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Philosophy and Theology: Notes on Early/Late Term Abortion, Non-Human Rational Animals, and Twinning

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Is later abortion worse than early abortion? Would the discovery of a nonhuman rational animal change the personhood debate? Does an individual person arise only after the possibility of twinning is excluded? This reflection touches on these important questions.

Late versus Early Abortion

In a fascinating article, “Late- vs. Early-Term Abortion: A Thomistic Analysis” (The Thomist, January 2007), Andrew J. Peach argues that the moral intuition that late-term abortions are more seriously wrong than earlier-term ones can be accounted for in a different way from the ways proposed by apologists for abortion. Defenders of abortion, it will be remembered, typically resort to a gradualist or achievement account of personhood in order to accommodate this intuition. On these accounts, late-term abortions are worse than earlier ones because the moral status of the fetus changes throughout or during pregnancy. However, by showing how circumstances affect the gravity of a human action and the culpability of a moral agent, one can account for the differences between early- and late-term abortions without compromising the conviction that all abortions are acts of murder and inherently wrong. One need not resort to a dubious account of personhood in order to account for this moral intuition. (139)

One way of accounting for the intuition is the additional evil of inflicting pain in late-term abortions but not in early-term abortions: “A murder that involves pain is, in itself, more grievous than one that does not. An abortion that is performed after the fetus is capable of feeling pain is, for that very reason, more seriously wrong than an abortion that is performed prior to the onset of this capacity. The infliction of pain need not enter into the act of murder, but when it does, it renders the act more grievous ‘by multiplying the ratio of evil,’ to use Thomas’s phrase” (126).

Of course, it is possible to remove this difference by simply anesthetizing the human fetus prior to a late-term abortion procedure, but in second- or third-trimester
abortions as typically performed, this difference remains. Others might object that even the early fetus experiences pain, but the typical advocate of abortion denies this, so Peach’s argument would work at least dialectically on his opponent’s supposition. In any case, it is certainly true that some killing of early human life (say, killing embryos for research purposes) would involve no fetal or embryonic pain and therefore would be distinguishable from other forms of killing (partial-birth abortion) that, as typically performed, involve pain in a normal human fetus.

Second, there is ceteris paribus a difference in the effort required to sustain fetal life that morally distinguishes late and early abortions:

For the woman whose child has passed the point of viability, the effort involved to spare the life of that child is little, if at all, greater than that involved in inducing labor and delivering the child. In earlier stages of pregnancy, say at around four weeks, the woman who no longer wishes to carry the fetus would have to endure approximately twenty more weeks of pregnancy, as well as inducement and labor, to secure the independent existence of the fetus. To do what is good is easier in the former case than in the latter, and so to fail to do what is good in the former case is worse than to fail to do so in the latter. That it is a less-grievous moral offense to fail in what is more difficult than in what is less difficult clearly resonates with our moral intuitions regarding late- and early-term abortions. (127)

As a counter-example, consider a woman who suddenly has to endure bed rest for the last three months of pregnancy, or who is undergoing health problems in later pregnancy. She might very well experience the remaining months of the pregnancy as more difficult and requiring greater effort than a healthy woman does during an entire pregnancy. Nevertheless, Peach’s general point would hold if it were understood as defending a prima facie moral difference between early-term and late-term abortion.

Third, Peach points out that as a pregnancy develops it becomes more and more difficult to be inculpably ignorant of the humanity of the unborn. Early in pregnancy, it is more plausible that the human fetus is merely a “bunch of cells” that are not really alive, but as pregnancy progresses, fetal movement and sometimes hiccups make such suppositions more difficult to maintain. Vivid three-dimensional ultrasound images taken in later pregnancy make the humanity of the unborn even harder to deny. Insofar as involuntary ignorance is, in a typical case, more likely early than later in pregnancy, culpability will be less for early abortion than for later abortion (135).

