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In Defense of Newborns: A Response to Kingma

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Abstract (250 words): *Recently, I argued that subjects inside of artificial wombs—termed ‘gestatelings’ by Elizabeth Chloe Romanis—share the same legal and moral status as newborns (neonates). Gestatelings, on my view, are persons in both a legal and moral sense. Elselijn Kingma challenges these claims. Specifically, Kingma argues that my previous argument is invalid, as it equivocates on the term ‘newborn.’ Kingma concludes that questions about the legal and moral status of gestatelings remain ‘unanswered.’ I am grateful to Kingma for raising potential concerns with the view I’ve presented. In this essay, however, I argue that (most) of Kingma’s objections are unpersuasive. First, my original argument does not equivocate on terms like ‘newborn’ or ‘neonate.’ The terms denote human beings that have been born recently; that is what matters to the argument. Charges of equivocation, I suspect, rest on a confusion between the denotation and connotations of ‘newborn’ (or ‘neonate’). Next, I show that, contra Kingma, it is clear that—under current law in the US and UK—gestatelings would count as legal persons. Moral personhood is more difficult. On that subject, Kingma’s criticisms have merit. In response, however, I show that my original claim—that gestatelings should count as moral persons—remains true on several (common) philosophical accounts of personhood. Regarding those accounts that imply gestatelings are not moral persons, I argue that advocates face a troubling dilemma. I conclude that regardless of which view of moral personhood one adopts, questions about the moral status of gestatelings are not ‘unanswered.’*

INTRODUCTION

Imagine we develop artificial womb technology (AWT); the capacity to extract fetuses from their mothers’ bodies and place them in artificial chambers that simulate gestation.¹ Many questions would arise, including questions about subjects within AWs (termed ‘gestatelings’ by Romanis).[1] What would the legal status of gestatelings be? Or their moral status? Would existing framework (legal and moral) be sufficient to answer these questions? Or are gestatelings a new category of human life (neither fetuses nor neonates)?

¹ This is *partial* ectogenesis. *Complete* ectogenesis involves creation of embryos via IVF before implanting them within an artificial womb. Like Kingma, I will focus on partial ectogenesis (unless otherwise noted).[4]

Elsewhere, I claimed that existing legal standards leave no mystery concerning gestatelings: they are legal persons.[2,3] Additionally, I argued that gestatelings are—or should be treated as—moral persons.[2,3] Kingma rejects these claims, arguing that ‘the difficult question of what protections (or moral status)’ gestatelings should have remain ‘unanswered.’[4] Here, I argue that Kingma’s claims are mistaken. First, I refute Kingma’s charge of equivocation. Next, I explain why questions about the legal and moral status of gestatelings are not ‘unanswered.’ Existing legal and moral frameworks are (already) well-equipped to determine whether or not gestatelings are persons.

THE (MISTAKEN) CHARGE OF EQUIVOCATION

Previously,[2,3] I argued:

1. If something is a newborn, then it has full legal and moral status.
2. Gestatelings are newborns.
3. Hence, gestatelings have full legal and moral status.

Kingma claims ‘newborn’ is equivocal here. In premise 1, the ‘image invoked ... is that of an infant, term or premature which is indeed legally recognised as a person with all associated rights.’[4] ‘Newborn’ in premise 2, however, means ‘a developing mammal at *any* development stage that has been “born recently.”’[4] If correct, the argument is invalid.

In response: I claimed that the *denotation* of ‘newborn’ (or ‘neonate’) is what’s relevant. ‘Newborn’ *denotes* a subject that has been born recently, even though it carries ‘connotations of features associated with *term* infants.’[2] Kingma’s critique misses this distinction. A proper understanding of the argument, therefore, relies only on the *denotation* of ‘newborn’ (in both premises).² Subsequently, two questions arise: What is the *legal* status of recently born individuals and what is their *moral* status? Contra Kingma, these questions aren’t ‘unanswered’ in either case.

THE LEGAL STATUS OF GESTATELINGS

Regarding legality, Kingma asserts, ‘all Colgrove can establish is that whatever protections and restrictions are in place concerning [recently born individuals] *of a given developmental stage* should be applied to a gestateling *of a similar developmental stage*.’[4] So, 38-week-old gestatelings would have the same legal status as 38-week-old born individuals, while 18-week-old gestatelings would have the same legal status as 18-week-old born individuals, etc. At present, the legal status of 18-week-olds is (seemingly) different from the legal status of 38-week-olds. As Kingma claims, ‘no jurisdiction would be tempted to issue a certificate of life-birth [sic] for an 18-week fetus—let alone an early embryo—even if the heart or umbilical cord briefly pulsed.’[4] Presumably, this means that legal personhood is not currently afforded to 18-week-olds after birth. Thus, the law wouldn’t assign legal personhood to 18-week-old gestatelings either.

