

THE EPISTEMIC ARGUMENT AGAINST ABORTION

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I. INTRODUCTION

The abortion controversy is nothing new in our contemporary culture. And additional debates about bioengineering and genetic manipulation *in utero* only fuel the discussions originally perpetuated by this controversy. In some cases, such bioengineering issues reduce to the abortion debate directly (think of the current discussion on stem cell research). Many philosophers and thinkers in general realize that one may never be able to present a case *for* the personhood of the fetus (in the case of the anti-abortion perspective) or the case *against* the personhood of the fetus (in the case of the pro-abortion perspective) that is satisfactory to every position available on the subject. As early as St. Augustine of Hippo we find a position of epistemic ignorance declared on precisely when someone becomes a person or, in his words, becomes “ensouled”:

“It is not everybody who recollects his own infancy; and do you suppose that a man is able, without divine instruction, to know whence he began to exist in his mother's womb,— especially if the knowledge of human nature has so completely eluded him as to leave him ignorant, not only of what is within him, but of that also which is added to his nature from without? Will you, my dearest brother, be able to teach me, or any one else, whence human beings at their birth are ensouled, when you still know not how it is that their life is so sustained by food, that they are certain to die if the aliment is withdrawn for a while? Or will you be able to teach me, or any one else, whence men obtain their souls, when you are still actually ignorant whence bags, when inflated, get the filling? My only wish, as you are ignorant whence souls have their origin, is, that I may on my side know whether such knowledge is attainable by me in this present life. If this be one of the things which are too high for us, and which we are forbidden to seek out or search into, then we have good grounds for fearing lest we should sin, not by our ignorance of it, but our quest after it. For we ought not to suppose that a subject, to fall under the category of the things which are too high for us, must appertain to the nature of God, and not to our own.”¹

A similar concern is also mirrored in the 1973 opinion delivered by Justice Blackburn in the infamous *Roe v. Wade* case that precipitated the heated discussion flowering today. Blackburn writes:

“When those trained in the respective disciplines of medicine, philosophy, and theology are unable to arrive at any consensus, the judiciary, at this point in the development of man's knowledge, is not in a position to speculate as to the answer.”²

Human history and philosophy have been filled with discussions about the point at which someone actually becomes a person or is “ensouled.”³ As any honest inquiry will yield, conclusions drawn all over the map have been suggested. The result? No consensus has been arrived at (as Blackburn correctly suggests). Don Marquis, a professor of philosophy at the University of Kansas, thus notes that the current debate on abortion will leave us *at best* in a stalemate:

“[W]e have both a symmetry and a standoff between pro-choice and anti-abortion views. ... The moral generalizations of both sides are not quite correct.”⁴

This potentially despairing conclusion that sees the debate as a “standoff” has led Marquis to opt for a non-arbitrary criterion of what *exactly* makes it wrong to kill another innocent human being. His solution avoids the difficulties associated with determining personhood. He suggests that abortion deprives fetuses of a “future-like-ours” in that should the fetus be left to her development, she would enjoy “experiences, activities, projects, and enjoyments that would otherwise have constituted one’s future.”⁵ I think there may be something to Marquis’ argument. But nevermind. Our concern here is to supplement the current debate with a different approach (if indeed I may be humble to say a *unique* approach) in the spirit of Marquis’ skirting of the personhood debate. Avoiding the personhood debate is not merely an anti-abortion strategy either. In a famous article by pro-abortion advocate Judith Jarvis Thompson, she makes it very clear that

the prospects for “drawing a line” in the development of the fetus look dim. I am inclined to think also that we shall probably have to agree that the fetus has already become a human person well before birth.⁶

Thompson’s approach is, therefore, to argue that despite the status of personhood, there are even situations analogous to pregnancy that warrant the woman’s overriding right to terminate that life. Thus my objective in this article is to supplement this controversial discussion on personhood (since much ink has already been spilled on it) and, instead, present an argument against abortion on demand⁷ that does not depend on the ontological status of the unborn. The benefit of this argument should be obvious – that the immorality of abortion on demand does not necessarily depend on fetal personhood.

