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Philosophy and Theology: Is Birth Ethically Relevant?

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PHILOSOPHY AND THEOLOGY

In her essay “Beyond Pragmatism: Defending the ‘Bright Line’ of Birth,” Achas Burin makes a case that an infant, but not a late-term prenatal human being, is a person.¹ Her contribution is distinctive in drawing on currents of thought seldom found together, namely, analytic philosophers like Robert Nozick and Michael Tooley, continental philosophers like Martin Heidegger and Maurice Merleau-Ponty, and contemporary scientists of human physiology like Tom Lissauer and Avroy Fanaroff. Burin seeks to refute the claims that birth is just a matter of location and that there is no medical basis for holding that “birth is an appropriate point on the spectrum of human development at which to attribute personhood” (500). Burin makes the case that birth is the bright line distinguishing individuals we should not intentionally kill from those we may intentionally kill. So she must show that the actions, emotions, and other features of a newborn are so radically different from the actions, emotions, and other features of a human being just prior to birth to justify a radical difference in treatment, namely, inclusion or exclusion from basic rights. Does she meet this burden of proof?

On Burin’s view, the physical changes, neurobehavioral changes, and social changes of birth mark a bright line separating human persons from human nonpersons. She augments this case by appealing also to the significance of expressing sentience in the outside world.

Do the physical changes that take place upon birth shift the prenatal human being into a postnatal person? In answering yes to this question, Burin provides a lengthy description of the physiological changes that take place at birth:

1. Achas K. Burin, “Beyond Pragmatism: Defending the ‘Bright Line’ of Birth,” *Medical Law Review* 22.4 (December 2014): 494–525, <https://doi.org/10.1093/medlaw/fwu017>. In subsequent citations, page numbers are given in parentheses in the text.

With hormonal support, the lungs inflate, circulation is redirected, and the digestive system becomes active. There are also profound changes in hormonal function, metabolism, and temperature regulation. The lungs are emptied of foetal fluid and lubricants secreted to facilitate expansion so breathing can begin. (In the absence of abnormality, both very preterm and term infants will begin breathing without intervention.) The volume of blood pumped from the heart nearly doubles. There are also major structural changes to the circulatory system. Before birth, oxygen is supplied by the placenta, so blood flows from the right to left atrium of the heart without passing the lungs. Following birth, the ducts that enabled this to happen close permanently. (501)

It is clear that significant *physical* changes take place at birth.

However, the *moral* significance of any of these changes is not clear. For example, suppose that further testing found that the volume of blood pumped from the heart does not nearly double but remains the same. Would this partially weaken the case for newborn personhood? If it were found that the volume of blood pumped from the heart were cut in half at birth, would this further weaken newborn personhood? It is hard to see why it would. The same is true of all the physical characteristics noted by Burin. It is not clear how the *moral* concept of personhood is related to the *physical* property of hormonal function, metabolism, or temperature regulation. Burin's article does not establish a connection.

Let us suppose for the sake of argument that these physical changes in blood volume, hormonal function, metabolism, and temperature regulation do have the momentous moral significance that Burin asserts. These physical changes occur not just in the birth of human beings but also in the birth of dogs, cats, and other mammals. So if these physical changes are in themselves so morally significant, then they must also change the moral status of all mammals that are born: every (born) rat has a right to life. This is hard to believe.

In addition to appealing to physical changes, Burin also points to neurobehavioral changes that differentiate newborns from late-term human beings in utero. For example, newborn babies sleep less (approximately 64 percent of the time) than children just prior to being born (approximately 86 percent of the time) (502).

The connection between sleep and personhood is tenuous. Suppose some elderly adults sleep more than 86 percent of the time; we would not consider them nonpersons. Imagine an individual who slept for twenty-four hours a day, every day of the month but one. On that one waking day, the individual was a whirlwind of activity—performing brain surgery in the morning, composing Nobel-Prize-winning poetry in the afternoon, and playing first violin in the Vienna Philharmonic Orchestra at night. Then she goes back to sleep for a month. Is she not a person?

Burin proposes another way to differentiate the prenatal nonperson from the natal person. Prior to being born, the human being cannot interact with the external world. Upon birth, this interaction becomes possible and shapes the neural plasticity of the child. Burin writes, one “way that neurobehavioral functioning requires the extrauterine context is ‘developmental plasticity,’ the adaptation of the brain in response to sensory input. Certain types of stimuli are necessary for normal growth” (502). So on Burin's view, the psychological changes at birth make learning possible and thereby actualize personhood.

In fact, human learning begins prior to birth. The brains of prenatal human beings adapt in response to sensory input. Having learned the distinctive sound in utero, even prematurely born babies recognize the voice of their mothers.² Not just hearing, but also the senses of sight and touch, are active prior to birth. So adaptation of the brain in response to sensory input does not differentiate a newborn from a late-term prenatal human being.

