Lecture Notes
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BIOGRAPHIES.

- “Alberto Giubilini is a Postdoctoral Research Fellow on the Oxford Martin Programme on Collective Responsibility for Infectious Disease. He has a PhD in Philosophy from the University of Milan (2010), and prior to joining the Uehiro Centre he worked in Australia at Monash University, University of Melbourne and Charles Sturt University. He has published on different topics in bioethics and philosophy, including the ethics of procreative choices, end of life decisions, organ donations, conscientious objection in healthcare, the concept of conscience, human enhancement, and the role of intuitions and of moral disgust in ethical arguments. He has published a book in Italian on the ethics of end of life decisions (Morals in the Time of Bioethics, Le Lettere 2011) and co-edited a book on The Ethics of Human Enhancement (Oxford University Press 2016) together with Julian Savulescu, Steve Clarke, Tony Coady and Sagar Sanyal.” [From the Oxford University website.]
- The essay was published online in late February 2012. It generated a great deal of controversy, both in and out of the academy.

INTRODUCTION.

- Subtitle. The subtitle is ambiguous:

1. It may be a rhetorical question (i.e., a declaration disguised as a question), meaning “The baby should not live.” Compare: “Who cares how I wear my hair?” (nobody cares how I wear my hair);
“Do you really think the Dallas Cowboys will win the Super Bowl?” (the Dallas Cowboys will not win the Super Bowl); “What’s wrong with eating meat?” (there is nothing wrong with eating meat).

2. It may be a sincere call for a justification (if any) for why babies should live. Compare R. M. Hare’s title, “What Is Wrong with Slavery” (1979). Note, however, that Hare did not use a question mark.

- **“Abortion”** =df. “the expulsion of a fetus (naturally or esp. by medical induction) from the womb before it is able to survive independently, esp. in the first 28 weeks of a human pregnancy” (OADLG, 3). “Abort” comes from “ab” (off, away, from) and “ort” (be born).

- **Valid (moral?) reasons for abortion.** There are two: (1) severe abnormalities of the fetus; (2) risks for the physical and/or psychological health of the woman. “Sometimes the two reasons are connected” (261). The authors add a third valid reason: “where . . . the well-being of the family is at risk” (262); social, psychological, and economic costs (263). Discuss Treacher-Collins syndrome and Down syndrome. Mayo Clinic: “Down syndrome is a genetic disorder that causes lifelong mental retardation, developmental delays and other problems. Down syndrome varies in severity, so developmental problems range from moderate to serious.” Not everyone believes that there are valid reasons for abortion. Many people (and not just Roman Catholics) believe that “it is always wrong to kill, intentionally and directly, an innocent human being at any point of development, dependency, or decline” (Richard John Neuhaus, “The Public Square,” First Things [February 2007]: 55-72, at 69). Discuss (1) killings to which this prohibition does not apply (e.g., self-defense, capital punishment, killing in a just war) and (2) the Doctrine of the Double Effect, which distinguishes between (a) intentional killing of innocents and (b) knowing but unintentional killing of innocents (the latter of which is permitted under certain conditions).

- **What if these reasons apply after birth?** “A serious philosophical problem arises when the same conditions that would have justified abortion become known after birth. In such cases, we need to assess facts in order to decide whether the same arguments that apply to killing a human fetus can also be consistently applied to killing a newborn human” (261). The authors go on to argue that the same arguments apply.

- **Example.** Suppose Alice is pregnant. She believes that her fetus is
normal and would abort it (thereby killing it) if she knew that it wasn’t. Many people would say that, morally speaking, she may do so. No tests are conducted. The baby is born abnormal. May she kill the baby? The authors argue that she may.

**ABORTION AND AFTER-BIRTH ABORTION.** This section is so badly written that its import is unclear. The authors appear to be setting forth their argument.

- **“Euthanasia”** =df. “the bringing about of a gentle and easy death [i.e., a good death] in the case of incurable and painful disease” (OADLG, 330). Discuss the concept; distinguish between active and passive E and then between voluntary, nonvoluntary, and involuntary E (creating six types: AVE, ANE, AIE, PVE, PNE, and PIE). A synonym for “euthanasia” is “mercy killing.” Dogs, cats, horses, and humans are (or can be) euthanized—though the term is often misused in the case of animals such as dogs, who are put to death when healthy. The authors say that euthanasia for infants (ANE) has been “proposed by philosophers” (citing Kuhse and Singer). It may be merciful (they say) to end the lives of infants who have “severe abnormalities” or “who are experiencing unbearable suffering” (261). Note that the Sanctity-of-Human-Life doctrine (see above for Neuhaus’s statement) prohibits all active euthanasia, even AVE. It also prohibits suicide and assisted suicide.

- **The Groningen [Netherlands] Protocol.** (“Groningen” is pronounced “Hroningen.”) This protocol concerns euthanasia in severely ill newborns. The authors admit that “it is hard to find definitive arguments to the effect that life with certain pathologies [e.g., Down syndrome] is not worth living” (261). Here are the five requirements that must be fulfilled in order for euthanasia of a newborn to be carried out:

  - “The diagnosis and prognosis must be certain.”
  - “Hopeless and unbearable suffering must be present.”
  - “The diagnosis, prognosis, and unbearable suffering must be confirmed by at least one independent doctor.”
  - “Both parents must give informed consent.”
  - “The procedure must be performed in accordance with the accepted medical standard.”

ciding not to initiate or to withdraw life-prolonging treatment in newborns with no chance of survival is considered good practice for physicians in Europe and is acceptable for physicians in the United States. Most such infants die immediately after treatment has been discontinued" (960).

• **Authors’ conclusion.** “[W]e argue that, when circumstances occur after birth such that they would have justified abortion, what we call after-birth abortion should be permissible” (261; italics in original). Alternate statement: “[W]e claim that killing a newborn could be [sometimes is?] ethically permissible in all the circumstances where abortion would be. Such circumstances include cases where the newborn has the potential to have an (at least) acceptable life, but the well-being of the family is at risk” (262). Note the conditional nature of this claim: If abortion is justifiable in circumstance X, then infanticide is justifiable in circumstance X. Do the authors ever assert the antecedent? If not, then they are not arguing for infanticide but rather making a logical point.

• **Why the authors eschew “infanticide.”** “[T]he moral status of the individual killed is comparable with that of a fetus . . . rather than to that of a child” (261-2). Query: Is this Orwellian doublespeak? Note that the term “infanticide” has a negative connotation. Is this why the authors eschew it? Second query: If infanticide is “after-birth abortion,” is abortion “pre-birth infanticide”? Two can play this rhetorical game!

• **Why the authors eschew “euthanasia.”** “[T]he best interest of the one who dies is not necessarily the primary criterion for the choice, contrary to what happens in the case of euthanasia” (262). This is a legitimate reason for not using the term “euthanasia.”

THE NEWBORN AND THE FETUS ARE MORALLY EQUIVALENT.

• **Similarities.** Both fetuses and infants are human beings (i.e., members of the biological category—genus, species, subspecies—*Homo sapiens sapiens*); both (at least after a certain point of fetal development) are sentient; both are potential persons. Neither is a person, i.e., neither “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” (262); neither has a right to life, i.e., neither is a “subject of a moral right to life” (262); neither is capable of “making any aims”; neither can be harmed by being deprived of life (see next section); neither is self-aware; neither has “well-developed plans.”

• **Personhood.** “We take ‘person’ to mean 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” (262).

- **Human ≠ person.** Draw a Venn diagram. Human nonpersons include embryos, fetuses, and newborns. (The authors add “criminals where capital punishment is legal,” which is absurd. Murderers have forfeited their right to life.) Human persons include mentally retarded individuals. Nonhuman persons include various animals (actual persons) and aliens (possible persons). Nonhuman nonpersons include chalk, chairs, and coffee cups.

- **Conclusion.** “[T]he rights and interests of the actual people involved should represent the prevailing consideration in a decision about abortion and after-birth abortion” (262). The logic of this argument escapes me. Is it that parents are persons, while infants are not, so parents may kill their infants? Perhaps they’re saying that one side of the scale has nothing on it.

### The Fetus and the Newborn Are Potential Persons.

- **Harm.** One cannot harm a (merely) potential person. “[I]n order for a harm to occur, it is necessary that someone is in the condition of experiencing that harm” (262). Read the marked passage on page 262.

- **Implication.** “[T]he interests of actual people over-ride the interest of merely potential people to become actual ones” (263).

- **Future generations.** The interests of people who will exist must be taken into account alongside the interests of people who actually exist. The interests of people who may or may not exist, depending on our choices, need not be taken into account. This is shaky.

### Adoption as an Alternative to After-Birth Abortion?

- **Objection:** “[H]ealthy and potentially happy people should be given up for adoption if the family cannot raise them up” (263).

- **Reply:** “[H]owever weak the interests of actual people can be, they will always trump the alleged interest of potential people to become actual ones, because this latter interest amounts to zero” (263). One such interest is that of the mother, “who might suffer psychological distress from giving her child up for adoption” (263). Read the section aloud.

### Conclusions.

- **Read the conclusion aloud.** Discuss.
• My reconstruction of the authors’ argument:

1. Abortion (i.e., the killing of a fetus—including a *healthy* fetus) is morally permissible.
2. There is no morally relevant difference between a fetus and a pre-person newborn.
   Therefore,
3. “After-birth abortion” (i.e., the killing of a pre-person newborn—including a *healthy* pre-person newborn) is morally permissible (from 1 and 2).

The argument is valid, which means that the truth of the premises is logically incompatible with the falsity of the conclusion. Thus, the only way to avoid accepting the conclusion is to reject a premise. In effect, the authors are claiming that the following set of propositions is inconsistent:

   a. Abortion (i.e., the killing of a fetus—including a *healthy* fetus) is morally permissible.
   b. There is no morally relevant difference between a fetus and a pre-person newborn.
   c. “After-birth abortion” (i.e., the killing of a pre-person newborn—including a *healthy* pre-person newborn) is morally permissible.

The truth of any two of these propositions entails the falsity of the third. The authors appear to be rejecting proposition c (unless they’re merely making a logical point about the relation between the propositions), but someone else might reject proposition a or proposition b. The authors say that even Roman Catholics accept proposition b. What they omit to say is that Roman Catholics reject proposition a, not proposition c.

• When does “after-birth abortion” become impermissible? Answers: (1) a “few weeks” after birth (262); (2) when the newborn is neurologically developed (263); (3) when the newborn acquires expectations and self-awareness (262).

**Additional Notes.**

• If time permits, play the 13-minute YouTube video of Francesca Minerva being interviewed. To find the video, type “After-Birth Abortion” into the YouTube search box. Discuss her attempt to wall off academic
debate. Isn’t philosophy supposed to be relevant, practical, and engaged (as opposed to detached)? Why would she want to talk only to other philosophers? Is she being disingenuous? Does she want to be engaged with the public only if (and only when) the public agrees with her? Discuss personal responsibility for one’s actions (including one’s linguistic actions).

- Reconstruct the authors’ “argument.” Are they arguing or merely asserting a conditional? If the former, then they are asserting and not merely entertaining the premises.

- Discuss the authors’ follow-up essay, “Clarifications on the Moral Status of Newborns and the Normative Implications.” They write: “Our article suggests that the same circumstances that justify terminating the life of fetuses without disabilities, an option about which there is ‘broad consensus’, also would justify terminating the life of newborns without disabilities” (265).

- The editor of the Journal of Medical Ethics, Julian Savulescu, defended his decision to publish the essay:

  As Editor of the Journal, I would like to defend its publication. The arguments presented, in fact, are largely not new and have been presented repeatedly in the academic literature and public fora by the most eminent philosophers and bioethicists in the world, including Peter Singer, Michael Tooley and John Harris in defence of infanticide, which the authors call after-birth abortion.

  The novel contribution of this paper is not an argument in favour of infanticide—the paper repeats the arguments made famous by Tooley and Singer—but rather their application in consideration of maternal and family interests. The paper also draws attention to the fact that infanticide is practised in the Netherlands.

If the arguments are “largely not new,” why was the essay published?