

KILLING FOETUSES AND KILLING NEWBORNS

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Abstract The argument for the moral permissibility of killing newborns is a challenge to liberal positions on abortion because it can be considered a *reductio* of their defence of abortion. Here I defend the liberal stance on abortion by arguing that the argument for the moral permissibility of killing newborns on ground of the social, psychological, and economic burden on the parents recently put forward by Giubilini and Minerva is not valid: because they fail to show that newborns cannot be harmed and because there are morally relevant differences between foetuses and newborns.

A well-known problem for defenders of abortion has always been to distinguish it from infanticide (1, 2, 3, 4, 5, 6, 7, 8, 9, 10). Giubilini and Minerva have pushed that challenge further by arguing that if, as many believe, killing foetuses can be justified by reasons that do not have to do only with the interest of the foetus or future child – such as “the costs (social, psychological, economic) for the potential parents” (11), then, contrary to what most believe, killing newborns can also be justified by reasons that do not have to do only with the interest of the newborn – such as the social, psychological, and economic costs for the parents.

There are two ways of resisting this argument: the first option is to deny that the conclusion that killing newborns is sometimes morally permissible on grounds of the social, psychological, and economic burden to the parents follows from the premise that killing foetuses is sometimes morally permissible on grounds of the social, psychological, and economic burden to the future parents. The second option is to deny that killing foetuses is sometimes morally permissible on grounds of the social, psychological, and economic burden to the parents. Unsurprisingly, critics of abortion respond to this argument by denying the

truth of the premise and therefore the soundness of the argument, rather than its validity (12).

That's because the argument that the moral permissibility of infanticide on the mere grounds of parental burden follows from the moral permissibility of abortion on the grounds of parental burden can be considered a *reductio* of permissible stances on abortion. The *reductio* would consist in showing that if one really thinks that abortion can be justified by such superficial reasons one is forced into the implausible conclusion that these superficial reasons justify infanticide. As that's just crazy, so the *reductio* would go, then we must give up the premise that superficial reasons such as the social, psychological, and economic interests of the parents are enough for a moral justification of abortion.

Therefore the validity of Giubilini and Minerva's argument is important over and above the thesis that killing newborns is morally permissible: at stake is the plausible liberal thesis that fetuses can be terminated on grounds such as the social, psychological, and economic interests of the parents. Therefore it should be a relief for liberals even more than for those who oppose abortion that Giubilini and Minerva's argument for the permissibility of infanticide is not valid. From the thesis that parental interests can sometimes justify killing fetuses does not follow the thesis that parental interests can sometimes justify killing newborns, because fetuses and newborns are not morally equivalent.

I will first criticise Giubilini and Minerva's arguments for the moral equivalence of fetuses and newborns and then provide positive considerations for the moral asymmetry between fetuses and newborns. As anticipated, my discussion will only focus on the validity of Giubilini and Minerva's argument: I will therefore ignore plausible objections against its soundness that have been raised (12). Their argument is, briefly, that both fetuses and newborns lack the right to life because "a necessary condition for a subject to have a right to X is that she is harmed by a decision to deprive her of X" (11). The further premise is that "in order for a harm to occur, it is necessary that someone is in the condition of experiencing that harm" (11). And a newborn, due to her lack of mental development, is not "in the condition to value the different situation she would have found herself in if she had not been harmed" (11), differently from stealing the winning lottery ticket from someone who will never find out that her ticket was the winning one. The winning-ticket holder, just like the newborn, is not aware of the harm. But the winning-ticket holder, differently from

the newborn, is at least in the condition to value the different situation she would have found herself in if she had not been harmed, or so the argument goes.

The idea is supposedly that the winning-ticket holder would have noticed winning the lottery had the ticket not been stolen, while the newborn would have not noticed being alive had she not been killed. But that is, quite obviously, false. Other things being equal, the newborn will go on to notice that she is alive if she is not killed just like the ticket-holder will go on to notice that she wins the lottery. So if the criterion is the one put forward by Giubilini and Minerva, namely being “in the condition to value the different situation she would have found herself in if she had not been harmed” (11), then newborns meet this criterion just like unaware winning-ticket holders.

But, it will be objected, showing that newborns meet the criterion for ‘being harmed’ may point to an error in Giubilini and Minerva’s argument but it is no good argument against the general equivalence between newborns and fetuses because what we said above about ticket holders and newborns can be said of fetuses as well: namely, fetuses too will go on to notice being alive. Here, in the absence of an alternative argument for the moral asymmetry between fetuses and newborns, it will actually in the end be those who oppose abortion who can rejoice because the moral equivalence between fetuses and newborns can be considered by them just a *reductio* of the liberal position on fetuses, as we anticipated.