Having examined physical changes and neurobehavioral changes, Burin appeals to “social association” as another significant difference between prenatal and neonatal human beings: “The infant and adult engage with each other and with the world of objects. Accomplishing intentional action depends on establishing intersubjective relationships, as meaning is created in conjunction with others” (503). So on this view, the newborn who can socialize (to a limited degree) has personhood, but the late-term prenatal human being who cannot socialize does not have personhood.

Although social interaction normally increases after birth, it can begin prior to birth. The ability of a prenatal child to hear voices, respond to touch, and react to light all indicate interaction with the social environment. In the case of twins, it is even easier to see the social interactions of the unborn. As Janelle Weaver notes in her article “Social before Birth,”

Researchers at the University of Turin and the University of Parma in Italy used ultrasonography, a technique for imaging internal body structures, to track the motion of five pairs of twin fetuses in daily 20-minute sessions. As published in the October *PLoS ONE*, the scientists found that fetuses begin reaching toward their neighbors by the 14th week of gestation. Over the following weeks they reduced the number of movements toward themselves and instead reached more frequently toward their counterparts. By the 18th week they spent more time contacting their partners than themselves or the walls of the uterus. Almost 30 percent of their movements were directed toward their prenatal companions. These movements, such as stroking the head or back, lasted longer and were more accurate than self-directed actions, such as touching their own eyes or mouth.

The results suggest that twin fetuses are aware of their counterparts in the womb, that they prefer to interact with them, and that they respond to them in special ways. Contact between them appeared to be planned—not an accidental outcome of spatial proximity, says study co-author Cristina Becchio of Turin.³

Twins in utero exhibit awareness and social interaction with each other. Do these twins have a right to life, but otherwise similar singletons do not? If Burin’s reasoning were correct, we would be led to the odd conclusion that a human being’s moral status hinges on whether he or she has a monoamniotic twin: late-term abortion of twins destroys beings with moral worth (since the twins are socially responsive), but late-term abortion of an otherwise identical singleton does not (since no opportunity

2. Olena D. Chorna et al., “A Pacifier-Activated Music Player with Mother’s Voice Improves Oral Feeding in Preterm Infants,” *Pediatrics* 133.3 (March 2014): 462–468, <https://doi.org/10.1542/peds.2013-2547>.

3. Janelle Weaver, “Social before Birth: Twins First Interact with Each Other as Fetuses,” *Scientific American*, January 1, 2011, <http://www.scientificamerican.com/>.

for social interaction of the required kind was present). But it is difficult to believe that whether a human being is a twin has any bearing on her right to live. In sum, Burin's appeal to the physiological changes, neurobehavioral changes, and social association that occur upon birth does not establish the moral significance of birth.

The second half of Burin's article argues that the potential person of the fetus becomes an actual person of the newborn via contact with the external world, which is necessary for us to be persons. Indeed, a person who was put into Nozick's experience machine for long enough would cease to be a person, since she would be deprived of the experiences that are necessary to remain a person.⁴

How could an advocate for the equal rights for all human beings respond? If engagement with the world and knowledge of it is necessary to make us persons, then the newborn is not a person, for a newborn has no knowledge but mere sense experiences. But if mere sense experience is sufficient for becoming a person, then the human being prior to birth (who can hear, touch, and see) also counts as a person. Indeed, a typical human being waiting to be born has greater sense experience in terms of hearing and seeing than a newborn infant who is blind and deaf. So even an appeal to greater sense experience does not differentiate all prenatal human beings from all postnatal human beings, and so cannot differentiate all cases of abortion from all cases of infanticide.

Moreover, Burin simply asserts without argument that a normal adult put into Nozick's experience machine loses her personhood (506). This assertion is not self-evident. Indeed, on many accounts, personhood cannot be lost once acquired. Burin has provided no reason for thinking these positions are mistaken. If someone were kidnapped by one criminal and put into the experience machine and then later killed by a second criminal, it is hard to believe the second criminal would be acquitted of murder since the victim's personhood had already been lost in the experience machine.

Finally, in speaking of "enriching personhood" and "dwindling personhood," Burin appears to be operating with a scalar account of personhood in which one could be more or less a person (506). But personhood is better understood as binary rather than scalar. An individual either has basic rights or does not. An individual either is to be treated as an end in itself or is not. An individual either has intrinsic value or does not. If a person is not just instrumentally but intrinsically valuable, if a person's well-being counts as an ultimate reason for action, then as Sherif Girgis points out, personhood is not a scalar but a binary concept.⁵

4. In his 1974 book *Anarchy, State, and Utopia*, the philosopher Robert Nozick imagined an experience machine which could provide us with any pleasurable experience we would like. He notes that no one would choose to enter into such a machine, which indicates that we want more than just pleasurable experiences. But if we want more than just pleasurable experiences, then the fundamental thesis of hedonism—that is, the only thing that we really want is pleasurable experiences—is mistaken. Independent of Nozick, Germain Grisez made the same point in *Beyond the New Morality* (1974).

