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Philosophy and Theology: Notes on Infanticide

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PHILOSOPHY AND THEOLOGY

A spate of recent articles defends the permissibility and practice of killing newborns. In their *Hastings Center Report* article “Ending the Life of a Newborn: The Groningen Protocol” (January–February 2008), Hilde Lindemann and Marian Verkerk support those who “responsibly end the lives of severely impaired newborns” of various kinds suffering from serious illness.¹ Their argument is fairly straightforward and similar in form to the argument in favor of euthanasia generally, another practice accepted in the Netherlands. They note that most people already sanction the removal of life support from severely handicapped babies who have no chance of survival (these are “Group 1” babies). “Group 2 consists of infants who ‘may survive after a period of intensive treatment, but expectations regarding their future condition are very grim.’ They include infants with severe brain abnormalities or extensive organ damage caused by lack of oxygen. The dilemma here is whether these infants are so badly off that they should be allowed to die.”

In the United States and Europe, there is a consensus that it is permissible to withdraw or withhold treatment from such children, allowing them to die. “In the Netherlands, however, if neither withholding nor withdrawing intensive treatment will result in a speedy death, the unbearable suffering of the infant is seen as a compelling reason for the doctor to end its life directly.” Group 3 consists of

infants who are not and have not been dependent on intensive medical treatment and who, with proper care, can in some cases survive many years, even into adulthood. They have serious conditions that cannot be treated but cause terrible suffering, such as epidermolysis bullosa, which in severe cases produces large, painful, fluid-filled blisters and continual scarring that fuses the fingers and

¹Hilde Lindemann and Marian Verkerk, “Ending the Life of a Newborn: The Groningen Protocol,” *Hastings Center Report* 38:1 (January–February 2008): 42–51.

toes and leads to feeding and swallowing difficulties. Other severe conditions include progressive paralysis, complete lifelong dependency, and permanent inability to communicate in any way.

The Groningen Protocol applies to babies in all three groups, allowing for intentional killing of newborns contingent upon informed consent given by both parents, a certain diagnosis of “hopeless and unbearable suffering” confirmed by at least one independent doctor, and also the consent of the physician who will kill the baby. From Lindemann and Verkerk’s perspective, babies in Group 3 have the most pressing need to be killed, since they could survive into adulthood with their terrible conditions.

Lindemann and Verkerk defend the Groningen Protocol for killing newborns, which they argue has been misunderstood by errors in linguistic translation as well as cultural misunderstandings of the Dutch context. At times, their defense of infanticide seems to rest on a moral relativism wherein infanticide is permissible in Holland, but perhaps not elsewhere. Moral relativism is typically not presupposed in discussions of infanticide, since relativism opens the door to approval of sex selection abortion and infanticide of baby girls as practiced in some parts of the world.² However, even aside from presupposing relativism, the real problems with Lindemann and Verkerk’s defense are foundational; they are not simply a matter of clarifying, for instance, that many babies, not only babies with spina bifida, will be subject to the protocol. For example, Lindemann and Verkerk presuppose the permissibility of physician-assisted suicide and voluntary euthanasia. They take for granted that severe suffering, understood as physical pain or psychological agony, renders worthless the life of the one who suffers. If one rejects a self-body dualism,³ their reasoning necessitates the conclusion that suffering makes a human person worthless. If, however, all human persons have intrinsic value, and a person’s *life* is simply nothing other than the *person* in his or her bodily dimension, then all human lives, even of those who severely suffer, have intrinsic value. To cite one more problematic assumption, the authors repeatedly offer a false dichotomy: either allow the baby to suffer or intentionally kill the infant. No mention is made of a third alternative: making use of drugs to relieve suffering, even if the dosage must be high enough to induce deep sleep.