II. THE ARGUMENT

Let us begin with a brief sketch of the argument in question and determine if its premises are either true or at least more probable than their negation:

1. It is morally wrong to terminate an unborn biological life if it is questionable whether or not it is an innocent human person *or* that there are no overriding reasons to do so.

2. It has not been settled whether or not the unborn biological life (in a pregnant mother) is a person and neither are there overriding reasons to terminate its biological life.
- C: Therefore, it is wrong to terminate the unborn biological life.

Let's examine each of the premises for if each premise in the argument is *probably* true or, at least, more likely than not then the conclusion is supported.

Premise 1: It is morally wrong to terminate a biological life if it is questionable whether or not it is an innocent human person or that there are no overriding reasons to do so.

This will probably not be met with any opposition as long as we appreciate the general moral principle that gives it its intuitive support. Perhaps the only complaint in this premise might be to ask what *precisely* constitutes an "innocent" human person. By "innocent human person" I mean to say that such a person is to be *prima facie* any human person not *worthy* of being deprived of her fundamental right to life. Understandably there are cases where human persons may be justifiably terminated despite the fact that they are human persons. For example, self-defense warrants the termination of the assailant if the victim's life is in jeopardy. As such one's *prima facie* right to life now takes on an additional property – their worthiness to be stopped even to the point of death. So the entire disjunction here intends to incorporate two sufficient ingredients to enjoying the right to life: being a *prima facie* innocent human person and there being no overriding reason to deprive this person of her right to life.

Premise 2: It has not been settled whether or not the unborn biological life (in a pregnant mother) is a person and neither are there overriding reasons to terminate its biological life.

What we have here is a conjunction of two claims. The first conjunct suggests that our lack of epistemic probability in determining the presence of personhood leads us to avoid any action that would otherwise *presume* the entity to *not* be a human person. To make that presumption would be to revoke one of the most fundamental rights of persons – the right to life – of the entity in question. But in the case of criminal jurisprudence, it is always wrong to deprive someone of their civil liberties and right to life if such grounds are not *beyond a reasonable doubt*. The reason why the stakes are always higher for the prosecution is because it is morally superior to release a guilty person than to deprive an innocent person of her basic rights. Thus we have a legal reason to uphold this conjunct.

Morally speaking, we also have our intuition that the destruction of an entity that is *unknown* to be a member of the human moral community (a human person) is equally wrong. For example, if detonators are about to be set inside a building slated to be imploded (to make room, say, for a larger hotel or parking lot) then the burden of proof that no human person is present inside that building lies with the orchestrators of that detonation. If the resulting analysis were to conclude that no one was secure in their decision that no human persons were

present, then the detonation would be belayed until it was *overwhelmingly* more probable than not that no human persons were present. In fact, the preponderance of evidence would have to be *virtually indisputable* in suggesting that no human life was present inside that building. Moreover, in theoretical scenarios where one was to approach an unidentified biological life with the intent of terminating its life, the reasons would have to be equally strong that the life in question did not possess any criterion of personhood. Think of an astronaut coming into contact with an alien species for the first time. The burden of proof would undoubtedly be on the person who sought to *terminate* the alien life form. Immanuel Kant, the famous moral ethicist of the 18th century who helped shape western ideas about moral duties, argued for the intrinsic value of all human life by virtue of *being* a human life. Regarding Kant's views, Professor Lawrence M. Hinman (a professor of philosophy at the University of San Diego) writes:

Human life is to be preserved at all costs, for the value of human life is beyond that of any costs.⁸

This is ultimately why criminal jurisprudence places the burden of proof solely on the prosecution. Nobody ever has to justify why their civil rights should not be retained; rather, the burden is always on the one who seeks to *deprive* someone of their basic civil rights. So forceful is our intuition about our civil rights that the United States' founding fathers themselves staked their lives on this seemingly indisputable truth found in our country's sacred *Declaration of Independence*:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. — That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, — That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.