5. Sherif Girgis, "Equality and Moral Worth in Natural-Law Ethics and Beyond," *American Journal of Jurisprudence* 59.2 (2014): 143–162, <https://doi.org/10.1093/ajj/auu014>.

It is true that “the dimensions, content, and stimuli of the womb are highly restricted” (514). Yet if a newborn baby is blind and deaf, the exterior stimuli that such a child could experience would likewise be restricted. But presumably the deaf and blind infant is not “somewhat less” of a person than the healthy newborn.

Sentience—how well an individual can see, smell, hear, or experience pain—is neither a necessary nor a sufficient condition for personhood. Many sentient beings, such as rats, snakes, and wasps, do not have personhood. Conversely, many animals have greater powers of sentience than human beings—for example, dogs have a keener sense of smell and eagles have sharper eyesight. The blind and deaf Helen Keller had diminished sensory experience in comparison with normal human beings but retained equal rights with them. Sentience comes in degrees, but every person shares equal basic moral rights.

Moreover, Burin has provided no good argument for why persons must be sentient or even conscious. But even if she had done so, this argument would not establish but rather would contradict her thesis that birth is the bright line. At least some newborn babies are born unconscious and therefore have no consciousness of the external world. If consciousness of the external world is necessary for personhood to begin, then these unconscious *born* infants are not persons. So if Burin is right in saying that consciousness of the external world is necessary for personhood to begin, then she is wrong when she argues that birth is the bright line separating all persons from all nonpersons.

If the unconscious infant is not less of a person than the conscious infant, then having sense experiences of the exterior world is not a necessary condition for personhood. Unless we are willing to deny personhood to a newborn baby born unconscious, Burin is mistaken in saying that “personhood requires interaction between one’s sentience and the world” outside the womb (515).

In addition to appealing to consciousness of the external world, Burin provides another justification for holding that birth is the bright line separating human persons from human nonpersons: “Our appearance and behaviour distinguish us from others, and are thus integral to our individual personhood. The foetus, however, lacks complete individuation from its mother” (511). We could link Burin’s argument to Boethius’s classic definition of a person: “An individual substance of rational nature.”⁶ The prenatal human being is not individuated from the mother and so cannot be an individual person.

How might a defender of equal rights for the unborn respond? If *complete individuation* is used as an unusual synonym for *being born*, then Burin’s statement is true but is begging the question. It is true that the fetus depends on the mother, but this characteristic is compatible with being an individual. Burin acknowledges that conjoined twins do not cease to be persons because they are dependent on each other (507). Moreover, the prenatal human being is in fact individuated from his or her mother in numerous ways. The prenatal human being has a different body than

6. Leonard Geddes, “Person,” in *The Catholic Encyclopedia*, vol. 11 (New York: Robert Appleton, 1911), available at <http://www.newadvent.org/>.

her, is younger than her, is (at least sometimes) a different race or sex than her, and has a different life than her inasmuch as the mother may die and the baby live or vice versa. The phenomenon of twins (and triplets, etc.) makes evident the individuality of each human being in utero. Each twin has his or her own body, which is captured in innumerable ultrasound images. Each twin has his or her own functioning heart, brain, hands, toes, and eyes. Twins in utero have incarnate existence which allows society to distinguish them in the womb. These differences illustrate that each prenatal human being is one individual, distinct from other human beings in utero, and also distinct from her mother.

Burin writes, “Entering the world provides the opportunity and context for agency to develop and operate” (512). Well, yes, but the question is, When does an individual enter the world? It is scientifically absurd to claim that an individual human being enters the world only at birth. Is the prenatal human being nonexistent prior to birth? No, because doctors can tell us all sorts of facts about a child in utero, and the kicks of this child can be felt by the mother and by others. An individual enters the world when that individual begins to exist, and there is undeniable and overwhelming scientific evidence that an individual human being begins to exist months prior to birth.

At points, Burin’s case is contradictory. Early in her essay, she claims that social interaction is necessary for personhood (503), but then she points out correctly that

interpersonal relations contribute to the actualisation of personhood in the majority of cases, but they are neither necessary nor sufficient. While the child is almost always born into a world of others, the significance of birth must explain why the moral wrong in killing Mowgli (a child raised without human contact) is equivalent to the moral wrong in killing one of the Famous Five. . . . Where children raised in isolation suffer cognitive defects, including irreversible impairment in language and social skills, they are not considered less than persons. Indeed, keeping a child in isolation is thought to be gravely abusive. This stems from convictions about what constitutes proper treatment of persons. Thus personhood must logically precede social interaction. (512)

Personhood is, therefore, not dependent on social interaction.

In fact, Burin has given us no good reason to believe that birth is a bright line distinguishing a human person from a human nonperson. To be born or to not yet be born is not a characteristic that justly distinguishes human beings with rights from human beings lacking rights.

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