

## **Personhood and After-Birth Abortion**

*Joshua J. Craddock*

**W**hat should happen to a child born alive after a failed abortion? In March, Alisa LaPolt Snow, a representative of Florida Alliance for Planned Parenthood Affiliates, told the state House of Representatives that the decision whether or not to kill such an infant should be one “between the patient and the health care provider.”<sup>1</sup>

That is the kind of decision that Philadelphia abortionist Kermit Gosnell faced every day. Gosnell regularly delivered and then killed infants in his clinic by “snipping” their necks with scissors.<sup>2</sup> When an investigation into Gosnell’s clinic revealed his gruesome practice, the news horrified the nation. Yet within days of Gosnell’s conviction on more than two hundred criminal counts, including three counts of first-degree murder, new evidence emerged that Houston’s abortionist Douglas Karpen similarly twisted the heads off infants just after birth.<sup>3</sup>

Academics have long asked the boorishly obvious question: “Why do such infants deserve to live?” Most recently, two Australian ethicists ignited controversy last year by suggesting that infanticide or “after-birth abortion” should be tolerated in all cases where abortion is. Given recent events, it is time to re-examine the argument for after-birth abortion advanced by Giubilini and Minerva.<sup>4</sup> When this argument is rigorously examined, the careful reader will discover that it rests on a fundamental misunderstanding of human personhood and fails to justify its own ethical reasoning.

The Australian ethicists contend that although fetuses and newborns “certainly are human beings,” they are not persons “subject of a moral right to life.”<sup>5</sup> According to the authors, a person is “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>6</sup> Newborns do not have the mental development necessary to value their existence, to create expectations about the future, or to possess self-awareness. Therefore, “killing a newborn could be ethically permissible in all the circumstances where abortion would be.”<sup>7</sup> Since abortion enjoys wide legal protection, “after-birth abortion” should too. Mothers and families experience physical, psychological, and financial burdens when they care for unwanted children or give children up for adoption. The decision to end newborn life should be left up to them.

There is little new or innovative about the Australians’ argument.

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**Joshua J. Craddock**, 22, is a graduate of The King’s College in New York City. He currently works as an international representative for Personhood Education at the United Nations.

Princeton's Professor of Bioethics Peter Singer wrote in 1979 that "human babies are not born self-aware, or capable of grasping that they exist over time. They are not persons."<sup>8</sup> He provocatively concluded that "the life of a newborn is of less value than the life of a pig, a dog, or a chimpanzee." The authors, in the tradition of infanticide advocates like Peter Singer, Steven Pinker, Michael Tooley, and John Harris, justify their arguments by pointing to the newborn's lack of self-awareness.

This reasoning undoubtedly finds its roots in the Kantian theory of rationality. For Kant, humanity includes only those who possess rationality. If the Categorical Imperative—the requirement upon moral actors to treat human beings as an end to themselves and never as a means—does not apply to non-rational creatures (even if they are human beings), rationally self-aware actors have no first-order duties to those other beings. Perhaps some second-order duty to care for newborns might exist if that care improves the happiness of others who have emotional relationships to the infants, but these second-order duties are no stronger than those owed to the family pet. Because only "the interests of the actual people involved matter,"<sup>9</sup> "the best interest of the one who dies is not necessarily the primary criterion for the choice."<sup>10</sup> In either case the baby is a means: staying alive for others' happiness or dying to avoid costs on others.

**B**ut why should self-awareness be the criterion for ascribing moral value to human life? Not only is this asserted criterion completely arbitrary and unsubstantiated, but it leads to bizarre conclusions. Why should individuals with more numerous and noble aims or high intellect not be considered *more* persons than those with fewer long-term aims or less brain development? A functionalist criterion for personhood implies that individuals who perform the chosen function more excellently should have higher human value. Individuals suffering from severe Alzheimer's disease or under general anesthesia, who are not "in the condition of experiencing that harm"<sup>11</sup> or cannot "create future expectations,"<sup>12</sup> could no longer be considered moral persons. We know, however, that the human under general anesthesia retains his identity despite his temporary lack of self-awareness, so his personhood must cohere in some other underlying nature.<sup>13</sup> The person is not a consciousness that *inhabits* the physical body; rather, the person *is* a living bodily entity.<sup>14</sup>

Living human beings are valuable because of what they are, not because of some arbitrary attribute that comes in varying degrees and may be gained or lost during their lifetimes. Other positions can be reduced to absurdity. Humans must have some essential nature that is intrinsically valuable. Unless this fact is accepted, it is impossible to say why objective human rights apply

to anyone and impossible to claim that “all men are created equal.”

The Australian authors reject this answer, however, claiming that “merely being human is not in itself a reason for ascribing someone a right to life.”<sup>15</sup> To support this assertion, they point to acceptance of embryo destruction in embryonic stem cell research (ESCR), abortion, and capital punishment. This shallow reasoning ignores the possibility that these practices may also be unethical, though permitted in some jurisdictions by law—a classic fallacy confusing what *is* with what *ought* to be. Since ethics operates in the realm of how one ought to act, examples of embryo destruction, abortion, and capital punishment provide no reason to reject the proposition that the essence of being human implies a right to life. Additionally, they do not address more complex formulations of the proposition, for example, that the essence of being human implies a right to life but that this right can be negated by heinous criminal behavior (as in the case of capital punishment).