² If, like Kingma, one thinks ‘newborn’ (or ‘neonate’) does not denote ‘an individual that has recently been born’ (or something comparable) I would challenge them to find even one English or medical dictionary that supports that view.

In response, US law could not be clearer. Subjects ‘born alive at any stage of development’ are legal persons.³[5] The US is not alone in this. Romanis notes, ‘English law is unambiguous that legal personality, and with it all legal rights and protections, is assigned at birth.’⁴[6] Unequivocally, gestatelings are ‘born alive.’ Thus, the argument to legal personhood is simple. Recently born individuals are legal persons. Gestatelings are recently born individuals. Hence, gestatelings are legal persons. There is no uncertainty here. Gestatelings undergo the exact same process of expulsion (or extraction) as other neonates (and remain alive throughout the process). For better or worse, *that exact process* is what is relevant in law.

What about Kingma’s claim that ‘no jurisdiction’ would assign birth certificates to 18-week-old neonates? As Vadeyar *et al* reveal, there are many cases where individuals were born alive as early as 18 weeks, yet professionals tended to ‘ignore signs of life’ so as ‘to avoid the need for the woman to register a live birth and then a neonatal death.’[7] Certificates are not issued, in these cases, due to practical concerns. That does not change the fact that the law, as written, *requires* that such neonates be regarded as legal persons.⁵

The perception that 18-week-old neonates are not (currently) considered legal persons is likely explained by the fact that they cannot survive. That nothing is done to save such individuals is not due to their lack of legal personhood, but due to the fact that they cannot be saved. AWT—as envisioned here—would change that. In worlds with our laws *and* AWT (where AWT could easily and effectively save a perfectly healthy neonate) to simply let an 18-week-old neonate die would be no different (legally) than letting a perfectly healthy 26-week-old neonate die today (where NICU technology could easily and effectively save their life). In short, even if Kingma is right that we do not currently treat 18-week-old individuals as legal persons, that fact is rooted in practical considerations and technological limitations, not the letter of the law. Under current laws, gestatelings—in worlds with AWT—would count as legal persons.

THE MORAL STATUS OF GESTATELINGS

Regarding moral status, Kingma writes, ‘all Colgrove ... can claim to establish, is that a gestateling *at a given stage of development* has the same moral status as an embryo/fetus extracted alive...*at the same stage of development.*’[4] For example, if 18-week-old neonates are not moral persons, then neither are 18-week-old gestatelings. Thus, gestatelings do not (necessarily) have full moral status (personhood) at all stages.

There is *much* greater merit to Kingma’s criticism here than regarding legality. In response, I will consider moral personhood from three competing perspectives: ‘personhood-at-conception’ (PAC) views, ‘threshold’ views, and ‘personhood-at-birth’ (PAB) views. I argue that my previous argument has important implications for each and that, contra Kingma, questions about gestatelings’ moral status are not ‘unanswered’ on any of these views.

³ ‘Born alive’ meaning ‘the complete expulsion or extraction’ of a fetus ‘from his or her mother...*at any stage of development*, who after such ... breathes or has a beating heart, pulsation of the umbilical cord’ or other signs of life.[5]

⁴ Romanis does argue that this aspect of the law might need revision, but that is a separate issue from what the law currently says.[6]

⁵ For a discussion of the ethical issues that result from failure to issue birth certificates, see Peterson.[12]

PAC VIEWS

PAC views assign moral personhood to individuals beginning at conception. For PAC theorists, Kingma claims, my previous work is superfluous.[4] PAC theorists already believe that gestatelings are moral persons, so arguments that support this claim add nothing new.

Kingma's response ignores the second half of my argument, however, which defends the claim that subjects of *complete* ectogenesis—those conceived via IVF and grown in AWs—share the same moral status as comparable subjects of *partial* ectogenesis. Since subjects of complete ectogenesis are never born (at any time) and they obviously achieve full moral status at some point in their lives, this shows that birth is not necessary for attaining full moral status. This point challenges 'personhood-at-birth' views, which compete with PAC. A novel argument that undermines a competing view does add something interesting for PAC theorists.⁶

Additionally, Kingma's observation about PAC theorists undermines her own view (that questions about gestatelings' moral status remain 'unanswered'). PAC theorists already have an answer: gestatelings are persons. So, claims that relevant questions are 'unanswered' will be unpersuasive to them.

