

140: Matters of Life and Death – 21 – Abortion (3): the moral standing of the fetus

1 Introduction – It is common to talk of ‘conservatives’ and ‘liberals’ on abortion.

But distinguish being conservative on the issue of *standing* (e.g. believing that the fetus has standing from conception) from being conservative on the *morality of abortion* (e.g. believing that all abortions are wrong).

And distinguish being liberal on standing (e.g. believing that only an infant after birth has standing) from being liberal on the morality of abortion.

Someone could be a conservative on standing but be relatively liberal on the moral issue (e.g. being convinced by extensions of Thomson-type arguments). And someone could be liberal on standing but be fairly conservative on the morality issue (e.g. because convinced by indirect arguments – e.g. the desires of adoptive parents – that most abortions are wrong).

2 Problems for conservatives on standing

The Conservative believes that the fetus has full moral standing from the moment of conception. Then there are only two possible criteria determining possession of such standing –

Species membership – the mere fact of being a member of *Homo sapiens* confers standing? But how can species membership be relevant in itself? Perhaps Contractualism might entail this view through the arguments suggesting that *all humans* have moral standing? (see #19 & section 5 below)

Potential personhood – the fetus (normally) has the potential to become a person (a rational agent) if allowed to develop. But in general ‘is a potential F’ does not imply or justify ‘has the rights of an F’, even when embarked on the process of becoming an F. (E.g. potential doctor, home-owner, car-driver.) Nor does embarking on the process of becoming an F confer the right to *be* an F. (E.g. becoming a US citizen.) So some special argument needs to be constructed for the case of potential personhood in particular. What might this be?

3 Problems for liberals on standing

The fetus lacks moral standing up to a certain stage of development. But which stage? The problem is to find a necessary and/or sufficient condition for moral standing which isn’t *morally arbitrary*.

Some suggestions – (a) achieving human form; (b) first independent movement; (c) achieving sentience; (d) viability; (e) birth.

Problems for these as *sufficient conditions* of standing – (a) but how can mere *shape* be enough? (b) then worms have standing? (c) ditto again? (d) ditto again? (e) but how can *spatial position* be enough?

Problems for these as *necessary conditions* of standing – (a) thalidomide victims & Martians; (b) paralyzed people? (c) this *is* a plausible necessary condition; e.g. trees; but cannot stand alone without an accompanying sufficient condition; (d) Siamese twins? (e) mere visibility?

4 Utilitarianism: total, average, and sentience

What should a Utilitarian say about moral standing re the abortion issue? It is important to distinguish, here, between (a) *utility-based* and (b) *utility-of-actual-individuals-based* forms of Utilitarianism.

(a) For **utility-based** theories it is the quantities of pleasure or satisfaction that matter, irrespective of *whose*.

Then there is the same type of objection to abortion *and* to contraception *and* to murder – if new / continued life would increase utility then it is *wrong* not to cause or allow that life to come into / remain in existence.

Note: Utility can be assessed either in *total* or on *average*. If it is *total* utility that matters, then new life will almost always make the world better. If it is *average* utility that counts, then new life will often be wrong, because lowering the average. (There are difficult issues here for *any* moral theory. See sessions on population policy, #26 & 27.)

Of course *indirect* considerations will differ for abortion / contraception / murder. (E.g. disutility for parents who don’t want another child; disutility of the loved ones of a murdered person). But strange to think that failing to have a child might be wrong in the same sort of way that killing an adult is!

- (b) For **utility-of-actual-individuals** theories the question is who *counts* as an individual, and at what point. Here *sentience* may turn out to be morally relevant for a utilitarian – the point at which one is capable of pleasure and pain, and so at which one is an appropriate object of sympathy. (Remember the standpoint of the impartial *sympathetic* observer as a model of the moral standpoint.)
- On this view, early abortions will always be permissible (there is as yet no actual individual). Most late ones will be wrong, except where the baby's life-chances are so poor that killing may be classed as euthanasia.

5 Contractualism: social stability and human form

What should a Contractualist say about the moral standing of the fetus? In #19 we saw that there are a couple of arguments on the basis of which contracting agents might extend basic rights and protections to all human beings, including infants and the senile. Do such arguments apply also to fetuses?

- (a) **Social stability** – this claimed that people are psychologically incapable of calmly accepting a system of rules that withholds rights from infants; there is a depth of feeling that is ineradicable without brainwashing.

This argument does *not* extend to fetuses (at least in early development), but pulls in the opposite direction.

Women who want an (early) abortion may be similarly incapable of accepting that they would be destroying something with the same moral standing as themselves. For they are only removing a small clump of human cells!

Certainly women don't feel the same sort of attachment for an early developing fetus as they do for a new-born infant. So rules withholding rights from the fetus wouldn't lead to social instability.

But many societies *have* achieved stability on this issue, while forbidding abortion? Only given a background of acceptance of authority and traditional moral belief. These are no longer available to (most of) us. And anyway there is conflict with the Contractualist ideal of *publicity* of moral rules and the justifications thereof.

- (b) The second argument was premised on the moral importance of developing, and the dangers of undermining, **natural reactions of sympathy** and concern for all humans. To mark divisions of right amongst humans is to risk destabilizing those feelings, creating moral monsters of us.

These feelings, and the consequent dangers of drawing moral distinctions, **extend to the fetus in its later stages** of development. (Witness, e.g., the distress experienced by nurses involved in late abortions.) But the argument **does not extend to early pregnancy**, where there is nothing but a clump of cells, or a little shrimp, to engage our sympathy.

Suggestion – the social stability argument doesn't speak against early abortions, whereas the natural reactions argument only speaks against later abortions.

So we should set the point of acquisition of moral standing at the point at which the fetus attains **recognizable human form** and/or becomes **sentient** (both of which make natural reactions of sympathy and concern all but inevitable).

The proposed boundary is **vague**, but we can set it fairly conservatively. Whether late abortions are ever permissible will then depend upon arguments concerning *conflicting claims* (see #15 & 16).

Note that there need be nothing directly morally relevant about human form or sentience *as such*, for a Contractualist – they only come to be so via facts about the psychology of rational contractors (c.f. the animals issue re cruelty).

Note also that the result is not just an *indirect* argument against killing, in the case of late abortions. Rather, what has been offered are indirect arguments for according full moral standing and the right to life.