Giubilini and Minerva can only identify what is, rather than what ought to be, because they cannot justify their own ethical reasoning. Editor Julian Savulescu, in defending the journal’s choice to publish Giubilini and Minerva’s work, writes: “the goal of the Journal of Medical Ethics is not to present the Truth or promote some one moral view.”<sup>16</sup> Detached from standards of absolute truth or morality, the Australian authors cannot justify why their ethical framework is preferable to any others (and *do not even bother trying!*) or even why “persons” should carry moral weight in the first place, undercutting their Kantian deontological claims. Their reasoning cannot draw prescriptive conclusions about ethical human behavior.

The authors can only rely on consequentialist utilitarianism, which measures the quality of an act by the net pleasure it creates. They say the family must weigh “the costs (social, psychological, economic)”<sup>17</sup> against the potential benefits when deciding whether to kill the newborn. If morals are determined by aggregate costs and benefits, sacrificing Christians in the Circus Maximus would be morally justifiable. After all, the Christian’s pain is outweighed by the thousands of cheering fans experiencing pleasure from his death, and persecuting Christians enjoyed broad social acceptability (as ESCR, abortion, and capital punishment do today). Some level of deontological ethics must be considered in addition to democratic sentiments and consequential considerations; otherwise any heinous act both popular and pleasurable becomes ethical.

Even on utilitarian grounds, their case is untenable. Costs to the newborn are non-existent, they say, because she is a non-person. An individual only experiences harm if she is “in the condition to value the different situation she would have found herself in if she had not been harmed.”<sup>18</sup> They say

“a person might be ‘harm’d if something were done to her at the stage of fetus” that adversely affects her quality of life, such as “her mother took drugs during pregnancy,” even if she was not aware of it.<sup>19</sup> Once she has the capacity to be aware of the situation, she has been harmed.

This is counter-intuitive to the point of unreasonableness. If a pregnant mother takes Thalidomide (a morning-sickness medicine known to cause birth defects), Giubilini and Minerva say harm occurs when the child is mentally developed enough to realize she is missing limbs. Was the drug neutral in terms of harm at the time it caused her arms and legs to be malformed? Surely some real harm to her body was incurred at the time of injury, not simply at the time she had the capacity to discover she had no legs.<sup>20</sup> Costs for the newborn must then be calculated in the utilitarian framework, creating a much higher standard for after-birth abortion than the authors suggest.

In one way, the ethicists’ argument is logically sound: They correctly identify the moral equivalence between abortion and infanticide. There exists no intrinsic characteristic bestowing human value upon newborns and not fetuses. While consistent, the view that both may be killed holds little intuitive appeal. Killing newborns offends the average person’s moral sensibilities. Intuitively, the public is repulsed by the actions of Kermit Gosnell and Douglas Karpen when their deeds are brought to light. The thought is horrifying to most people, as evidenced by the overwhelming outrage in response to Giubilini and Minerva’s paper. Since the conclusion is so outlandish, perhaps the commonly held premises need reexamination. Yet the ivory-tower speculation of today often becomes the public-policy talking points of tomorrow. Such theories of personhood should be refuted and rejected from the start.

Giubilini and Minerva accidentally make a pro-life argument by pointing out the absurdity of the pro-choice position when taken to its logical conclusion. If fetuses truly are morally equivalent to newborns, abortion is just as reprehensible as infanticide. Giubilini and Minerva either prove that infanticide should be legal or that society’s definition of personhood must be reconsidered and abortion, like infanticide, should be illegal. Given the moral morass of the former, readers should choose the later.

#### NOTES

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2. Jon Hurdle and Trip Gabriel, “Philadelphia Abortion Doctor Guilty of Murder in Late-Term Procedures,” *New York Times*, 14 May 2013: A12.
3. Anna Higgins, “Preventing the Suffering That Abortion Inflicts,” editorial, *The Washington Times*, 30 May 2013.
4. Alberto Giubilini and Francesca Minerva, “After-birth abortion: why should the baby live?”

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5. *Ibid.* 4, p. 2.
6. *Ibid.* 4, p. 2.
7. *Ibid.* 4, p. 2.
8. Peter Singer, *Practical Ethics* (Cambridge: Cambridge University Press, 1979), 122-123.
9. *Ibid.* 4, p. 3.
10. *Ibid.* 4, p. 2.
11. *Ibid.* 4, p. 3.
12. *Ibid.* 4, p. 2.
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14. Robert P. George and Patrick Lee, "The Wrong of Abortion," ed. Andrew I. Cohen and Christopher Wellman, *Contemporary Debates in Applied Ethics* (New York: Blackwell Publishers, 2005).
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16. Julian Savulescu, "'Liberals Are Disgusting': In Defence of the Publication of 'After-Birth Abortion,'" *Journal of Medical Ethics Blog*, 28 Feb. 2012. Web, accessed 25 Nov. 2012, <http://blogs.bmj.com/medical-ethics/2012/02/28/liberals-are-disgusting-in-defence-of-the-publication-of-after-birth-abortion/>
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18. *Ibid.* 4, p. 2.
19. *Ibid.* 4, p. 2.
20. Josh Brahm, "Refuting Those 'After-Birth Abortion' Philosophers," *Live Action News*, 31 Mar. 2012. Web, accessed 05 Dec. 2012.



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