THRESHOLD VIEWS

Next, 'threshold' views attribute moral personhood to individuals who pass some developmental threshold(s) other than birth (e.g., fetal heartbeat, brain activity, etc.). Suppose, in the future, we have a room full of gestatelings ranging from 2-weeks to 40-weeks-old. Threshold views would separate these newborns into two categories: Those with full moral status and those without. This would entail that newborns are *unequal* in moral terms, which contradicts core international moral norms stated in the Universal Declaration of Human Rights (UDHR).⁷ Specifically, the UDHR states (unequivocally) that 'all human beings are born free and equal in dignity and rights.'^[8] Yet, contra the UDHR, threshold theorists would assign moral personhood to just *some* gestatelings. Using function (or age) to separate neonates into two classes—those with full moral rights and those without—seems straightforwardly ableist (or ageist). Kaczor warns against such practices, noting that in the past, 'gross moral mistakes were made' every time born human beings were separated into these two exact categories.^[9]

AWT, therefore, changes the *overt* costs of threshold views. In worlds with AWT, threshold theorists face a dilemma: Argue *against* the moral equality of neonates (and so, reject the UDHR) or abandon the threshold view. This is not a dilemma for them yet, since many threshold views set the standard for moral personhood prior to (or at) viability (22-24 weeks). Those threshold views say, in effect, that fetuses have a lesser moral status than newborns, which will not raise eyebrows like claiming *neonates are unequal* would. International norms, for better or worse, attribute full

⁶ Is extraction from an AW 'birth' for subjects of complete ectogenesis? No. As Rodger, Colgrove, and Blackshaw explain, the physiological transition from an AW to the outside world is a kind of 'metamorphosis,' not birth.^[10]

⁷ The UDHR is a *normative* document, not a legal document. It establishes standards that *should be* codified in law and serves as moral guidance, designed to inform legal systems regarding human rights.

moral status to born human beings. AWT forces threshold theorists to overcome that precedent; a burden they do not yet have to bear.

Kingma may object that we should seek ‘legal and moral categories that are both metaphysically accurate and morally helpful’ rather than appeal to ‘conventional’ norms like the UDHR.[4] As Rodger, Colgrove, and Blackshaw argue, however, the burden is on others to show why widely accepted concepts require revision.[10] Kingma’s objection also overlooks the *stakes* here. As noted elsewhere, ‘given the legal ramifications that would follow from redefining’ terms like ‘birth,’ ‘such a task should not be taken lightly.’[2] If Kingma wishes to replace conventional moral norms (regarding the moral equality of neonates), then given widespread opposition *and* such high stakes, it seems reasonable to insist that *very* compelling arguments be provided on behalf of alternative metaphysical and moral categories.

Finally, for threshold theorists, gestatelings that pass relevant thresholds for moral personhood are persons. Those that do not, are not. Hence, like with PAC theorists, Kingma’s claims—that questions about the moral status of gestatelings remain ‘unanswered’—are unpersuasive.

PAB VIEWS

PAB theorists attribute moral personhood at birth, so PAB theorists will ask whether or not gestatelings have been born. They have been. Thus, gestatelings are moral persons (at any stage in development). Yet again, claiming that these questions are ‘unanswered’ is unpersuasive.

In fairness, Kingma may object that gestatelings have *not* been born.⁸[11] That just changes the subject, however. As I noted, ‘maybe we should redefine what it means to be born ... but that discussion moves us beyond the scope of this essay ... what is clear is that terms like ‘live birth’—*as currently used by international legal and medical authorities*—apply to subjects of partial ectogenesis.’[2] Arguing that ‘birth’ should be redefined, therefore, fails to address the original argument.

CONCLUSION

Based on current law (e.g., US law), were AWT available now, gestatelings would count as legal persons. Gestatelings are also moral persons on both PAC and PAB. Threshold theorists *may* maintain that gestatelings are not moral persons, but doing so would carry heavy costs. Ultimately, while there are many unanswered questions concerning AWT, questions about the legal and moral status of gestatelings are not among them.

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