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## Philosophy and Theology: After-Birth Abortion

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## PHILOSOPHY AND THEOLOGY

The basic premises of the article are not new. In fact, the central argument was put forward, in a more sophisticated form, by Michael Tooley in 1972.<sup>1</sup> Yet when Alberto Giubilini and Francesca Minerva's article, "After-Birth Abortion: Why Should the Baby Live?" appeared online, it caused an international uproar.<sup>2</sup> The central thesis of the article is that "after-birth abortion," that is, killing a baby after he or she is born, is justified on the same grounds as elective abortions. The article made many defenders of abortion squirm because the conventional view defends abortion but prohibits infanticide. The article made critics of abortion squirm because, if accepted, it would extend the ethics of exclusion to cover not just prenatal but also postnatal human beings.

Giubilini and Minerva correctly point out that, "the same arguments that apply to killing a human fetus can also be consistently applied to killing a newborn human."<sup>3</sup> In other words, these arguments justify killing not just newborns whose medical conditions are dire but also elective infanticide when raising a child would burden the parents. As they say, "when circumstances occur *after birth* such that they would have justified abortion, what we call *after-birth abortion* should be permissible."<sup>4</sup> So, killing newborn human beings is permissible whenever abortion would be permissible. And what makes abortion and post-birth abortion permissible?

Giubilini and Minerva give two reasons to support their claim that post-birth abortion is ethically permissible: "[1] The moral status of an infant is equivalent to that of a fetus, that is, neither can be considered a 'person' in a morally relevant

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<sup>1</sup> Michael Tooley, "Abortion and Infanticide," *Philosophy and Public Affairs* 2.1 (Autumn 1972): 37–65.

<sup>2</sup> Alberto Giubilini and Francesca Minerva, "After-Birth Abortion: Why Should the Baby Live?" *Journal of Medical Ethics*, published online (February 23, 2012).

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*, original emphases.

sense. [2] It is not possible to damage a newborn by preventing her from developing the potentiality to become a person in the morally relevant sense.”<sup>5</sup> The first part of the first claim, the equal basic moral status of infant and prenatal human being, is accepted by pro-life philosophers, indeed it is sometimes used as a basis for criticizing abortion.<sup>6</sup> If infanticide kills a being with a right to live, and the moral status of a prenatal human being is not fundamentally different from the moral status of a postnatal human being, then abortion kills a being with a right to live. Giubilini and Minerva turn this reasoning on its head. Beginning from the presupposition that abortion is ethically permissible, if newborns have no greater moral status than the human fetus, it follows that infanticide is ethically permissible. So at issue for defenders of human life is the second part of claim one, “neither [the newborn nor the human fetus] can be considered a ‘person’ in a morally relevant sense.”

What justifies the denial of personhood to both newborn babies and prenatal human beings? They write, “Both a fetus and a newborn certainly are human beings and potential persons, but neither is a ‘person’ in the sense of ‘subject of a moral right to life.’”<sup>7</sup> This view echoes many authors before them who draw a distinction between human beings (a biological category) and persons (a moral category) i.e., those enjoying basic moral immunities from harm. So, why not hold that all human beings are persons? They write: “Merely being human is not in itself a reason for ascribing someone a right to life. Indeed, many humans are not considered subjects of a right to life: spare embryos where research on embryo stem cells is permitted, fetuses where abortion is permitted, criminals where capital punishment is legal.”<sup>8</sup>

Obviously, however, some human beings enjoy a right to live. What then grants these human beings a right to life on the view of Giubilini and Minerva? What makes you into a person? They write, “We take ‘person’ to mean an individual who is capable of attributing to her own existence some (at least) basic value such that being deprived of this existence represents a loss to her.”<sup>9</sup> Although the prenat and neonate are potential persons—by virtue of their biological constitution ordering them toward human maturity—they are not yet actual persons until they can value their own existence.

Now the question becomes why is it necessary for personhood for a being to be able to attribute to her own existence some basic value so that deprivation of this existence represents a loss to her? For Giubilini and Minerva, the answer to this question is that neither the prenatal human being nor the newborn human being can be harmed or helped, because “in order for a harm to occur, it is necessary that someone is in the condition of experiencing that harm.”<sup>10</sup> So, since the baby does

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<sup>5</sup> Ibid.

