

Does birth matter?

Walter Veit 

ABSTRACT

This paper is a response to a recent paper by Bobier and Omelianchuk in which they argue that the critics of Giubilini and Minerva's defence of infanticide fail to adequately justify a moral difference at birth. They argue that such arguments would lead to an intuitively less plausible position: that late-term abortions are permissible, thus creating a dilemma for those who seek to argue that birth matters. I argue that the only way to resolve this dilemma, is to bite the naturalist bullet and accept that the intuitively plausible idea that birth constitutes a morally relevant event is simply mistaken and biologically misinformed.

INTRODUCTION

In 2013, the *Journal of Medical Ethics* published an article by Alberto Giubilini and Francesca Minerva titled 'After-birth abortion: why should the baby live?'¹ in which they argued that it would be morally permissible to kill newborns under 'all the circumstances where abortion would be (permissible)' (p262). Their article was met with an unprecedented response by the media, with the authors reporting to have received 'hundreds of emails, most of which were very abusive or involved death threats' (2 p.264). Concerning as this may be, it highlights an important set of questions that philosophers have tended to shy away from, that is, why does birth matter, why do people have such strong intuitions about this case and why should we care?

Within the last days, Poland has moved towards the implementation of a total ban of abortion in 2020, causing massive strikes across the country. One protesting woman reports:

"Forcing us to give birth to sick, deformed fetuses, causing such suffering to mothers and children, is barbarism taking Poland back to the middle ages.

A line has been crossed and we are not going to back down."ⁱⁱ

In a recent paper by Christopher Bobier and Adam Omelianchuk,³ we are presented with a dilemma that has a surprisingly close connection to these current events in Poland. Dubbing Giubilini and Minerva's argument an 'if abortion, then infanticide' inference, Bobier and Omelianchuk argue that the usual criticism of this argument rely on ill-founded attempts to justify an important moral difference between fetuses and newborns.³ Their naming of this inference as such may have been inspired by a paper of the same name by Hershenov and Hershenov⁴ who likewise argue that there is 'no way to distinguish an infant from a (late-term) fetus in terms of an intrinsic morally relevant feature that the former has and the latter lacks—neither one is rational, morally responsible, self-conscious, concerned about the future and more. They both lack the cognitive abilities of most household pets' (p388).ⁱⁱ

Naturally, such an argument can be taken in the reverse direction from that of Giubilini and Minerva, where the impermissibility of postnatal abortion comes to imply the impermissibility of late-term abortion or even abortion more generally, since the fetus similarly lacks any meaningful difference. Such an appeal can be seen in religious protests against abortion, with protest signs that emphasise that the fetus is almost indistinguishable from a newborn and thus should not be aborted. One man's modus ponens, after all, is another man's modus tollens.

One natural response to the 'if abortion, then infanticide' inference would be to assert that there is a meaningful difference in infants before and after birth. But Bobier and Omelianchuk assert that such a 'Birth Strategy' principle would fail to block what they consider to be an equally problematic 'if early-term abortion, then late-term abortion' inference (3 p4), thus

creating a dilemma for those who seek to capture our folk intuitions of abortion.

I argue that the only way to resolve this dilemma is to bite the naturalist bullet and accept the conclusion of Giubilini and Minerva in order to undermine the intuitively plausible idea that birth constitutes a morally relevant event.

INTUITIONS ARE UNRELIABLE

At the heart of this debate is a thought experiment about pregnant Mary. Consider two situations (abbreviated): Mary has been pregnant for 36 weeks. In situation A, she decides to have an abortion. In situation B, she goes through the birth process but then decides for the very same reason to have an abortion. Here, it appears reasonable to argue, as Giubilini and Minerva do, that situation B cannot be wrong if A isn't either.

Bobier and Omelianchuk, however, argue that we shouldn't accept this conclusion because situation A is already considered problematic by many.³ To abort a fully developed fetus for what they call late-term 'non-therapeutic abortions' is considered intuitively impermissible for many. By non-therapeutic they mean a birth which doesn't endanger the health of the mother or—following the WHO recommendation—would require substantial medical intervention to ensure the 'normal birth' of a child.⁵ There are two major problems with this innocent-sounding formulation, that should lead to the rejection of this premise.

First, it is not at all clear why it matters to have a 'normal birth'. Babies can be born with negative effects on their health and well-being regardless of whether it is a 'normal birth'. Likewise, babies can have highly unnatural births and yet be perfectly healthy and happy in later life. Here, we shouldn't relate on an outdated perspective of 1997. There is nothing intrinsically morally relevant about birth or whether it was a normal one (ie, with the exception of complications for the mother).

Second and relatedly, this position is entirely grounded in intuitions about the inherent sanctity of life at the final stages of pregnancy. Now, Bobier and Omelianchuk grant as much when they recognise that one might object to their dilemma by claiming that it would only be a problem 'for those who share our intuition that such abortions are morally impermissible, and that our intuitions are unreliable or biased, and that the principles deployed by proponents of the Birth Strategy should help correct our judgement' (pp.3–4). But their response to this

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ⁱSource: <https://www.theguardian.com/world/2020/oct/26/polish-pro-choice-protests-continue-with-blockades-and-red-paint>.

ⁱⁱSimilar arguments are common in the bioethics literature. Consider, for instance, Veit¹⁸ who argues that there is no salient moral difference between selecting a life and creating one.

objection is simply to assert that the plausibility of their argument is ‘simply greater than any of the proposed principles that could be used as premises in an argument to the contrary’ (p.4). This strikes me as an incredibly bold assertion.

The literature on the ethics of abortion is an incredibly large one, and although often muddled with mere tug-of-wars between different intuitions, has led to substantial empirical work on the developmental process of human pregnancy.ⁱⁱⁱ

While they quote Levy who argues that there ‘good reasons to take intuitions seriously’ (p.326), this does not justify a blanket defence of what some may dub ‘common-sense morality’ but is more accurately described as folk morality. Levy himself states, (in the very sentence before the quote,) that ‘[c]ommon sense is often confused, at odds with itself and sometimes driven by psychological processes that are not truth tracking’. The mere fact that we have these intuitions already puts more weight on them in our ethical discussion than they deserve. What is needed are reasons, whether they are motivated by appeal to ‘common sense’ or independently arrived at.

TOWARDS NATURALIST BIOETHICS

The argument of Bobier and Omelianchuk can be aptly summarised as the idea that both infanticide and late-stage abortion are intuitively immoral. And that those seeking to ward off the conclusions of Giubilini and Minerva sacrifice one intuition for another. But this approach is fundamentally misguided if one takes naturalist philosophy seriously. Here, I don’t mean the sort of moderate naturalism found in Racine⁷ but a strong commitment to the idea that there should be continuity between the sciences and arts, or in our case biology and bioethics. Animal welfare researchers have long recognised that animal ethics detached from our knowledge of biological science is at best ill-informed and at worst harmful.^{8–13} Cases involving humans should not be treated any differently.^{iv}

If the biological sciences reveal that there is no morally salient difference between a newborn and a fetus, that is, that they are

almost at the same developmental stage, one must abolish the intuitively compelling idea that birth matters morally. It doesn’t. And with this, Bobier and Omelianchuk happily agree. Their arguments, however, rests on the idea that we need to recover our intuitions regarding the inherent wrongness of abortion. But this is precisely what moves religious groups such as those in Poland to frighteningly go ahead and attempt to outlaw all abortions. The biological facts about the physiology of the fetus are pushed aside in favour of an intuition about the moral wrongness of abortion. As Räsänen has argued in response to the critics of Giubilini and Minerva—their arguments fail to demarcate a morally salient difference shortly before and shortly after birth.¹⁴ Better arguments need to be given in favour of a moral status for newborn infants, but Bobier and Omelianchuk’s argument fails to simultaneously live up to both biological continuity and the demand of public intuition.

It is all well and fine to argue, as Levy does, that our intuition ‘might rest on a truth’ (p.329), but such a truth needs to be demonstrated and not merely asserted. A mere appeal to something like intuitive plausibility is not enough. Not only does this not reliably track truth, but is also highly volatile, depending on whose intuitions we are interested in. Religious groups can hijack bioethical discourse by appealing to the ‘absurdity’ and ‘evident immorality’ of practices like abortion, but unless these arguments are backed up or at least consistent with our knowledge of the world as a naturalist view of medicine demands,^{15–17} we should not give them any purchase, in order to avoid finding ourselves in situations such as what is now happening in Poland.

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ⁱⁱⁱLargely due to progress in our understanding of mammalian pregnancy more generally.¹⁹

^{iv}Similar issues apply to neural organoids.²⁰