Fortunately for defenders of abortion, there are plenty of reasons to think that fetuses and newborns are not morally equivalent, and some of them are offered by Giubilini and Minerva themselves. Take their point that “Those who are only capable of experiencing pain and pleasure (like perhaps fetuses and certainly newborns) have a right not to be inflicted pain” (11): that is your morally relevant difference right there. What ‘perhaps’ means, there, is supposedly that ‘fetuses’ is a general term which encompasses various stages of development during the pregnancy: at some stages of this development, but not at other stages, fetuses are capable of experiencing pain and pleasure; and the same will be true of many other properties of fetuses. Giubilini and Minerva recognise the moral relevance of being able to feel pain to the extent that they claim that those who are able to feel pain have a right not to be inflicted pain. Now take a fetus’s right not to be inflicted pain and compare it to the social, psychological, and economic interests of parents. That is one

difficult moral dilemma and one can imagine many sets of social, psychological, and economic interests which would not overwhelm someone's right not to be inflicted pain. Same for newborns, who are "certainly" capable of feeling pain. The same, though, cannot be said of fetuses at early stages of development who cannot feel pain: there the choice in favour of the social, psychological, and economic interests of the parents is less intractable.

The general point is that the premise upon which Giubilini and Minerva's argument is built, namely that the social, psychological, and economic interests of potential parents justify killing fetuses, is too vague. If the premise is taken to refer to late fetuses who are already capable of feeling pain then it is no longer the case that such premise is uncontroversial even amongst defenders of abortion. If, on the other hand, the premise is taken to refer to early fetuses who are not capable of feeling pain then the premise may indeed be accepted by many defenders of abortion but then we lose the moral symmetry with newborns, because then the moral balance between the newborn and the social, economic, and psychological interest of the parents is not the same as the moral balance between the early fetuses and the social, psychological, and economic interests of the future parents.

Two points of caution here: (1) it may be objected that my argument depends on empirical evidence on fetuses feeling pain. There is plenty of evidence of that (13), but certainly such a complicated issue cannot be quickly settled here. This is, though, not decisive for my argument against Giubilini and Minerva, as the hypothesis that fetuses cannot feel pain at any stage during the pregnancy would certainly not help their thesis on the symmetry between fetuses and newborns, since they say that newborns are "certainly" able to feel pain. (2) It should be emphasized that my argument here may only distinguish between early fetuses and newborns, and not between late fetuses and newborns. Below I offer considerations that distinguish also between late fetuses and newborns.

There is another important morally relevant difference between fetuses and newborns: where abortion is legal, the pregnant woman can decide by herself for an abortion, and most people agree that, if anybody's got the right, then that is the mother and the mother alone (14). But with a newborn, who should decide? Here it does no longer sound so plausible that the mother should have the right to decide alone, and indeed Giubilini and Minerva talk about 'parents': it may be thought that the father must give his consent too; that the social, psychological, and economic interests of the mother will not suffice, because she may just

leave the newborn to the father. The point is not whether the claim about the moral permissibility of killing newborns should be restricted to cases where both parents agree. The point is that the plausible role of the father shows once again that newborns are not morally equivalent to fetuses. This latter argument for the moral asymmetry between fetuses and newborns is importantly different from the previous one in that it does not depend on the ambiguity of the term 'fetuses' with relation to early and late fetuses (even though one could imagine saying something similar about the possible role of the father with late viable fetuses).

I could go on discussing other asymmetries between fetuses and newborns, talk about other properties that set them apart, about the important role of labor during childbirth, about the possibility of adoption, or about the problem that the burden of proof is on those who deny the distinction between fetuses and newborns to plausibly draw a moral distinction some other place down the line of the newborn's life (12); but that discussion is not very new (15) and, having written on abortion elsewhere (14, 16, 17), I think it more fruitful here to try to offer a diagnosis: the plausibility of the argument for the moral permissibility of killing newborns derives from the ambiguity of the thesis that fetuses can be killed on grounds of the social, psychological, and economic interests of the potential parents. Such ambiguity does not reside only in the obvious need to specify these social, psychological, and economic costs. More importantly, the ambiguity derives from the term 'fetus' being used to refer to different stages of development and their related different sets of morally relevant properties. Superficial social, economic, and psychological reasons may justify, even on very liberal positions on abortion, only the termination of very early fetuses. Also, we must not confuse the plausible idea that birth does not alter the moral status of the individual with the idea that birth does not make any moral difference. Singer and Tooley have famously argued for the former (1, 2), but that does not imply the latter, as our discussion here has shown. Summing up, then, defenders of abortion should not worry about the implications of believing that the social, psychological, and economic interests of the pregnant woman may be enough to justify killing some healthy fetuses: those implications are not as morally repugnant as the killing of healthy babies.

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