

The Pregnancy Rescue Case: Why Abortion is Immoral

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Abstract: In cases in which we must choose between either (i) preventing a woman from remaining unwillingly pregnant or (ii) preventing a fetus from being killed, we should prevent the fetus from being killed. But this suggests that in typical cases abortion is wrong: typical abortions involve preventing a woman from remaining unwillingly pregnant *over* preventing a fetus from being killed. So abortion is typically wrong—and this holds whether or not fetuses are persons.

1. The Embryo Rescue Case

Say that the pro-choice position is the view that abortion is (typically) permissible. And say that the pro-life position is the view that abortion is (typically) immoral or wrong. Several arguments have been given for thinking that the pro-choice position is correct. That is, several arguments have been given for thinking that abortion is typically morally permissible. For example, some argue that whether or not the fetus is a person, abortion is (in typical circumstances) permissible [1, 2], and others have argued that fetuses aren't persons¹ and therefore abortion is permissible [3, 4].²

¹ Tooley [4] goes farther than Greasley [3], arguing that infants also aren't persons and infanticide is, therefore, permissible.

² Others have argued that abortion is impermissible. See e.g. [5-12].

One argument for the permissibility of abortion that's been defended we may call *The Embryo Rescue Case*. The argument relies on a thought experiment to provide support for thinking that embryos aren't persons, which (defeasibly) supports the view that abortion is (typically) permissible. The Embryo Rescue Case asks us to consider something like the following scenario:

The Embryo Rescue Case: You're in a hospital that's on fire. At one end of the hospital, there's a six month old infant. At the other end, there's a petri dish holding 100 embryos. Given how fast the building is burning, you can only save one of these. Which should you save?

The answer that's *supposed* to be obvious is that you should save the infant over the embryos. And this—proponents of The Embryo Rescue Case suggest—is a problem for pro-life philosophers: if we *really* believe that embryos are persons, then it should be obvious that we should save the many (i.e. the embryos) over the few (i.e. the infant). But—the argument goes—we should save the infant, and therefore we have reason to doubt that embryos are persons.³

Many responses have been given to The Embryo Rescue Case. Kaczor [10] argues (among other things) that external factors can make it such that we ought to save a single person over the many. For example, we should save the president over 100 citizens, due to the drastic consequences of a president dying. But this doesn't tell us that the 100 citizens aren't persons.

³ See e.g. [13-16].

Others (e.g. [5] and [17]) have argued that intuitions elicited by The Embryo Rescue Case aren't justified since they're influenced by irrational factors. For example, Beckwith [5] argues that this intuition is due to the fact that embryos don't look very much like we (born humans) do. And I've argued [17] that our cognitive tools responsible for attributing agency to things aren't likely to be activated by embryos: the so-called hyperactive agency detection device (e.g. [18]) needs to be triggered to attribute agency to things. But embryos don't pull that trigger because they don't (easily) display the relevant kind of behavior (e.g. they don't move in a goal-directed manner, produce fear, and so on).⁴ And so it will be very tough to believe (or find it intuitive) that embryos are persons—if something isn't an agent, it's hard to see it as a person. So, intuitions elicited by the embryo rescue case aren't truth-indicative, and this provides us with a defeater for these intuitions, rendering them unjustified.

And still others have pointed out that there are serious disanalogies between pregnancy and The Embryo Rescue case, and when these disanalogies are fixed, the case is no longer in tension with the pro-life view. For example, Hershenov [20] notes that *triage* considerations come into play with the embryo rescue case: an embryo from the petri dish might not survive being thawed, and almost all of the embryos in the dish are likely not to find a home for gestation. And when we adjust The Embryo Rescue Case to put the infant in a similar position to the embryos, it's no longer clear that we should save the infant. Here's why. To make them sufficiently analogous, we need to stipulate that (i) the infant is frozen and might not survive being thawed, (ii) if the infant survives being thawed, it will need to be connected to a human body for 9 months to have its blood filtered through another adult human (for whatever

⁴ See e.g. [18] and [19].

reason), and (iii) it's unlikely that the infant will ever find a willing host to be connected to for 9 months. But once we stipulate (i)-(iii) hold, it's no longer clear that we should save the infant over the embryos, rendering The Embryo Rescue Case innocuous.