This, of course, raises potential challenges to the other conjunct of this premise – whether or not there *are* overriding reasons to terminate the unborn. Remember that this premise, if true, squarely places the burden of proof for the pro-abortion stance solely on their shoulders. As such, the pro-abortionist is under the obligation to either (i) disprove the personhood of the unborn, or (ii) prove that there are overriding reasons to terminate the unborn life. The pro-abortionist's inability to provide arguments *beyond a reasonable doubt* in favor of (i) makes it exceedingly difficult for there to be grounds for (ii). If (i) is satisfactorily proven to the anti-abortionist's satisfaction (within reason) then, consequently, (ii) becomes much easier to support. But as already noted, there do not appear to be good grounds for thinking (i) has been proven to be *probably*

true much less *beyond a reasonable doubt*. The only rescue for the pro-abortionist is to opt for shouldering the more modest conjunct (ii).

Appeals to Pity

The arguments typically advanced for abortion on demand tend to take on an emotional element – usually one of pity. The allegations usually leveled against anti-abortion sympathies tend to center around the implications of harm, distress, lack of comfort, and/or fiscal deprivation. Such arguments tend to suggest that *if* abortion is made illegal, *then* some unacceptable implication warranting pity would result.

There is one primary flaw in arguments from pity. They tend to beg the question. Such arguments merely play the sympathy card in order to solicit a policy favorable to abortion rights. In most cases, such prejudicial language is intimated into the argument such that one might not even consider that the personhood of the fetus was a matter of debate. For example, consider the following statement by NARAL Pro-Choice America:

Making abortion access more difficult and dangerous is a key tactic in the anti-choice movement's strategy. Today, 87 percent of U.S. counties have no abortion provider, yet anti-choice lawmakers continue to impose a broad range of restrictions on women's access to abortion.⁹

However, such sympathy is misplaced because the arguments *already assume that the unborn are not human persons*. Of course restricting a woman's right to her body are *ceteris paribus* unwarranted, but if a human person is potentially present within her womb then the conceptus is deserving of the right to life – both morally and legally. Thus, in the attempt to solicit pity the arguers tend to color their case by noting some unacceptable implications that would result should abortion be made illegal or restrictions imposed thereby making the abortion process less accessible:

It is estimated that before 1973, 1.2 million U.S. women resorted to illegal abortions each year and that botched illegal abortions caused as many as 5,000 annual deaths. Barriers to abortion endanger women's health by forcing women to delay the procedure, compelling them to carry unwanted pregnancies to term, and leading them to seek unsafe and illegal abortions. ... [F]unding bans ... segregate abortion care — a vital component of women's reproductive health — from other health-care services. The bans ... bear most heavily upon the poor. These bans undoubtedly force many women to bear children they are not prepared to raise or to sacrifice funds vitally needed for other necessities in order to pay for abortion care. The personal and social costs of these bans are heavy and completely avoidable.¹⁰

Once again the appeals to pity only work if the unborn are not human persons, otherwise to permit abortions to have less obstacles or to deny funding to

abortion are tantamount to permitting mothers who want to terminate their newborns to have less obstacles and denying funding to people who want to terminate them! Given the circularity of these appeals to pity, undoubtedly we must implore pro-abortion defenders to shoulder their burden of proof that beyond a reasonable doubt the unborn are not human persons.

