

1 In Defense of Abortion Rights

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1.1 Clearing the Cobwebs

Attitudes on abortion rarely exist in a vacuum. Most often, they are tied up with a wider set of beliefs or worldview. As the philosopher Michael Tooley has noted, many people come to adopt their personal stance on abortion as part of a “package deal” (Tooley 2009). That “package” may be identification with a religion or it may be subscription to a set of cultural or political values. The prevalence of “package deal” thinking can mean that convincing people of anything in the realm of abortion ethics is an uphill struggle from the get-go.

Getting people to think clearly about abortion as an independent question in morality can be especially difficult in the case of those whose attitudes are inextricably linked to their views about legitimate sexual relations, traditional notions of the family, or the belief that all humans are made in the image of God. Perhaps more so than anything else, the fact that the abortion issue is so deeply intertwined with ideas about ethical sexual behavior is especially liable to muddy the waters with those who have strong views about such things, the drive toward enforcing perceived sexual morality and punishing deviance being so universal and, apparently, irresistible.

Because of all this, the first, and possibly most important, stage in any defense of abortion rights is to encourage people to see how they might have embraced a position on abortion as part of a “package deal” and to exhort them to interrogate their

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predispositions, as well as to ask whether the anti-abortion stance is a nonseverable component of their wider commitments. It is often assumed, without much reflection, that a hostile attitude to abortion goes hand in hand with a particular religious affiliation or belief, such as the belief in the existence of an enduring human soul, making the abortion question closed for discussion. In the face of such assumptions, there is a certain amount of “cobweb clearing” to do before we can properly begin. (The cobwebs I am referring to here are not the religious precepts themselves, but the strands running between them and the anti-abortion moral stance.) If a person is convinced that to be Christian he must be opposed to abortion, and he is not about to give up being Christian, then there is little practical point saying much else before we can get him to question whether this is really true.

We may take, as one example, the belief in what is termed the “sanctity” of all human life. For many, the commitment to the sanctity of human life quite naturally and obviously entails the immorality of all, or almost all, abortion. But is this quite so obvious? For one, we will still have to ask when the human life that is supposedly sacred actually begins, or what *counts* as a “human life.” Is a single-celled zygote a human life in the relevant sense? Is a sex cell, or a single, living human skin cell? Sex cells and skin cells are, after all, both human and alive. But they do not seem to be what the “sanctity of life” value marks out as sacred. A basic commitment to the sanctity of human life does not by itself answer the crucial question about what counts as a human life in the morally relevant sense. One can certainly imagine someone who believes that human life is sacred but does not consider “human life” to begin in earnest until enough of a human form has developed. Such a claim would not be logically incoherent.

A second question, and one with which the philosopher Ronald Dworkin was concerned, is exactly what it looks like to demonstrate respect for the sanctity of human life when it comes to abortion (Dworkin 1994). Does respect for the sanctity of human life require the preservation of all biological human life, no matter how radically immature or radically degenerated?

Could respect for the sanctity of human life not also be compatible with the sacrifice of some very nascent forms of human life so as to prevent a much more mature life, with far more investment, from being squandered? Dworkin believed that discussants equally committed to the sanctity of human life could understandably differ on these questions. In particular, they may differ on the question about which is the more intrinsically valuable, or “sacred,” *part* of human life: nature’s pure biological creation or all of the human creative investment that goes into human beings throughout their lifetime? Perhaps, then, the sanctity of life does not straightforwardly entail the immorality of all abortion.

A similar point can be made with respect to specific scriptural passages that are often taken to be religious authority for the proposition that abortion is morally prohibited. The writer of Psalms proclaims to God that “you knit me together in my mother’s womb,” that he is “fearfully and wonderfully made,” and that God had ordained all of his days before any of them were lived (Ps. 139:13–16). In Jeremiah, the prophet, speaking as God, says: “Before I formed you in the womb I knew you, before you were born I set you apart” (Jer. 1:5). These verses seem to suggest that “we” begin to exist in the womb – that is to say, we are already, before birth, in existence as the beings that we most basically are, and worthy of strong moral protection. However, “we” may be identical with the being God formed in the womb in a number of different ways, not all implying the moral equality of embryos and fetuses with more mature human beings. It might have been “me” that God formed in the womb only in the sense that the early human creature is the same biological entity as am I – that we are physically one and the same thing. But not everyone thinks that this kind of identity means that if I have strong moral rights now, I also possessed them as a fetus. Perhaps we do not possess strong moral rights at all times in our existence. Whether or not we do is a philosophical question the answer to which does not follow from what is contained in the Bible verses. Thus, someone who believes that she was created and identified by God in the womb may still doubt that *while* in the womb she already had a strong right to life.