Finally, others may simply deny that we ought to save the one over the many here. That is, some may find it intuitive that we should save the embryos, making the embryo rescue case inapplicable.

My task here is *not* to defend any of these responses to The Embryo Rescue Case—and everything I say is compatible with one thinking that these responses fail. Instead, my purpose here is just to illuminate some responses that have been given, and to later consider whether these kinds of responses can be used in response to the challenge facing the pro-choice view that I explain below.

2. The Pregnancy Rescue Case

So much for The Embryo Rescue Case. Below, I'll show that there's a similar (and perhaps more powerful) case that is a problem for the pro-choice view—namely, *The Pregnancy Rescue Case*. This case illustrates that in circumstances in which we have to choose between (i) preventing (or saving) a woman from remaining unwillingly pregnant or (ii) preventing (or saving) a fetus from being killed, we should prevent (or save) the fetus from being killed. And since typical cases of abortion involve choosing between saving a fetus from being killed or preventing a woman from remaining unwillingly pregnant, this means that typically abortion is wrong. To be clear, this problem holds *whether or not* one thinks that The Embryo Rescue Case

has any merit and *whether or not* fetuses are persons. And so it fashions us with a novel argument for thinking abortion is wrong that doesn't depend on fetal personhood.⁵

Some important preliminaries to keep in mind: The Pregnancy Rescue Case is set in the country of *Shmerica*. In Shmerica, abortion is criminalized at 100 days and beyond, and the only time a woman can have an abortion at or after 100 days is when her life is in danger. Additionally, an abortion *can't* be performed if a woman has undergone a separate, unrelated operation that day. For example, a woman cannot have an abortion on a day that she's previously had liposuction. With those preliminaries in mind, we can state The Pregnancy Rescue Case as follows:

The Pregnancy Rescue Case: Sarah is comatose with no hope of waking up. Prior to becoming comatose she became (unbeknownst to her) pregnant, and is currently in her 99th day of pregnancy. Judy is 99 days pregnant, doesn't want to remain pregnant, and goes to the hospital for an abortion. You're the on-duty nurse, and you notice that the abortion doctor has been sent to the room Sarah—who is comatose—is in. You also notice that the doctor who will perform liposuction has been sent to the room that Judy—who wants an abortion—is in. If Judy receives liposuction from the doctor, it means she can't have an abortion until the 100th day of her pregnancy, which means she can't have an abortion at all. Both patients are unconscious (Sarah due to the coma, Judy due to anesthesia)

⁵ Alternatively, if one thinks that personhood does play a role here, then The Pregnancy Rescue Case can be seen as an argument for thinking that fetal personhood entails that abortion is typically wrong. That's a significant point in its own right.

and unable to tell the doctor that she (the doctor) has come to the wrong room.

You have no way to communicate this problem to the relevant doctors besides physically going to the rooms that the operations will be taking place in.

Unfortunately, you're far away from both Sarah's room and Judy's room, and will only be able to reach one to prevent the mistaken operation from being performed.

You must choose, then, between (i) preventing (or saving) a woman from remaining unwillingly pregnant or (ii) preventing (or saving) a fetus from being killed. Who should you save?

The answer, I think, is that you should save the fetus from being killed. Indeed, anecdotally, this is *overwhelmingly* the answer given—the vast majority of people who have considered this case (due to my prompting) have said that we should save the fetus from being killed over the woman from remaining unwillingly pregnant.

But this is in tension with the pro-choice view: if we ought to prevent the fetus from being killed *over* preventing a woman from remaining unwillingly pregnant, then, typically, we ought to prevent abortion. In other words, if we're faced with preventing a fetus from being killed or preventing a woman from remaining unwillingly pregnant against her will *and* we ought to prevent the fetus from being killed, this gives us good reason to think that abortion is wrong, since typical abortions involve choosing to prevent a woman from being unwillingly pregnant *over* preventing the fetus from being killed.