Red Herrings

These arguments tend to misplace the emphasis of the abortion controversy in favor of issues that are not immediately irrelevant. This can be seen in the charge of "double-standard" often made of those who oppose abortion on demand with the expectation that one's pro-life stance is utterly self-contradictory when we consider the full scope of *all* bioethical issues. Take the following for example:

President [Bush] has defended his opposition to abortion by arguing that every life "is a sacred gift given by our Creator" and ought to be protected, and that abortion "discourages a culture that values life." At the same time, like many conservatives the President is also an adamant supporter of capital punishment.¹¹

The presumption in this line of reasoning is that one's anti-abortion stance is logically contradictory to one's pro-death penalty stance. But there is nothing logically inconsistent between the two propositions

1. It is wrong to permit the death an unborn human
- and
2. It is right to permit the death of an incarcerated human

I imagine the sense here is that we are merely contrasting the *geography* of the human person where, in one case, the human being is *in utero* and the other is in prison. But clearly these two propositions are not mutually exclusive so long as it is logically possible that there is a qualitatively moral difference between the two (any difference need not be *actually* true but only *possibly* true). One such qualitative distinction might be that the human *in utero* is an innocent person lacking any desert of punishment whereas in the case of the death penalty the human person has given up her right to life through due process and, hence, is worthy of a lethal punishment. Thus it is possible that

3. The incarcerated human *deserves* termination but the unborn human does not.

I just don't see anything logically incoherent between (1) and (2) as long as it is possible that (3) is true.

But perhaps the pro-abortion advocate really only wants to communicate that abortion ought to be permitted because *the same grounds for the death*

penalty underlie the abortion controversy. As such, the pro-abortion advocate seeks to show by analogy that (1) should not be the case because a similar case, (2), shares relevant similarities. But it is difficult to overcome the relevant *dissimilarity* here given the possibility of (3). Of course the detractor could argue that mere possibility is insufficient to make the alleged dissimilarity a relevant factor after all. However, the anti-abortion advocate might then amend (3) to be

3*. The incarcerated human has been declared legally guilty of a crime worthy of the death penalty but the unborn human has not.

This would successfully avoid the criticism of whether anyone actually “deserves” the death penalty *morally speaking* in favor of acknowledging that due process has found the defendant worthy of the death penalty purely from a legal standpoint. Therefore, like it or not, there exists an objective distinction between the unborn and the incarcerated.

Other types of red herrings in the pro-abortionist’s plight to meet the demands of the second conjunct of premise 2 in my argument include scenarios about rape and incest that unwontedly on occasion lead to impregnation. The argument here is to warrant abortion in situations where the birth of a child *further victimizes the woman assaulted*. But this argument *at best* only serves to show that abortion ought to be morally permissible *in just the cases of rape and incest*. It would not follow that the permissibility of abortion under these circumstances warrant abortion on demand. Moreover, this is also guilty of circular reasoning for it already assumes that the unborn are either non-persons or there are overriding reasons to permit the termination. To see why this latter point is the case, consider what it *would* take to permit the death of an innocent person who is the byproduct of a criminal act. I can’t think of any situation! In fact, as Joan Kemp from Feminists for Life once mused, abortion after rape only “[adds] the surgical rape of abortion to her original victimization.”¹² Thus though on the surface abortion might seem to *suppress* the victimization process, it actually ends up *enlarging* it by assaulting an additional human being – the unborn. Finally, suppose that rape and incest were to vanish from all human activity. Would the pro-abortionist be prepared to abandon her position? I suspect the answer would be a resounding “No!” Hence, this serves to show how irrelevant the subject of rape and incest actually are in the abortion controversy.

It would appear, as we survey the general landscape of pro-abortionist arguments, that attempts to undermine premise 2 contain fallacies that make it insufficient to warrant our rejection of it. And given the general admission that no consensus exists on the status of the personhood, we must uphold premise 2.

As we have seen, good reasons exist to uphold the two premises of this argument. And given that neither of the conjuncts in premise 2, the argument’s key premise, have good reasons to be abandoned, then we have doubly supported the argument’s conclusion: Therefore, it is wrong to terminate an unborn biological life – specifically the unborn *human* life.

END NOTES

¹ St. Augustine, *De Origine Animae* 5.4.

² Justice Blackburn, Opinion of the Court on *Roe v. Wade* (IX.B).