1 The contention that continuing pregnancy after viability requires little or no effort outside of labor and delivery is false. After viability, much effort is involved in continuing a pregnancy, since walking, sitting, and doing other activities typically becomes much more challenging as the unborn child grows larger. In addition, for at least some women, morning sickness continues even into the second and third trimesters. Still, just as carrying a load for ten miles is more difficult than carrying it for two miles, ceteris paribus more effort is required to finish carrying a child to term when thirty-six weeks of pregnancy remain than when ten weeks remain.—C.K.
Again, there may be cases when this difference is not in play. Someone well versed in the facts of fetal development may be more culpable for having an early abortion than a mentally handicapped woman aborting later in pregnancy. Still, if the point is to make a prima facie case that there is greater culpability for later abortion than for early abortion, the point remains true despite differences in cases where other things are not equal.

Fourth, Peach argues that when a woman first becomes aware of the pregnancy, the passions are most likely to be at their highest intensity: dread of the burden of carrying the baby arises, apprehension and anxiety at the notion of being a parent for the first time or of having to parent another child, the fear of being financially and emotionally abandoned by the biological father, etc. When one considers that these passions surface all at once at the onset of pregnancy and when the developing human being is at its earliest developmental stages—when it does not “look like a baby” yet—then one can understand how easy it can be for a person, out of weakness and due to difficult circumstances, to fail to apply the general prohibition against murder to the particular case of the person in the womb. (135–136)

By contrast, to choose late-term abortion after having gotten through the initial trauma and having withstood the stormy anxiety of learning the shocking news of pregnancy seems to be more deliberate and therefore more blameworthy. As time passes, passions cool and the expectation of reasonable action increases (136).

One difficulty with this argument is that it does not apply in all cases to distinguish early from later abortion. In some cases of late-term abortion, the mother may wish to terminate the pregnancy because of a diagnosis of fetal handicap that can only be made later in pregnancy. The emotional trauma brought on by the news of a malformed unborn child late in pregnancy may be no less severe than the distress brought about by the early discovery of an unwanted pregnancy. In addition, it can happen that a woman with irregular cycles or obesity only discovers that she is pregnant in the second or third trimester. Still, these exceptions do not undermine the general thesis that late-term abortion is more morally problematic than early-term abortion ceteris paribus.

Fifth, Peach points to the fact that, in general, expectant parents experience late-term miscarriages as more traumatic than early miscarriages:

Even if they feel or have judged that abortion is a necessary evil, all things considered, their sense of remorse and loss would have to be more palpable or intense given the level of development of the child; what has been taken away cannot plausibly be denied. This must be particularly true for the woman, whose attachment to the person in her womb presumably develops as the child develops. Just as, in general, late-term miscarriages are likely to impact a woman (or couple) more severely than early-term ones, late-term abortions must surely impact a woman (or couple) more severely than early-term ones. (138)

Anecdotally, it does seem to be the case that late miscarriages are more traumatic for women (and couples) than early miscarriages. Does it follow that late abortions are morally worse than early abortions? Does an attachment develop between the mother and the child through the course of pregnancy such that the greater the attachment the worse it is to detach? Generally, the length of a relationship seems to have some
bearing on the loss involved when the relationship ends. To end a marriage after three weeks involves a less serious loss than ending it after three decades. Perhaps this helps explain in part why later abortion is worse than early abortion, without at all denying that every abortion is a matter of grave, intrinsic injustice which ends the life of an innocent human being.

Although I have raised questions about Peach’s five arguments that late abortion is worse than early abortion in terms of circumstances and moral culpability—and although late and early abortions are equally unjust in terms of the intentional killing of innocent unborn human persons—it would seem that Peach’s arguments are sound so long as they are understood as not being exceptionless but rather ceteris paribus considerations.