Indeed, this problem holds *even if fetuses aren't persons*: we should save the fetus from being killed—we should choose option (ii)—whether or not the fetus is a person. And, again, to judge that we should save the fetus in The Pregnancy Rescue Case suggests that abortion should be prevented—is wrong—whether or not fetuses are persons.⁶

3. Possible Responses

Of course, there are possible responses that can be given here—responses that mirror the pro-life responses to The Embryo Rescue Case.⁷ For example, one might claim that external factors make it such that we should save Sarah's fetus instead of saving Judy from remaining unwillingly pregnant. Perhaps, for example, one thinks that the emotional damage caused to Judy from remaining pregnant unwillingly is less severe than the emotional damage caused to Sarah by her fetus being killed. There's some non-decisive reason to support this view. For example, according to the turnaway study [21], roughly 96% of women who are denied having an abortion are actually *happy* they were denied having an abortion after 5 years, making it overwhelmingly likely that Judy will be happy to have her child in the end. However—the objection goes—Sarah will likely be unhappy at the death of her fetus. And this explains why in this case it makes sense to prevent the death of the fetus.

⁶ Alternatively, we could make one of the following weaker claims: (i) mirroring Greasley's [13] defense of The Embryo Rescue Case, we could claim that The Pregnancy Rescue Case illustrates that we ascribe high moral status to the fetus (since we favor saving it over preventing a woman from remaining unwillingly pregnant) or (ii) contrary to Thomson [2], we think that if the fetus is a person, abortion is wrong—that's why we should save the fetus instead of preventing the woman from remaining unwillingly pregnant. Those who are inclined towards these weaker theses can interpret my argument below in light of them.

⁷ To be clear, one need not endorse the pro-life view to reject (or accept!) The Embryo Rescue Case.

This response isn't terribly plausible. First, this won't be a case of disanalogy between cases of pregnancy and abortion and The Pregnancy Rescue Case because the same point holds for pregnancy and abortion: a woman denied an abortion is overwhelmingly likely to be happy she was denied an abortion [21]. And so far from undermining The Pregnancy Rescue Case, it supports it: it's an example of analogy, not disanalogy. Worse yet, the fact is that Sarah is in a coma and will never wake up. So, she isn't going to suffer any emotional damage if her fetus is killed, rendering this issue irrelevant. Perhaps, however, one can find different external factors that explain away The Pregnancy Rescue Case. I leave it to others to come up with such explanations.

Another possible response is to claim that any intuitions elicited by The Pregnancy Rescue Case are unjustified due to being influenced by irrational factors. But this response isn't plausible—or, at least, it isn't plausible if we're considering the reasons given for doubting intuitions elicited by The Embryo Rescue Case. That is, the reasons cited by Beckwith [5] and myself [17] don't apply here: Beckwith suggests that what drives The Embryo Rescue Case is that embryos don't look like us, and I argue that our cognitive faculties will fail to attribute agency to embryos due to their lack of movement, small stature, and lack of resemblance to us, which suggests that our intuitions aren't truth indicative. But none of these reasons are relevant to The Pregnancy Rescue Case: the moral of that story is that we should save the fetus—something that doesn't look much like us or display signs of agency. And this is so *in spite of* the cognitive biases or obstacles we have against empathizing with fetuses that Beckwith and myself cite. So, if there's some factor that undermines intuitions (or judgments) elicited by

The Pregnancy Rescue Case, it's different from the factors cited by Beckwith and myself. Again, I leave it to others to identify any such factors.

Finally, one might simply deny that we ought to save the fetus in The Pregnancy Rescue Case and claim that we should instead prevent the woman from remaining unwillingly pregnant, i.e. we should choose option (i) of The Pregnancy Rescue Case. This is no doubt a possible response that can be made, but it's one that, anecdotally, is rarely taken. So while some might make this move, it's not clear to me that many will be tempted by it.⁸

4. The Upshot

So, what's the upshot of The Pregnancy Rescue Case? The upshot is basically this: The Pregnancy Rescue Case illustrates that if we must choose between saving a fetus from being killed or saving a woman from remaining unwillingly pregnant, we should save the fetus. And this holds whether or not fetuses are persons. Since typical abortions involve killing a fetus in order to prevent a woman from carrying an unwanted pregnancy to term, this means that typical abortions are immoral. And this will be true whether or not fetuses are persons.⁹

⁸ My evidence for this is, again, anecdotal. So it's possible that I'm wrong about how many will be tempted toward this view. Moreover, even if many are tempted toward that view, this is still an interesting case/argument worth considering.