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Equally, in Genesis, the first book of the Bible, it is written that mankind was made in the image of God (Gen. 1:27). This is taken by some to entail that all human life, no matter how radically immature, is a reflection of God's image and, as such, is inviolable. But again, the inviolability of all early human life does not follow inexorably from the belief that mankind is made in God's image. It is not clear, for instance, that when this passage refers to mankind it means to include all of the early precursors to developed human beings. Are these organisms also a reflection of God's image, or merely biologically continuous with creatures that bear a resemblance to God? Whatever "God-like" features one believes are reflected in human beings are presumably those that are present only in developed humans, and not in zygotes and embryos. It is hard to think of ways in which embryos reflect God's image; not, surely, in virtue of being human and mortal, since God is neither of those things.

On the other side of the coin, Christian opponents of abortion rights are also prone to overlook scriptural passages which indicate that human beings in utero do *not* possess the same moral standing as born ones. In the book of Exodus, for example, the punishment meted out to a man who strikes a woman and causes her to miscarry is to pay compensation to the woman's husband (Exod. 21:22–25). But any harm suffered by the *woman* as a result of the attack is to be repaid equally, "an eye for an eye, a tooth for a tooth," as the well-known passage proceeds. The implication here is that the fetus does not have the same inherent value as an adult human being. While causing injury or death to a woman must be punished severely, killing a fetus is akin to a property offense – the value of the fetus is a monetary value.

Some discussants may be mistaken, then, to think that the spiritual beliefs they hold leave no room for maneuver on abortion. This is extremely important because I suspect that "package deal" thinking motivates much abortion opposition, even if it does not form the content of anti-abortion arguments. In many cases, the philosophical questions at issue in abortion simply transcend the propositions for which there is scriptural authority, or do not seem to be determined either way by them. And to

compound things, scriptural authority pointing in the opposite direction tends to be ignored.

Before I am accused of one-sidedness, I concede that “package deal” thinking is prevalent on the other side of the debate as well. Many of those who identify as feminists, liberals, or progressives may find it difficult to separate their defense of abortion rights from a whole roster of other political and moral commitments. The abortion issue is bound up with values and ideologies of all kinds, not all religiously grounded, and many of which rouse just as strong passions. Perhaps it is especially difficult for someone staunchly committed to women’s equality to consider the possibility that abortion is seriously immoral, given just how much sex equality suffers when reproductive rights are denied.

Of course, to a considerable extent, our thinking about abortion is bound to be directed by the other principles and commitments that we embrace, and quite rightly so. Nevertheless, there are certain kinds of commitments in particular, often tied up with group affiliations and political identity, which seem to exert an irresistible pressure to endorse one or other conclusion in advance of much careful thinking. These are the kinds of package-deal arrangements that can be the enemy of clear-headed deliberation about abortion and to which it is worth calling people’s attention, most especially to the potential that they are wrong in supposing that only one view of abortion morality is consistent with all of their beliefs.

Plenty more can and probably should be said by way of introduction to my argument. But I would rather make a start.

1.2 The Silver Bullet

I want to begin by conceding a very important proposition to the anti-abortion side. This is that, if the fetus is a person, equivalent in value to a born human being, then abortion is almost always morally wrong and legal abortion permissions almost entirely unjustified. The truth of this claim is a huge question in its own right in abortion discussion. The issue here is about which further philosophical questions need to be answered before we can say

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whether abortion rights are morally or legally defensible. Some proponents of abortion rights do not believe we need even get on to considering whether or not a fetus is what we would call a “person,” morally on a par with all born human beings, to know that abortion is defensible. On their view, other philosophical considerations show that we can get to a permissive answer on abortion without having to make up our minds about that question – in other words, the question about when morally important human life begins. Others, quite differently, find it an obvious and inescapable truth that whether or not the fetus is a person in the philosophical sense is the central question for abortion ethics.

Before expanding on this debate, it will help to clarify the terms a little. What do I mean here when I use the term “person”? Aren’t human beings and persons just the same thing? Well, not in some important ways. When philosophers use the classification “person” they generally mean to capture a category of beings with strong moral rights, in particular, the almost inviolable right to life. “Human being,” on the other hand, is used to denote individual members of the human species. All embryos and fetuses are certainly human beings, in that they are all individual human organisms. But this does not mean that they are all necessarily persons.

First of all, we can see that human beings and persons are not conceptually the same thing by performing a simple thought experiment. Suppose that, many years from now, we discover a highly intelligent species of alien on another planet, the members of which can reason, learn, communicate, and construct advanced technology. It is beyond doubt, I think, that the members of that species fit our concept of a person. Like us, we would surely want to recognize their strong moral status and right to life. But they are certainly not human beings. So “human being” and “person” do not *mean* the same thing. It is possible to be a person without being human.

But is it possible to be a human being without being a person? Someone may try to argue that even if “person” and “human being” do not mean the same thing, all human beings are, by virtue of their human biology and nature, also persons. This

would be the case if every human being also met the correct conditions for personhood. While it is conceivable that they do, an argument will need to be made as to why that is. The fact that the two categories are conceptually distinct just shows that it is an open question whether all human beings are persons. The need to make an argument connecting the two cannot be circumvented by insisting over and over (as some opponents of abortion are wont to do) that embryos and fetuses are *human lives* or *human beings*. This much is not usually in contention. The relevant moral question is whether, *just* by being human, they are also persons. Maybe there is more to personhood than bare humanity.

But *is* that the relevant moral question? As I have already said, not everyone agrees that it is. The *prima facie* case for thinking that the question about prenatal personhood is the central issue for abortion law and ethics is, I believe, fairly intuitive. If the fetus is a person, then abortion is homicide, tantamount to the killing of a human child. And if this is true, then it will hardly ever, if ever, be permissible. Indeed, if one regards the fetus as a person, in possession of the same fundamental right to life as you and me, abortion will be difficult to justify even in the most extreme cases such as pregnancy caused by rape, severe fetal disability, or serious physical risk to the health or life of the pregnant woman. We do not ordinarily think that homicide is justified to avoid huge emotional distress, the burden of disability, or even to avoid physical trauma, unless carried out in self-defense. And this is to say nothing of the many lesser hardships that abortion might be chosen so as to evade.

According to this line of thinking, then, the conclusion that embryos and fetuses are properly considered persons and the moral equivalent of all born human beings is a silver bullet for abortion rights. This is the view I want to concede is correct. I want to concede it despite the fact that there is a huge wealth of argument, some fairly persuasive, against it. In different ways, some philosophical defenders of abortion rights have sought to argue that whether or not the human fetus is properly considered a person is in fact irrelevant for the moral or legal status of

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abortion. That is, they have sought to establish that abortion is morally and, or, legally defensible *regardless* of how we answer that question.

One argument of this kind, famously made by the philosopher Judith Jarvis Thomson, claims most abortion does not really amount to killing the fetus, but only, rather, the refusal to save it with the use of bodily support (Thomson 1971). Moreover, she argued, what it takes to sustain the fetus's life – continued gestation – is not something any pregnant woman can be morally obligated to provide. In other words, continuing to gestate an unwanted fetus is a supererogatory act, or a form of Good Samaritanism. And since no one is morally required to be a Good Samaritan, and certainly should not be so required by law, abortion rights are defensible. Consequently, abortion is permissible *whether or not* the fetus is a person because no one is morally required to offer the use of her body in order to keep another person alive.