An interesting question is why such distinctions do not find any echo in the contemporary magisterial teaching on abortion. Would such an emphasis help or harm evangelization toward a gospel of life? This question may also be related to the various strategies undertaken by pro-life advocates to end abortion. Some, such as Hadley Arkes, seek to end all abortion incrementally by focusing on issues, such as partial-birth abortion, supported by public opinion. Others, most notably perhaps Colin Harte in Changing Unjust Laws Justly: Pro-Life Solidarity with the “Last and the Least” (2005), argue that this incremental approach is unjust and inevitably leads to a distortion of the pro-life point of view. Peach’s analysis does not definitely answer the question of approach, but it may prove useful in reconciling pro-lifers divided on political strategy as well as reconciling church teaching on abortion as intrinsically evil with the “commonsense” view of many Americans that late abortion is worse than early abortion.

Personhood and Rational Capacity

In his book Abortion and Unborn Human Life (1996), Patrick Lee provides a powerful philosophical defense of the intrinsic wrongfulness of abortion. In two recent articles in Bioethics—“The Pro-Life Argument from Sustantial Identity: A Defence” (June 2004) and “Substantial Identity and the Right to Life: A Rejoinder to Dean Stretton” (February 2007)—Lee defends his book and his view that all human beings by nature have a right to life, against criticisms raised by another philosopher, Dean Stretton. The exchange is crisp, clear philosophy, taking up issues such as the difference between human beings and nonrational animals, the importance of natural capacities in distinction from developed capacities, and responses to bizarre examples of human brain transplants in animals and puppies with rationality. Lee’s responses to criticism leave his case intact, but I would like to consider further one of the points Stretton raises.

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2 Hadley Arkes, “This Heartbreaking Court,” First Things 166 (October 2006): 11–14.
A bizarre scenario that Dean Stretton borrows from Jeff McMahan is of dogs with a latent brain mechanism that, with years of cognitive therapy occupying virtually every waking hour, eventually allows them to function in a rational way. These dogs would have a (weak) rational capacity, and the question is, would they also have a right to life? If Lee answers no, these dogs do not have a right to life, then he has in fact conceded that natural capacities do not give rise to the right to life. If Lee answers that they do have a right to life, then he embraces an untenable conclusion (argues Stretton) that goes against our intuitions: dogs have a right to life.

Lee responds that “it is not plausible that an animal would have a latent capacity for rationality and self-consciousness but not manifest that capacity given a reasonably favorable environment” (“Substantial Identity,” 95). However, bizarre counter-examples are by their very nature not plausible. One could rule out such examples, but they seem to be a standard tool of contemporary analytic philosophy to, among other purposes, enable one to distinguish conceptually that which—in reality—one finds linked up together. Lee rightly notes that the moral conclusions we can draw from our intuitions about bizarre examples is tentative, “partly because the scenario is so extraordinary, there is reason both to doubt what people’s intuitions about it would be and to disagree with their intuitions if they clashed with basic moral principles” (95).

In a certain sense, the rational puppy scenario is not that bizarre, for certain individual rational animals, mentally handicapped human beings, may find themselves in situations not altogether different from the situation of the dogs in the example. They may be able to function rationally only if a massive effort is made by those around them to give them what other human beings can attain effortlessly. Unless Stretton would deny the right to life to human beings with serious mental handicaps, then it would seem that the dogs in question would also have a right to life. “If the dogs really did have a basic, natural capacity for conceptual thought and free choice, but (inexplicably) could actualize that capacity only through gargantuan efforts, why should this last fact determine whether or not they are intrinsically valuable as subjects of rights?” (95). Of course, if dogs, cats, or horses really were rational, then it would turn out that they are radically different creatures than we had previously thought. It might be appropriate to rename them, snoopies or garfields or mistereds, or perhaps even more appropriately to have them name themselves. Further, just because someone can recover a natural capacity with a gargantuan effort, it does not follow that such an effort must be made. Similarly, life is always a good, but we need not do everything in our power, no matter what the circumstances and no matter what the cost, to preserve human life.