<sup>6</sup> See for example, Christopher Kaczor, *The Ethics of Abortion: Women’s Rights, Human Life, and the Question of Justice* (New York/Abingdon, UK: Routledge Annals of Bioethics, 2011), sec. 3.3.

<sup>7</sup> Giubilini and Minerva, “After-Birth Abortion.”

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

not value his or her own existence and does not experience getting killed as a harm, killing him or her doesn't harm the baby, and hence it is not wrong to kill a newborn. If no one is harmed, then no harm occurred, and nothing wrong is done.

But surely, an objector might argue, your own mother would have harmed you had she authorized your death either before or after your birth. Giubilini and Minerva respond, "if you ask one of us if we would have been harmed, had our parents decided to kill us when we were fetuses or newborns, our answer is 'no', because they would have harmed someone who does not exist (the 'us' whom you are asking the question), which means no one. And if no one is harmed, then no harm occurred."<sup>11</sup> In other words, "we" did not exist prior to birth or even after birth until we became able to value our own existence.

On Giubilini and Minerva's view, the interests of real people (parents, family, and society) override the interests of potential people (newborns and prenatal human beings). Newborns are both costly and burdensome for parents, families, and society. They say, "Actual people's well-being could be threatened by the new (even if healthy) child requiring energy, money, and care which the family might happen to be in short supply of. Sometimes this situation can be prevented through an abortion, but in some other cases this is not possible."<sup>12</sup> They claim that killing a newborn or a preborn human being is morally permissible and should be legally permissible: "In these cases, since non-persons have no moral rights to life, there are no reasons for banning after-birth abortions."<sup>13</sup>

Why not place children that are unwanted by biological parents into another family via adoption? They answer that the weak interests of actual persons (the biological parents) always trump the non-existent interests of the potential people. So, if the parents are uncomfortable with adoption or fear psychological effects on them if they place the child in a family via adoption, then their interest in having the child not adopted trumps the interest of the child in living, an interest which "amounts to zero."<sup>14</sup>

Giubilini and Minerva's argument is that if abortion is ethically permissible in certain social, economic, or psychological circumstances, then consistency demands that post-birth abortion (infanticide) also be accepted. Thus, the same reasons that justify abortion of the human being prior to birth also justify killing a newborn after birth up to the time when neurologists and psychologists assess that the child values his or her own existence. Abortion at an early stage may be better for the woman psychologically or physically, but according to the authors, there is nothing morally wrong with post-birth abortion, particularly in cases where circumstances change and taking care of a newborn becomes something the parents find burdensome.

Giubilini and Minerva decline to say exactly when it begins to be wrong to kill a baby, leaving the question to psychologists and neurologists to determine when a

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<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

human being begins to value his or her own existence. Psychologist Philippe Rochat expresses the view that human beings become self-aware of their own existence at around two years of age: “There is a general consensus on a few major landmarks in young children’s psychological development such as the manifestation of the first social smile, the first independent steps, or the first words. All parents also notice an important change at around 2 years of age when children manifest “self-consciousness,” the so-called secondary emotions such as embarrassment or pride in very specific situations such as mirror exposure or competitive games.”<sup>15</sup> Until human beings become self-conscious and aware of their own existence, they cannot take an *interest* in their continued existence. So, if this general consensus is correct, given Giubilini and Minerva’s account, post-birth abortion is morally permissible until the child is around two years old. This is an absurd conclusion.

Where exactly does the argument go wrong? Not just one but several of the premises leading to their conclusion are false. Indeed, Giubilini and Minerva’s argument rests on five faulty claims.

The first of which is that not all human beings have basic human rights because of the permissibility of lethal embryo research, legal abortion, and capital punishment. However, it is far from self-evident that lethal embryo research, legal abortion, and capital punishment are indeed permissible. Giubilini and Minerva presuppose the moral acceptability of practices that are among the most controversial and disputed in our society. Then, they argue from the deeply controversial to support the even more controversial.

But even if we presupposed that lethal embryo research, abortion, and capital punishment were permissible, it still does not necessarily follow (at least without further justification) that these practices indicate a lack of a right to life for all humans. For example, one might hold that abortion is permissible but justify it by means of arguments, like Judith Jarvis Thomson’s violinist, which do not deny a fetal right to life.<sup>16</sup> Likewise, capital punishment does not necessarily imply a denial of the right to life of the one condemned, insofar as just punishments do not violate basic human rights.<sup>17</sup> Some even defend embryo research as compatible with recognizing an embryonic right to life, or they argue that such research does not really destroy a “human being” since twinning is still possible.<sup>18</sup> For the sake of argument, even granting that these three controversial practices were permissible (and this is to

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<sup>15</sup> Philippe Rochat, “Five Levels of Self-Awareness as They Unfold Early in Life,” *Consciousness and Cognition* 12.4 (December 2003): 718.

