

# **Abortion and Infanticide: a Triple Libertarian and Critical-Rationalist Defence**

J. C. Lester

## **Abstract**

*From libertarian and critical-rationalist assumptions, the moral permissibility of abortion and infanticide can be explained and defended in three principal ways; although non-libertarians and justificationists could also accept these arguments. These include theories of personhood and harm-infliction. The three defences are independent of each other but collectively consistent. 1) The unborn and infant human is not a person in the relevant intellectual and moral sense. 2) There is no overall proactive imposition (harm-infliction), as the unborn or infant human is only denied the benefit of support. 3) The better welfare consequences of allowing abortion and infanticide seem clear. It is inconsistent to accept any versions of these arguments as defending abortion rights but reject them for infanticide—as pro-abortion rights advocates tend to do. Some related rights and duties of the parents are briefly addressed with regard to contracts and property rights.*

## **0. Introduction**

The moral permissibility of abortion and infanticide can be explained and defended in three principal ways: 1) the unborn and infant human is not a person, 2) the unborn and infant human is not proactively imposed on (no overall harm is inflicted), and 3) the better consequences of allowing abortion and infanticide. All three ways can be characterised as types of libertarian explanations and defences, although none of these presuppose the ideology of libertarianism (the arguments stand or fall to the same degree were any references to libertarianism removed). Assuming the truth of critical-rationalist epistemology,<sup>1</sup> all of these explanations are necessarily conjectural. Therefore, none of them is intended to offer a supporting justification or foundation for the thesis that abortion and infanticide are morally permissible (although that is how justificationists or foundationalists are likely to perceive them, nonetheless). There will also be some brief discussion of related rights and duties of the parents.

### **1. The unborn and infant human is not a person.**

An unborn *Homo sapiens* is human, although perhaps not yet a particular human if before the stage at which twins, etc., can occur and not be reversed. It is human at whatever stage of development: zygote, morula, blastocyst, embryo, and foetus. However, it is not a person in the intellectual-attainment sense. A person is here theorised to be a consciousness capable of higher level critical-theorising: having theories about his theories beyond merely noticing that they do or don't appear to be functional; and it seems that language may well be a practical necessity to achieve this. This assumes that there is some real distinction between a person and a non-person that can be discovered, and then adapts the epistemology of critical rationalism to produce a theory of what constitutes personhood. This theory is not in itself a definition or criterion of personhood, although it can also be used as either of these as well. An unborn human is not a person because it has at most, and mainly in the later stages,

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<sup>1</sup> For an introductory discussion plus a list of further reading see Wetterson undated. See also Lester 2012b and 2017.

appetites and instincts. This text will not go into a detailed explanation and defence of this theory of personhood. It suffices that this theory, or something relevantly like it, appears to capture a real and important aspect of sufficiently developed humans.

Being a person is necessary to give human beings their higher moral value: more or less because they have sophisticated minds, or consciousnesses, that are created by critical theorising. Biologically, humans are animals. Animals that are not persons (let us here call them ‘beasts’: this is a stipulative definition) have moral value too, and it is certainly possible to behave immorally towards them (although this is outside libertarian theory); in particular, by causing them indefensible pain or suffering. And some beasts (chimpanzees, elephants, and dolphins, for instance) approach being persons; so moral duties<sup>2</sup> towards them exceed that of unambiguous beasts. But being a person is what makes wrong all proactively-imposed costs (this being a libertarian theory of ‘inflicted harms’) that flout self-ownership and libertarian property (these being the practical applications of the abstract theory of interpersonal liberty as ‘people not proactively imposing costs on each other’<sup>3</sup>).

The unborn human is, usually, a potential person. But then so are any sperm and ovum that could in principle be conjoined; or even any food, or other substances, that could eventually be converted into a person (but, presumably, they would need to be converted at least into an ovum first: a sperm is no longer required for fertilisation). Therefore, it would be absurd to hold that a potential person already has the moral status of an actual person, or even of anything approaching that. It would be equally absurd to reverse this and hold that a potential non-person (as anyone might be considered to be; by death or sufficient brain damage, for instance) already has the moral status of an actual non-person, or even of anything approaching that. If it is not inherently immoral to kill a non-person, as beasts are, then it is not inherently immoral to kill an unborn human. (Some vegetarians might have problems with this argument.)