⁹ For comments on this article, thanks to Adriane Hendricks, Chris Tweedt, two referees, and an audience at Romanell Center for Clinical Ethics and the Philosophy of Medicine. And thanks in particular to David Hershenov and Stephen Kershner for helping me develop The Pregnancy Rescue Case. Thanks to G.L.G.—Colin Patrick Mitchell—for particularly insightful comments. Finally, thanks to Reid Bode.

5. References

- [1] Boonin, David. (2002). *A Defense of Abortion*. Cambridge University Press.
- [2] Thomson, Judith. (1971). "A defense of abortion" *Philosophy and Public Affairs* 1: 47–66
- [3] Greasley, Kate. (2017). *Arguments About Abortion: Personhood, Morality, and Law*. Oxford University Press.
- [4] Tooley, Michael. (1972). "Abortion and Infanticide." *Philosophy and Public Affairs* 2:37-65.
- [5] Beckwith, Francis J. (2007). *Defending Life: A Moral and Legal Case Against Abortion Choice*. Cambridge University Press.
- [6] Blackshaw, Bruce. (2021). "Defending the substance view against its critics" *The New Bioethics* 28(1): 54-67.
- [7] Hendricks, Perry (2019). "Even if the fetus is not a person, abortion is immoral: the impairment argument" *Bioethics* 33: 245-253.
- [8] Hendricks, Perry. (2022). "The Impairment Argument Against Abortion," in Bruce Blackshaw, Nicholas Colgrave, and Daniel Rodgers (eds.) *Agency, Pregnancy, and Persons: Essays in Defense of Human Life*. (Routledge): 162-175.
- [9] Hershenov, David and Rose Hershenov. (2017). "If Abortion, then Infanticide" *Theoretical Medicine and Bioethics* 38(5): 387-409.
- [10] Kaczor, Christopher. (2011). *The Ethics of Abortion: Women's Rights, Human Life, and the Question of Justice*. Routledge.
- [11] Marquis, Don. (1989). "Why Abortion is Immoral." *The Journal of Philosophy* LXXXVI: 183-202.
- [12] Miller, Calum. (forthcoming). "Human equality arguments against abortion" *Journal of Medical Ethics*.

- [13] Greasley, Kate and Christopher Kaczor. (2018). *Abortion Rights: For and Against*. Cambridge University Press.
- [14] Lovering, Rob. (2014). "The Substance View: A Critique (Part 2)" *Bioethics* (28): 378-386.
- [15] Räsänen, Joonas. (2016). "Pro-life arguments against infanticide and why they are not convincing." *Bioethics* (30): 656–662.
- [16] Räsänen, Joonas. (2018). "Why pro-life arguments still are not convincing: A reply to my critics" *Bioethics*: 1-6.
- [17] Hendricks, Perry. (2019). "Why the embryo rescue case is a bad argument against embryonic personhood" *Bioethics* 33(6): 669-673.
- [18] Barrett, Justin. (2004). *Why Would Anyone Believe in God?* AltaMira Press.
- [19] Waytz, Adam, Kurt Gray, Nicholas Epley, and Daniel M. Wegner. (2010). "Causes and consequences of mind perception" *Trends in Cognitive Sciences* 8: 383-388.
- [20] Hershenov, David. (2020). "What Must Pro-Lifers Believe About the Moral Status of Embryos?" *Pacific Philosophical Quarterly* 101(2): 186-202
- [21] Rocca, Corinne, Heidi Moseson, Heather Gould, Diana Foster, and Katrina Kimport. (2021). "Emotions over five years after denial of abortion in the United States: Contextualizing the effects of abortion denial on women's health and lives." *Social Science & Medicine* 269:

