

'After-birth abortion' and arguments from potential

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In 'After-birth abortion: Why should the baby live?', Alberto Giubilini and Francesca Minerva challenge the widely-held belief that the moral status of newborn infants differs from that of fetuses, such that infanticide requires much stronger justifications than are often thought required for abortion. Contrary to this view, Giubilini and Minerva argue that 'killing a newborn could be ethically permissible in all the circumstances where abortion would be'.¹ For example, if raising a child is likely to pose an unbearable burden on the family, Giubilini and Minerva argue that it should be regarded as morally permissible to end its life whether it is a fetus or a newborn infant, as in neither case would it qualify as a 'person' in the sense often used in bioethics.² Further, unlike some philosophers who regard infanticide as morally permissible only in cases where a child has such severe disabilities as to render its life likely to be 'not worth living', Giubilini and Minerva argue that infanticide should be thought permissible even in cases where the newborn infant is capable of living a life of acceptable quality (presumably from its point of view), but where raising the child would place 'the well-being of the family ... at risk'.³

While clearly echoing some older and influential arguments in bioethics, Giubilini and Minerva address an important issue, and their article is a controversial restatement and development of those arguments. Giubilini and

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- 1 Alberto Giubilini and Francesca Minerva, 'After-birth abortion: why should the baby live?' *Journal of Medical Ethics*, published online 23 February 2012. Available from: <http://jme.bmj.com/content/early/2012/03/01/medethics-2011-100411.full>, 2.
 - 2 For the source of these ideas about persons and infants, see Michael Tooley, 'Abortion and infanticide', *Philosophy and Public Affairs* 1, 1972. Another influential discussion of this idea is Peter Singer, *Practical Ethics*, Cambridge: Cambridge University Press, 1979.
 - 3 Giubilini and Minerva, 2.

Minerva challenge us to identify morally relevant differences between abortion and infanticide, particularly in cases where the mother or the couple involved have reasons that would generally be considered sufficient to justify abortion.⁴

Giubilini and Minerva dismiss arguments from claims that fetuses and newborn infants are potential persons, because they argue that potential persons cannot be harmed. But whether or not potential persons can be harmed, is it really so clear that potential persons are entirely lacking in moral status, of a kind that could count as a (pro tanto) reason against bringing about their demise? We do not generally regard potential as entirely lacking in moral value until it is actualised. For example, parents who believe they have identified in their child an emerging musical talent commonly see this potential as having some (not necessarily moral) value, however small, which would count as a reason against destroying that potential gratuitously. Similarly, the morally valuable capacities involved in standard philosophical conceptions of personhood (such as capacities for self-awareness, to form meaningful social relationships with others, and to experience various emotions) can be plausibly thought to confer a derivative moral value on the potential to develop such capacities, thereby grounding some level of moral status on a fetus and an infant. Indeed, many women and couples regard a fetus's potential to develop morally valuable characteristics as placing the onus on them to have sufficiently strong reasons to justify aborting it. Nevertheless, I believe that this moral status is not plausibly regarded as absolute, and it is commonly seen as lower than that of an individual which has actualised its potential for those valuable characteristics.⁵

Of course, the process of developing those morally valuable characteristics may not undergo a quantum leap at birth. Nevertheless, there is evidence that some of these capacities (such as the capacity to relate to others) are already

4 Note that matters are somewhat more complex than this suggests, for even if a right to bodily autonomy is admitted, such a right could still be exercised well or badly (eg. virtuously or viciously), as Rosalind Hursthouse demonstrates in her 'Virtue theory and abortion', *Philosophy and Public Affairs* 20, 1991.

5 See Hursthouse, *Ibid*; R. Jo Kornegay, 'Hursthouse's virtue ethics and abortion: Abortion ethics without metaphysics?' *Ethical Theory and Moral Practice* 14, 2011, 51-71; and Justin Oakley, 'Reproductive cloning and arguments from potential', *Monash Bioethics Review* 25 (1), January 2006, 42-7.

beginning to be manifest at that stage (and even, to some extent, in a full-term fetus just prior to birth). In any case, it should not be assumed without further examination of the empirical evidence that these capacities are *barely* any further developed in a newborn infant than in a fetus.⁶ And, because such capacities are intrinsic rather than relational properties of the infant, its moral status does not depend on the attitudes or preferences of the parents (although their views would also need to be included in determining what it is right to do here, all things considered).

I believe that the gradual emergence of these characteristics in later-term fetuses and newborn infants is the main reason why late abortions are harder to justify than earlier abortions. Nevertheless, a woman can still be thought to have a right to have even a late-term abortion, because the fetus is inside her body, and she is not ethically obligated to continue with the pregnancy unwillingly.⁷ By contrast, the fact that a newborn infant is no longer inside the woman's body shows that a woman's right to bodily autonomy is not relevant to the ethics of infanticide, and this is a further reason why, contrary to Giubilini and Minerva, justifications for abortion are not straightforwardly transferable to infanticide with newborn infants.

In my view, the justifiability of infanticide in any given case depends not primarily on parental burdens but on whether the child has a condition where its life is likely to be maimed by such terrible suffering that it would be cruel to keep the child alive. Making such a judgement in a given case can be extremely difficult, but it is crucial that those entrusted with making such judgements do so from a genuine attempt to grasp what the life in question is likely to be like from the infant's point of view.

6 See eg. Daniel N. Stern, *The Interpersonal World of the Infant*, 2nd ed., New York, Basic Books, 1998.

7 See Judith Jarvis Thomson's well-known argument for this claim, in 'A defense of abortion', *Philosophy and Public Affairs* 1, 1971. Nevertheless, seeking a late-term abortion for certain sorts of reasons may still be wrong, even if nobody has a right to prevent the woman involved from having the abortion.