Cell Growth and Potentiality

In an article titled “Individuality and Human Beginnings: A Reply to David DeGrazia,” Alfonso Gómez-Lobo of Georgetown University and the President’s Council on Bioethics brings important considerations to bear on criticisms of the proposition that “we originate as single-cell zygotes at the time of conception” (Journal of Law, Medicine & Ethics, Fall 2007, 457). A standard objection to this view is that fact that a zygote can twin, and therefore (it is argued) must not have been an
individual at the time of conception, but rather a “mass of tissue” from which could arise several individuals. Of course, if there is no individual present, then there is no “person” according to the classic Boethian definition of a person as an individual substance of a rational nature.

Gomez-Lobo shows that there is no necessary link between indivisibility and individuality, noting that “If indivisibility were a necessary condition for individuality, then there would be no material individuals. After all, any material object can be pulled apart of dismantled. No car would be an individual car, but only a collection or package of car parts, likewise no living body would be an individual organism, but only a colony of cells” (458). Obviously then, individuality does not require indivisibility.

What if we slightly change the necessary condition and say that “if a living organism can give rise to other living organisms by fission,” then it is not an individual? Gomez-Lobo responds, “On the assumed criterion you could never have, say, three individual amoebas on a lab dish because each of them can divide and reproduce by fission. Nor could you have six because the ones resulting from the division can in turn be divided, etc. In the case of amoebas, we cannot even have recourse to the alternative that they are a mere collection of cells: amoebas are single-cell organisms” (458). Thus, the ability to give rise to others by means of fission does not exclude individuality, unless one wants to say, rather implausibly, that there is no such thing as an individual amoeba, no such thing as three amoebas, etc.

Another argument examined by Gomez-Lobo is that with cloning any cell of the human body has the potential to become a full grown human being, and so the fact that the zygote has potential to develop into a mature human being makes it no more important—on that account—than any skin or hair cell. Every cell in the human body has the potential (through cloning) to become a full grown human being, but obviously every human cell does not have an inalienable right to life. So too, the zygote does not have an inalienable right to life based on its potentiality to become a mature human being.

Gomez-Lobo indicates a difficulty with this view:

It is plainly false that each somatic cell has the potential to become an organism. In terms of its epigenetic state, each of those cells is at an end-stage or unipotent state. The technician performing the cloning extracts a nucleus (thereby destroying the original somatic cell and any potentiality it may have had) and inserts it in an enucleated ovum. The expectation is that the cytoplasm of the ovum will reprogram that nucleus so that it reverts to zygote stage. Not the original somatic cell, but the new cell, the one that starts to live with the reprogrammed nucleus directing the genetic development of the material provided by the ovum, is the one that has the potentiality to generate a full-grown organism. (461)

This critique depends on what constitutes a cell, for one might respond (contrary to the standard view that the nucleus is a part of a cell) that the “cell” is essentially the

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nucleus, with other parts such as the cell membrane, mitochondria, and cytoplasm being merely accidental properties like hair on a human being. Contemporary philosophy is rife with competing accounts of what essentially constitutes a human being—brain alone, body and brain, soul and body, etc., and these discussions could in principle be mirrored by similar debates about what constitutes a cell. Gómez-Lobo’s critique works given standard accounts of the nature of a cell, but one could imagine critiques of the standard account as philosophically naive (although I am aware of no such discussion in the philosophy of biology). Such a response to Gómez-Lobo’s argument seems quite strained, to say the least.

In a sense, the argument from potentiality is misplaced. The standard pro-life position does not hinge on the potentiality of the embryo, fetus, or baby to become a functionally rational adult or, in DeGrazia’s words, “one of us.” The typical pro-life view is that any human being in any stage of development—embryonic, fetal, or infantile—is already in its actual nature a rational animal, not potentially but already “one of us.” So arguments about whether a skin cell has potential to become one of us are irrelevant. No one argues that a skin cell is actually “one of us,” for it is merely a part of an individual. The real argument is about whether all human beings in whatever stage of development count as “one of us” in terms of basic human rights, or only those who meet a certain standard of functioning.

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