A different sort of argument claims that even if abortion does amount to killing the fetus rather than failing to save it, almost all abortion could be subsumed into a recognized category of justified homicide. This argument points out that it is sometimes permissible to kill other persons, for example, in situations of self-defense or, perhaps, in exceptional circumstances where killing one person is the only way to avoid the deaths of a greater number. If it can be shown that all or most abortion mirrors these justified homicide scenarios, then the relevance of fetal personhood will be greatly diminished. There will be another way of showing that abortion is permissible whether or not the fetus is properly considered a person.

I am going to assume that both of these arguments ultimately fail. There is insufficient space here to explain why I reject them,¹ but opponents of abortion do not, in any case, need to be convinced of their falsity. I will therefore assume in the following that abortion does indeed involve the deliberate killing of the

1 Although for a full account, see Greasley 2017, chapters 2 and 3.

fetus and that, were the fetus a person, hardly any abortion scenarios would meet the moral and legal conditions for justified homicide.

Further attempts to displace the relevance of fetal personhood in the abortion debate might take a different tack. It may be claimed that even if abortion is *morally* impermissible, the *legal* right to abort is still defensible for reasons to do with counterproductiveness or justified toleration. Claims about counterproductiveness of regulation point to the hugely harmful consequences of banning abortion practice, given the realities of imperfect compliance. Abortion practice does not disappear because it is banned. Rather, the argument goes, prohibiting or restricting abortion in law only drives women intent on procuring abortion to unregulated and unsafe practitioners – the “back-street” abortionist – resulting in worse overall outcomes. This is what I term the “back-street abortion argument.”

Somewhat differently again, it could be argued that even if abortion is morally impermissible, there exists, to some degree, a “right to do wrong” (Waldron 1981). Not all kinds of immoral conduct ought to be proscribed by law, or so we tend to think. There are many kinds of immoral conduct that are not the appropriate targets of legal sanction or regulation. Lying in one’s personal life and infidelity are two clear examples of conduct that most would regard as immoral but as not suitable for legal regulation. Law does not, and should not, enforce all forms of morality. There are immoral behaviors that we have good reason to tolerate, although we might wish to discourage them. Perhaps abortion falls into this category of activities – that which there is reason to tolerate in our laws even if (or when) we think them morally wrong.

Both the “back-street abortion argument” and the “right to do wrong” argument underscore the distinctness of the legal and the moral realms and the fact that there is more to think about when it comes to the appropriateness of legal prohibition than what is or is not immoral. Still, I do not believe either of these considerations can show that abortion rights ought to exist *even if the fetus is rightly considered a person*. This is because neither consideration

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can justify toleration of abortion if it amounts to homicide. Concerns about counterproductivity and endangering the participants would never be accepted as arguments against the prohibition of infanticide. This is the apt control test for whether the “back-street abortion argument” displaces the relevance of fetal personhood. Moreover, norms of justified toleration can never extend to conduct that seriously harms others, especially to homicide. The law cannot consign abortion to the realm of private immoral conduct *if* it entails the unjustified killing of rights-holding persons. Since the right to engage in infanticide could never be defended with arguments about justified toleration of immoral conduct, neither can abortion rights if we are assuming the fetus has equal moral status. Neither of these arguments, then, is capable of bypassing the question about the fetus’s personhood status in discussion about abortion rights.

To reiterate, then, I am going to grant in everything that follows that if human beings really are full persons from conception, morally equivalent to born human beings, this would indeed be a silver bullet for the defense of abortion rights. Those who believe abortion rights are unsupportable will likely be in full agreement with me thus far. They too will believe that the question about when and how persons begin is central to the moral and legal status of abortion. Here, though, is where our like-mindedness is probably going to end.

1.3 What Is at Stake for Women in Abortion

To recap, I have argued so far that if the fetus is indeed a person, morally on a par with all born human beings, abortion will hardly ever be morally permissible. This seems to follow even if it is true that prohibiting abortion will result in the proliferation of illegal and unsafe abortion practice, resulting in significant harm to women. But what follows about the morality of abortion, and the case for abortion rights, if the fetus is instead very far from being a moral, rights-holding person? I think it clear that if the fetus has little or no moral considerability, then not only is abortion morally permissible, but denying women the abortion right is