At one point, the authors recognize a significant objection to their defense of infanticide: “It is of course true that some of these babies—those, for example, who face complete lifelong dependency—might, if kept alive, judge as adults that their lives had been worth something to them. Much would depend, one supposes, on how much pain and other kinds of suffering they had to endure to get to adulthood. But that consideration is no reason to proscribe all life-ending interventions on the basis of future suffering.” Why not? Empirical evidence shows that the overwhelm-

²See Renuka M. Sharma, “The Ethics of Birth and Death: Gender Infanticide in India,” *Journal of Bioethical Inquiry* 4.3 (December 2007): 181–192, and Vardit Rispler-Chaim, “Contemporary Muftis between Bioethics and Social Reality: Selection of the Sex of a Fetus as Paradigm,” *Journal of Religious Ethics* 36.1 (March 2008): 53–76.

³Such dualism is also reflected in Omar Sultan Haque, “Brain Death and Its Entanglements: A Redefinition of Personhood for Islamic Ethics,” *Journal of Religious Ethics* 36.1 (March 2008): 19, 22.

ing majority of adults suffering from serious illness do not kill themselves. These people have presumably known good health at some point in their lives, and so they suffer additionally (as children from Group 3 would not) in missing what they have lost. We have good reason to suppose that children from Group 3 would, as adults, value their lives, a consideration that should not be simply dismissed.

Lindemann and Verkerk falsely assume that the withdrawal or withholding of life support for an uncomprehending patient of any age depends on a judgment that the patient's life is no longer of value. If the burdens of a treatment outweigh its benefits, then the treatment need not be administered or may be withdrawn. Of course the patient's condition will partially determine the degree to which any given treatment is beneficial and burdensome.⁴ The appropriate question, however, is whether a given *treatment* is more beneficial than burdensome, not whether a person's *life* is beneficial or burdensome (*lebensunwertes Leben*, "life unworthy of life").

Not limiting themselves to disabled newborns, Nicole Hassoun and Uriah Kriegel offer a different defense of killing infants in their article, "Consciousness and the Moral Permissibility of Infanticide" (*Journal of Applied Philosophy*, February 2008). Their argument in bare outline is as follows: "It is impermissible to intentionally kill a creature only if the creature is conscious; it is reasonable to believe that there is some time at which human infants are not conscious; therefore, it is reasonable to believe that it is permissible to intentionally kill some human infants." The logic of their premises actually entails no limitation to only "some" infants.

In arguing for this conclusion, Hassoun and Kriegel make frequent appeal to authority: "At least since the work of Mary Ann Warren [1970s], it has been customary to hold that all and only those creatures it is impermissible to intentionally kill qualify as persons . . . Most philosophers will agree that consciousness is necessary for personhood, and in any case, this is where we shall begin."

Taken literally, the proposition that consciousness is necessary for personhood is ridiculous. No one believes it is permissible to kill human beings in surgery, knocked out in a boxing match, or rendered unconscious by car accident, and yet in all these cases the human beings in question lack consciousness.

This difficulty could be remedied by speaking of being *capable* of consciousness rather than being *actually* conscious. Hausoun and Kriegel state that "T is creature-conscious only if T is capable of having mental states that are state-conscious." Could "capable" mean the ability to exercise this power in the future? The trouble with this modification, from the perspective of a person seeking to justify infanticide, is that the vast majority of infants are capable of consciousness in this sense.

In order to exclude the importance of potentiality, Hassoun and Kriegel appeal to the following example: "Consider, however, what we would say if we found out that oysters could be made conscious upon being transported to Mars. This would

⁴Christopher Kaczor, "The Culture of Life and the Quality of Life Ethic: An Either/Or?" in *Culture of Life—Culture of Death*, ed. Luke Gormally (London: Linacre Center, 2002), 313–321.

probably not convince most of us to stop eating oysters on Earth.” Of course, a normal human infant develops toward consciousness in the absence of special intervention, unlike the oysters transported to Mars, so Hassoun and Kriegel develop their example further. “Suppose that many years from now, a space elevator is installed between Earth and Mars, and that an oyster finds its way to the elevator. At this point, the normal course of events should lead to that oyster’s becoming conscious *in the absence of intervention*. The oyster on the elevator is thus potentially conscious in the sense in which fetuses and neonates are—it is, so to speak, *en route* to consciousness. Yet it still seems intuitively permissible to kill the oyster.”