<sup>16</sup> Judith Jarvis Thomson, “A Defense of Abortion,” in *Intervention and Reflection: Basic Issues in Medical Ethics*, 5th ed., ed. Ronald Munson (1971; reprint Belmont, CA: Wadsworth Publishing, 1996), 69–80. For a response, see chapters 7 and 8 of Christopher Kaczor, *A Defense of Dignity: Creating Life, Destroying Life, and Protecting the Rights of Conscience* (Notre Dame, IN: University of Notre Dame Press, 2013).

<sup>17</sup> See John Finnis, *Fundamentals of Ethics* (Washington, DC: Georgetown University Press, 1983), 128–130.

<sup>18</sup> See Julian Savulescu, “The Embryonic Stem Cell Lottery and the Cannibalization of Human Beings,” *Bioethics* 16.6 (November 2002): 508–529. For the record, I think this defense of embryo research fails.

presuppose a lot), it is presupposing even more to hold that they each entail a denial of all human beings of the right to live.

Second, Giubilini and Minerva assume that killing a particular human being is wrong (only) because the human being *desires, takes an interest in, or values* his or her continued existence and, thus, his or her not being killed. This is implausible in part because suicidal human beings (the deeply depressed, drug addicts, and brain-washed cult followers) do not desire their continued existence, yet suicidal human beings still have a right to live, and it is wrong to kill them.<sup>19</sup> In fact, we *desire* things (like continued living) because we (rightly or wrongly) think that such things are *good*. What is relevant in determining whether someone has been wronged is not whether they were deprived of something they *desired* (after all, the heroin addict desires his heroin) but whether they were deprived of something *good* to which they were entitled.<sup>20</sup> Aside from just punishment, and regardless of subjective states of mind, to be deprived of a good is relevant for being wronged.

Third, Giubilini and Minerva falsely assume that “harm” is possible only if someone *experiences* it as a harm. However, as they note, if someone buys the winning lottery ticket, but a thief secretly replaces it with a losing ticket, that person has been harmed, even if the person is unaware of the switch. Giubilini and Minerva respond, “However, in such cases we are talking about a person who is at least *in the condition* to value the different situation she would have found herself in if she had not been harmed.”<sup>21</sup>

Yet, counter-examples abound to this qualification of their initial premise. The lobotomy of a normal adult may so damage the brain that the man or woman does not *experience* the loss of brainpower as a harm and is not in a condition to value the difference, yet undoubtedly such a person has been seriously harmed. If Giubilini and Minerva’s view were correct, it would follow that someone rendered permanently unconscious has not been harmed, since such a human being is not in the condition to value the different situation she would have found herself in if she

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<sup>19</sup> Some authors, such as David Boonin, take this objection into account. David Boonin, *A Defense of Abortion* (Cambridge: Cambridge University Press, 2003), 70–79. But I think these responses fail. See Kaczor, *Ethics of Abortion*, section 4.1.1.

<sup>20</sup> In the words of Patrick Lee, “The positive attitude account puts the cart before the horse. Conditions are not worthwhile because they are desired; rather, they are desirable because they are worthwhile, because they have whatever it takes to make something worth being desired. Clearly, some of our desires are bad and some are merely whimsical. Since worthless objects are sometimes desired, it follows that being desired cannot be what makes an object to be worthwhile. So, prior to being desired, the object of desire must have something in it which makes it *fitting* or *suitable* to being desired. What makes a thing good does not consist in its being the satisfaction of desires or preferences; rather, desires and preferences are rational only if they are in line with what is genuinely good. So, a state of affairs should be desired or cared for if it is inherently valuable. A condition’s being valuable makes desires for it reasonable, not vice versa.” Patrick Lee, “Substantial Identity, Rational Nature, and the Right to Life,” in *Bioethics with Liberty and Justice: Themes in the Work of Joseph M. Boyle*, ed. Christopher Tollefsen (New York: Springer, 2010), 25, original emphasis.