³ One of the most common attempts by pro-abortion thinkers in attempting to dissuade people from accepting a personhood status for the unborn can be seen in Mary Anne Warren's notable discussion on her criteria of personhood. She writes:

"I suggest that the traits which are most central to the concept of personhood, or humanity in the moral sense, are, very roughly, the following:

1. Consciousness (of objects and events external and/or internal to the being), and in particular the capacity to feel pain;
2. Reasoning (the *developed* capacity to solve new and relatively complex problems);
3. Self-motivated activity (activity which is relatively independent of either genetic or direct external control);
4. The capacity to communicate, by whatever means, messages of an indefinite variety of types, that is, not just with an indefinite number of possible contents, but on indefinitely many possible topics;
5. The presence of self-concepts, and self-awareness, either individual or racial, or both"

("On the Moral and Legal Status of Abortion," *The Monist: An International Quarterly Journal of General Philosophical Inquiry*, vol. 57, no. 1 (January 1973)). Though she recognizes the potential flaws in this sort of presumption (that these attributes individually are neither necessary nor sufficient to affirm personhood), the problem remains that there are clearly moral persons who do not possess criteria 1 and 2 (something she says "may well be sufficient for personhood"). For example, someone who is comatose would not have consciousness and/or reasoning capability but would remain, all things being equal, a person. Moreover, one of the more damaging implications of her view is that such a set of criteria entail that newborn children would not qualify as persons either. Realizing this frightening implication, she goes on to deny that infanticide is wrong "because even if its parents do not want it and would not suffer from its destruction, there are other people who would like to have it, and ... most people, at least in this country, value infants and would much prefer that they be preserved, even if foster parents are not immediately available." But surely there is something wrong with the idea that the level and depth of desire *for* the newborn is somehow proportional to its being a person. The only thing that separates the two cases – abortion and infanticide – is that "the minute the infant is born ... its preservation no longer violates any of its mother's rights." But this, of course, presupposes that the unborn are not persons – and so we're back to square one!

⁴ Don Marquis, "Why Abortion Is Immoral," *Journal of Philosophy*, Vol. 86, No. 4 (April 1989), pp. 188.

⁵ *Ibid.*, p. 189.

⁶ J.J. Thompson, "A Defense of Abortion," *Philosophy and Public Affairs*, Vol. 1, No. 1 (Autumn, 1971), p. 47.

⁷ I do not mean to argue that *all* forms of abortion are not morally permissible (given that "therapeutic" abortions are typically employed to save the life of the mother, I find them morally acceptable in these exceptional cases), only that the permissibility of abortion for *any reason whatsoever* ought to be immoral. I leave open the question as to whether or not there may be other exceptional grounds to permit abortion. But all the while I recognize these serve as the *exception* and not the *rule*.

⁸ L. Hinman, *Contemporary Moral Issues: Diversity and Consensus*, 3rd ed. (New Jersey: Prentice-Hall, 2006), p. 106.

⁹ NARAL, "Access to Abortion" (<http://www.naral.org/issues/abortion/access-to-abortion/>).

¹⁰ NARAL, "The Safety of Legal Abortion" (<http://www.naral.org/issues/abortion/access-to-abortion/misuse-of-science-/safety-legal-abortion.html>); "Discriminatory Restriction on Abortion Funding"

(<http://www.naral.org/issues/abortion/access-to-abortion/government-health-care/restriction-abortion-funding.html>).

¹¹ Matt Spooner, "The hypocrisy of Bush's pro-life, pro-death penalty stance," Opinion section, *The Bowdoin Orient* (February 25, 2005). For an additional resource chronicling the taxonomy of the various positions people hold on abortion and the death penalty in concert, see K.J. Cook, *Divided Passions: Public Opinions on Abortion and the Death Penalty* (Boston, Massachusetts: Northeastern University Press, 1998). Cook's analysis shows that all people hold to a generally high view of the sanctity of life despite their diversity.

¹² J. Kemp, "Abortion: The Second Rape"

(http://www.feministsforlife.org/FFL_topics/victory/2ndrape.htm).