It is difficult to take such a preposterous example seriously rather than laugh and say, “Come on, do you *really* think that killing a newborn baby is like killing an oyster that could become conscious by taking a space elevator to Mars?” The more ridiculous the example, the less useful it is in clarifying real cases at hand. However, *if per impossible* oysters were indeed rational creatures simply in need of the right developmental conditions in order to flourish, then they would have rights to live. But they are not, so they do not.

At what stage of development do Hassoun and Kriegel believe that human beings begin to have a right to live? Although some claim evidence of self-awareness only twelve to fourteen days after birth, Hassoun and Kriegel also offer what they take to be another plausible cutoff point for infanticide: “It is quite plausible to take mirror self-recognition to be *evidence for* the presence of self-awareness. The question we want to ask ourselves is at what age humans develop the ability for mirror self-recognition. The evidence suggests that humans develop the capacity for mirror self-recognition between the ages of eighteen months and twenty-four months.” When killing children up to two years of age becomes a matter of debate, one wonders whether Elizabeth Anscombe was right that certain positions reveal a corrupt mind with which argument is not profitable.⁵

Recalling Anscombe’s remarks and rejecting them, at least as applicable to killing newborns, Jeff McMahan’s “Infanticide” (*Utilitas*, June 2007) offers argument in favour of intentionally killing infants after birth in order to transplant their organs. The scenario he envisions, which he names “Healthy Newborn,” is as follows:

A woman dies in childbirth leaving a very premature but healthy infant, just a few hours old. The child’s biological father died months ago and neither he nor the mother had any living relatives. Both were reclusive and had no friends; hence there is no one who is specially related, even indirectly, to the infant. Suppose there are four children in the same hospital, all of whom are three years old and need an organ transplant within the next twenty-four hours in order to survive. Because these children’s organs have been impaired by illness, it is not possible to wait for one to die and use his or her organs to save the others; nor is it possible to sacrifice one (say, by lottery) to save the other three. But the newborn infant has the right tissue type and its organs could be used to save all four.

⁵G. E. M. Anscombe, “Modern Moral Philosophy,” *Philosophy* 33.124 (January 1958).

Most people, including those who defend abortion, are horrified by this scenario. McMahan's work is especially interesting because it shows an inconsistency in defenses of abortion that seek to exclude infanticide but secure the permissibility of abortion throughout pregnancy.

McMahan notes that many defenders of abortion believe it would be morally permissible for a woman to have an abortion after viability if it is in the interest of her health to do so, a scenario he calls "Selfish Abortion." He points out that there is no difference in intrinsic properties, and therefore no difference in moral status, between a newborn baby and a viable human fetus. "The reason why there cannot be intrinsic differences between newborn infants generally and viable fetuses is simply that viable fetuses could *be* newborn infants if they were delivered prematurely." Indeed, an infant born prematurely at six months is less well developed than a child in utero at nine months. Since McMahan also rightly supposes that birth itself is irrelevant to the moral status of the progeny, a viable fetus and an infant have equal moral standing. Therefore, if it is permissible for a person to intentionally kill the viable fetus in order to eliminate health problems for one person, "Selfish Abortion," then it would seem to be morally licit to intentionally kill a viable fetus in order to harvest its organs to save the lives of four children in need of organ transplantation, a grisly scenario McMahan calls, "Altruistic Abortion." But if "Altruistic Abortion" is permissible, since the viable fetus and the newborn infant have the same moral status, then it should also be permissible to kill a newborn in order to harvest his or her organs to save the lives of four other children, the "Healthy Newborn" scenario.

McMahan also seeks to show that the pro-life position is mistaken. Why would it be permissible to kill an animal in order to make use of its organs but impermissible to kill a viable fetus? McMahan explores a number of possible responses.

One pro-life argument is that a viable fetus, but not a nonrational animal, has the potential to develop cognitive capacities and that this difference makes abortion for organ retrieval wrong but killing an animal for the same reason permissible. McMahan rebuts this suggestion by noting a congenitally severely retarded human fetus would not have the capacity for rationality, arguing that species membership is morally irrelevant.