<sup>21</sup> Giubilini and Minerva, “After-Birth Abortion,” original emphasis.

had not been rendered permanently unconscious. Indeed, their account cannot even explain why the (painless and quick) murder of an adult person is wrong. Unless we assume murder victims consciously survive their own death (which Giubilini and Minerva surely reject), the victim does not experience her own death as a harm, nor is the victim in a position to value the state that she would have been in if she had not been killed, since she does not *experience* anything at or after her death. If no aspect of the victim survives death, this personal annihilation would seem to make murder a greater harm than if some aspect of the victim did survive death. Given Giubilini and Minerva's account, personal annihilation is no harm at all. Yet even if we assume the immortality of the soul, it would still be false to say that murder victims experience death itself, insofar as "they" (an integrated unity of body and soul) no longer exist at death, but only an aspect of what was them, their soul, exists. As Saint Thomas Aquinas noted, "My soul is not me."<sup>22</sup> If the soul is not the human being, then the unity of body and soul that constitutes a living human being is not consciously aware after death. The wrong of killing a conscious adult cannot be explained by the victim experiencing the harm of death or by the victim being in a condition to value after their death what life would have been like had the murder not happened.

Fourth, Giubilini and Minerva falsely assume no one has been wronged if no one has been harmed. Many counter-examples to this claim are evident. Failed assassination attempts may harm no one, but the target is wronged nonetheless. Particular cases of perjury may harm no one, but perjury is morally wrong nonetheless. Malicious slander of someone's reputation wrongs the one slandered, even if no one believes the slander and the slander ends up benefiting the intended victim. So even if the preborn or newborn were not harmed, it still might be the case that he or she was wronged.

Finally, Giubilini and Minerva falsely assume body–self dualism. On this view, "you" are your aims, desires, and awareness, and your body (the human being that your mother had in her womb) is not you. A human organism—not you—was born, and then months later "you" began to exist. Giubilini and Minerva write, "So, if you ask one of us if we would have been harmed, had our parents decided to kill us when we were fetuses or newborns, our answer is 'no', because they would have harmed someone who does not exist (the 'us' whom you are asking the question), which means no one. And if no one is harmed, then no harm occurred."<sup>23</sup> Absurd consequences follow from this view: you are not a human being, you do not have a birthday, and you are not made of flesh and blood. On their view, your mother has never kissed you (since no one kisses the aims, desires, and awareness that constitutes a person).

It is possible to enumerate other problems with the body–self dualism. First, an episodic problem also arises, for if "you" are really your thoughts, dreams, desires, and aims, then "you" pop in and out of existence along with your periodically present consciousness. Second, if Giubilini and Minerva were right, then curing

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<sup>22</sup> Thomas Aquinas, *Super primam epistolam ad Corinthios lectura*, chapter 15, lesson 2.

<sup>23</sup> Giubilini and Minerva, "After-Birth Abortion."

dissociative identity disorder, also known as multiple personality disorder, also destroys “someone,” since it destroys one or more sets of personalities with distinct aims, desires, and awareness; but this too is absurd. Finally, body–self dualism cannot adequately explain simple statements such as “you see.” Such acts of sensing involve “you” doing both bodily acts (via the eyes) and intellectual acts (via the mind). But if you are not a bodily being, then you do not do bodily acts involving bodily organs such as eyes. “You” cannot see, taste, or walk.<sup>24</sup>

In sum, Giubilini and Minerva’s argument for post-birth abortion rests on several false premises. Since capital punishment, lethal embryo research, and legal abortion are among the most contentious issues in our society, these practices cannot be used as a non-controversial way to justify a denial of basic rights to all human beings. Nor is killing a human wrong simply because it contradicts that human’s desire. Indeed, a human being can be harmed even if that harm is not experienced by the victim as harm, nor is it the case that a lack of harm means that no wrong was done. Finally, Giubilini and Minerva presuppose a false anthropology, body–self dualism, in their defense of killing preborns and newborns. Their article does highlight one very important truth: “The moral status of an infant is equivalent to that of a fetus.”<sup>25</sup> However, this truth, combined with other true premises, such as the equal basic dignity of every human being, points in the direction of preventing rather than fostering the killing of human beings either before birth or after birth.

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<sup>24</sup> For much more, see Patrick Lee and Robert P. George, *Body–Self Dualism in Contemporary Ethics and Politics* (Cambridge: Cambridge University Press, 2008).

<sup>25</sup> Giubilini and Minerva, “After-Birth Abortion.”