It follows that neither is it inherently immoral to kill an infant not yet a person (although there might be bad social side-effects of one kind or another; such as greatly upsetting some people who might also resort to violence). It is probably best to draw a line for permissible infanticide, erring on the side of non-personhood, maybe some time in the first year or so after birth and always well before sufficiently sophisticated speech—or other communication—indicates that personhood has been achieved (the word ‘infant’ has its origins in the Latin ‘infans’, meaning ‘without speech’). The agreement of any parents or guardians would be necessary: they have a property claim in the human non-person.

It might immediately be suggested, as an attempted *reductio ad absurdum*, that by this standard an unconscious or comatose adult human is not a person but only a potential person, and so morally on a par with an unborn or infant human as regards the permissibility of killing him.<sup>4</sup> However, as long as consciousness can be recovered, it looks far more cogent to see this as an existing person: personhood is not merely potential but has already been achieved. It is simply that this person’s consciousness is temporarily interrupted, and so full rights relating to personhood remain.

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<sup>2</sup> To say there is a moral duty not to inflict indefensible suffering on a beast, is not to imply that a beast can have rights or duties. One also has a moral duty not to destroy some historic buildings or great works of art, but they do not have rights or duties either.

<sup>3</sup> See Lester 2012, 2014, 2016.

<sup>4</sup> Gene Callahan produced this criticism (personal communication).

This, then, appears to be one sufficient explanation of the way in which abortions and infanticides of humans are not intrinsically immoral. It is libertarian in the sense that this ideology entails that only persons have a prima facie right not to have their liberty infringed. Other accounts of personhood have been used to argue in more or less the same way on this issue, such as Warren 1973 (but that article does not go far enough in consistently drawing out its logical implications). However, they will not be compared and contrasted here. This is primarily intended to explain the matter in terms of libertarianism and critical rationalism.

## **2. The unborn and infant human is not proactively imposed on.**

Even if an unborn human were a person in the intellectual sense, it would not be infringing his liberty, or libertarian rights, to withdraw the support of the womb so that he dies. This is to discontinue giving the gift of support; after the gift of initial conception. It might be suggested that, at least if it is a person, there is some sort of contract between the mother and the unborn human to bring him to term, etc. But there is no kind of, even implied, offer or acceptance of that offer or any quid pro quo; which contracts require. The pregnant woman usually did tacitly consent to, at least risk, creating the unborn human. But that is not thereby tacitly to consent to continue support of it.

This situation is like becoming physically attached to an unconscious adult person (whether intentionally, by chance, or by carelessness) where no one else could have supported that particular adult (analogous with the usual relationship between a pregnant woman and her unborn human) and who requires your bodily support for nine months. If you decide that you do not wish to continue the support, then there is no overall proactive imposition (inflicted harm) on the unconscious adult by stopping. And there is no inherent moral difference, in these terms, between simply unplugging and actively killing the unconscious adult if that is necessary, or even merely more convenient, in defence of your right to use your own body as you wish. There seem to be two necessary and sufficient aspects for moral permissibility here: (1) you have exercised your right to defend your use of your own body; and (2) the unconscious adult is no worse off than if you had never started to support him in the first place. One too-hasty criticism might be that such an argument could seem to imply that killing one's adult children is permissible, as they are thereby not worse off than they would have been had you never benefitted them—by conception, etc.—in the first place. But that would be to overlook (1): killing your adult children is not to defend your use of your own body. Those familiar with the philosophical literature will notice that all of this is at least somewhat like the position taken in Thomson 1971 (but that article does not go far enough in consistently drawing out its logical implications). However, by removing the contingent complications surrounding both abortion and being attached to another person it is possible to make a more fundamental argument that should be clearer and more cogent.

Here is that argument. To bestow a benefit on others, for their own sakes, is prima facie morally good. To proactively impose (inflict harms) on others, for whatever reason, is prima facie morally bad. To do neither is prima facie morally neutral. It cannot proactively impose on other people to deny them, or stop, a bestowal of a benefit (to contract to help someone in some way and then fail to observe one's contractual obligations is a proactive imposition and not the denial of a bestowable benefit). Libertarianism, in particular, appears to require these three moral distinctions. But, in any case, logical analysis also appears to imply them. For if we want to classify mere failure to benefit people as immoral, then—conversely—we seem bound to classify mere failure to proactively impose on people as positively moral. But

proactive impositions are usually far easier to bring about than bestowable benefits (it is easier to harm people than to help them). Consequently, we omit to proactively impose on people to a far greater extent than we omit to bestow benefits on them. This implies two paradoxes: 1) merely by doing nothing, we are usually both moral and immoral or—on balance—positively moral, and 2) there is no conceptual room for neutrality or innocence (unless, perhaps, when we are contingently not in a position to do either or they are by sheer chance in perfect balance). To avoid this paradox, it seems only coherent to distinguish good, bad, and neutral (or innocent) moral behaviour.

From this more fundamental argument we can see that the unborn and infant human is only benefitted by conception and support (or, at least, there is no inherent proactive imposition in that process). Therefore, removal of that continuing bestowed benefit cannot itself be a proactive imposition—assuming that no pain or suffering is inflicted thereby—even if we assume he is a person. This is so whether abortion involves some expulsion or the painless physical destruction of the unborn human. And to fail to support an infant so that he dies without pain or suffering is not proactively to impose (to inflict harm) on that infant. Abortion and infanticide are, in themselves, morally neutral.

### **3. The better consequences of allowing abortion and infanticide.**

Even if we assume that the unborn or infant human both is a person and is proactively imposed on, coercing women to carry to term their unwanted unborn humans, or to support their infants, or give them to others to support, cannot plausibly increase overall human welfare compared to allowing the women to bear and raise, or put up for adoption, children when they wish to do so. That abortion and infanticide rights are welfare-maximising seems fairly clear. First, there is the significant welfare-reduction to would-be aborting or infanticiding women if they are prevented. Then there is the fact that preventing abortions or infanticides of *unwanted* humans must thereby to some extent be to reduce the numbers of *wanted* unborn and infant humans that are in competition for the same resources; and wanted offspring are, on average, likely to have better lives than unwanted offspring. This position is libertarian only in the sense that some libertarians think that abortion and infanticide rights are both compatible with liberty and also with the best welfare outcomes: either because they are consequentialist libertarians<sup>5</sup> or because they are critical-rationalist libertarians who defend the libertarian conjecture from all criticisms, including consequentialist ones.

### **4. Two related private-property and contract issues**

All that said, if people strongly object to abortion or infanticide, for whatever reasons, then they can still choose to live in private-property areas or join private organisations where these are contractually proscribed on pain of whatever penalties they wish. To go into, or remain in, those areas or join these private organisations would be to contract to accept those proscriptions and those penalties. But even then, the breaking of the contract would still not conflict with any rights or liberties of the unborn or infant human. It would conflict only with the rights or liberties of the parties with whom one has contracted.

Current state-legislation concerning child-support does not approximate to what is libertarian. Where a man passes his sperm during sexual intercourse with a woman, he cannot merely

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<sup>5</sup> Notable consequentialist libertarians (or at least classical liberals, if a distinction is made) include Milton Friedman, David D. Friedman, Ludwig von Mises, and Friedrich Hayek.

thereby have any libertarian rights concerning the resultant unborn or infant human. In the same way, a woman who freely chooses to risk unprotected or imperfectly protected sex with a man does not merely thereby have any rightful claims against the man if she becomes pregnant. To gain any such rights on either side a contract is required, such as a marriage contract. Once again, though, private-property rules can override this default position. Some people might want to live in areas where there is an implied contract for men and women to have duties and rights with respect to their unborn or infant humans. But without allowing people to choose such real property solutions it seems unlikely that the state can reliably approximate to what they would be. Therefore, the intrinsic position of no rights or duties without a contract should prevail.

## 5. Conclusion

On its own, each of the three principal arguments may be sufficient to explain the moral permissibility of the abortion and infanticide of unwanted humans—depending on the types of criticisms being addressed. Taking them together, they amount to a consistent and fairly comprehensive account that it is hard to see could easily be refuted. It is common, however, for people to accept some versions of these arguments as applied to abortion but reject them as regards infanticide. And that is simply to be logically inconsistent.

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