However, moral decisions bear on promoting or thwarting the flourishing of others. Species membership is morally relevant because it gives us a benchmark by which to judge the flourishing of an individual member of a species.⁶ For example, for a human being of a certain age to be unable to read indicates a failure of that individual to fully flourish; whereas a squirrel can flourish *qua* squirrel without reading, and so even if *per impossible* we could teach a squirrel to read, we would be under no obligation to do so. Since there are species-specific kinds of flourishing,

⁶See Elizabeth Anderson, "Animal Rights and the Values of Nonhuman Life," and Martha Nussbaum, "Beyond Compassion and Humanity: Just for Non-human Animals," in *Animal Rights: Current Debates and New Directions*, ed. Cass R. Sunstein and Martha Nussbaum (Oxford: Oxford University Press, 2004).

the natural kind of a being matters ethically. Precisely an account of species-specific flourishing allows us to identify and bemoan human retardation as a painful lack of flourishing. It is in virtue of an account of species-specific flourishing that we take it as a serious loss for them and the human community that mentally handicapped human beings cannot fully flourish as the kinds of beings that they are. A mentally retarded human being and a dog may be equally incapable of exercising distinctly human reasoning and freedom, but the handicap of the human is tragic while the rational incapacity a dog is inconsequential. This difference rests on the fact that the human, but not the dog, cannot exercise his or her species-specific form of flourishing. Since even mentally handicapped human beings share in a species-specific form of flourishing ordered to the goods of rationality and freedom, they are human persons even though they are not flourishing human persons.

McMahan's second argument against membership in the human species as a source of moral status is based on human and nonhuman combinations across the transgenic spectrum: "Individuals at one end of the spectrum with only a tiny proportion of human genes are unambiguously chimpanzees; those at the other end with only a tiny proportion of chimpanzee genes are unambiguously human beings. The relevant question is whether the *moral* status of any individual in the spectrum depends on whether it has a sufficiently high proportion of human genes to count as a member of the human species." Given the Transgenic Spectrum example, McMahan believes the defender of human life is faced with a dilemma following from the disjunction that either being a member of the species *Homo sapiens* is a matter of degree or it is not.

One horn of the dilemma follows from the assumption that being a human is not a matter of degree but rather is an all or nothing category. It is hard to believe that a being mostly composed of chimp genes, but who had the brain of a human being would not be deserving of our respect. Likewise, a being composed mostly of human genes but with a chimp brain would not seem to be worthy of respect as human. Rational functioning rather than the proportion of human genes determines moral status.

On the other hand, if being a human is a matter of degree, reasons McMahan, then defenders of life cannot claim that all persons have an equal right to life (the equal wrongness thesis), since all transgenic creatures would not be equally human.

At work here is a presupposition that we need not accept. "Assume that our working genealogical criterion of species membership is undergirded by a deeper genetic criterion—in other words, that membership in the human species is determined by the possession of a characteristically human genome, which is in fact produced only by the fusion of gametes from human parents." If we retain the Boethian definition of person as an individual substance of rational nature, then we can sidestep McMahan's argument. If creatures of mixed origin are manufactured, then we shall have to debate about whether they should be included in the category of rational animals. But the debate about such creations need not undermine the moral conviction that all human beings—anyone who arises from human parents—should be protected by law and welcomed in life. Indeed, if a species of animal is manu-

factured with a mix of human and nonhuman genes (itself morally problematic),⁷ then the species would have moral rights if the species had a rational nature. We would know the nature of the beings in question by observing how healthy, mature members of the species function.

Until we had moral clarity about the nature of transgenic beings, we should treat such creatures as if they had moral rights on the supposition that we should err on the side of protecting what very well may turn out to be animals of a rational nature. We already know that all human beings are members of a rational species, so all human beings merit respect as persons, including all newly born human beings.

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⁷National Academies, *Guidelines for Human Embryonic Stem Cell Research* (Washington, DC: National Academies Press, 2005), 55.