, we would only deprive it of that future in the descriptive sense. That would make killing future-John permissible, just as it makes abortion permissible, according to Brill. The foetus is no different psychologically than future-John in a TVS in the respect that both lack a functioning brain that is able to ground the capacity for consciousness, and both will acquire that capacity at a later date. So it would seem that whatever our view is about the permissibility of killing Future-John while he waits for the operation that will restore his higher brain functions, we would have to say the same about the permissibility of abortion, and vice versa. Given that Brill thinks that it is permissible to kill the foetus, because a mere organism cannot be morally harmed, he must say that it is permissible to kill Future-John. That seems clearly to be a mistake. It would be wrong to kill Future-John in the scenario described, and it would be wrong for the reasons Marquis offers. By parity of reasoning it would be wrong to abort a foetus, unless there is a morally relevant difference between the two cases.

One potential difference is that in the future TVS case, Future-John has a past self as well as a future self, whereas the foetus only has a future self. But why should having a past self make any difference? Present-John has a past self, but that does not make it wrong to kill him. Killing Present-

John is permissible because he is in a PVS, and so lacks a future of value of which he would be deprived by killing him. That he had a past self is irrelevant.[14]

It may be argued that the state of technology in the Future-John scenario might change our assessment of whether he has the capacity for consciousness. If I severely broke both my legs two hundred years ago, that may well have meant that I was never able to walk again, so I would have lost the capacity to walk. But, as our technology has advanced and we can now repair such damage, it is no longer accurate to say that this damage to my legs would mean that I have lost the capacity to walk. One might argue that in a similar way the technological developments in the future-John scenario might legitimately alter our assessment of when people have the capacity for consciousness. That would mean that it is not permissible to end Future-John's life even if what Brill says about derivative deprivation is correct.

I don't think this response works. I think it is clear that McMahan and Brill understand 'capacity' as 'ability'. This is why McMahan often refers to a functioning brain when discussing the conditions of personal identity (see, eg, McMahan 67-69).[15] Of course we can have this ability even when we do not exercise it. We do not lose the capacity for consciousness when we are asleep, but simply do not exercise this capacity, just as we do not exercise our capacity for walking when we are sitting down. We retain the capacity when and because we have the relevant physical basis of that capacity.

We can also have a capacity even if we are *unable* to exercise it. If for example, someone ties up my legs so that I cannot walk, I do not lose the capacity to walk, but only the ability to exercise that capacity. Similarly, when under a general anaesthetic, we do not lose the capacity for

[14] It is not like sleeping, where the desires, intentions and beliefs of my former self remain. Since John's brain damage is so severe, he has last even the capacity to have desires, intentions and beliefs. So when John is in the TVS I described there is no John. There is just the organism. In this respect it is not like being asleep where the self continues to exist.

[15] If by 'capacity' they mean 'potential ability', then in that sense a foetus has the capacity for consciousness, as it has that potential ability.

consciousness, but only the ability to exercise that capacity. But this is not the case in the broken legs case 200 years ago. It is not the case that whilst both legs are severely broken the individual has the capacity to walk but is not exercising it, or that something is preventing him from exercising that capacity. Both in the past and in the present the individual loses the capacity to walk, because he has lost the physiological basis of that capacity. The only difference is that in the present this loss is temporary, whereas 200 years ago it would have been permanent.

Now that is clarified we can return to Future-John. Even in a future where his brain damage can be reversed, whilst he has that brain damage he lacks the capacity for consciousness, because he has lost the physiological basis of this capacity – a properly functioning brain. All that is different from Present-John is that this incapacity is temporary rather than permanent. If that is right, then Brill's view would imply that it is permissible to kill future-John whilst he is in a TVS, because whilst in this state 'he' is a mere organism and so cannot be wronged.

Conclusion

Brill bases his argument that a mere organism cannot be morally harmed on McMahan's distinction between having some property directly, and having it derivatively. I have argued that this distinction has no such implications. That those experiences are grounded in certain properties of the brain has no moral implications.

Second, I argued that Brill's conclusion has implications which by themselves cast doubt on its truth. I gave two such examples. The first is that it would imply that a pregnant woman has no moral reason not act in ways that would harm the foetus (short of killing it), even if she intends to go through with the pregnancy. The second is that it would make killing Future-John in a TVS permissible. I conclude, therefore, that Brill's latest objection to the future of value account fails.

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