

Abortion, Contraception, Infanticide

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Contraception, abortion, and infanticide are all measures that enable human beings to enjoy the form of sexual experience most of them prefer while at the same time avoiding or negating its reproductive consequences. All three practices have been matters of moral controversy, but scrutiny reveals more order in the controversy than may appear at first glance.

First, the three practices form not only a temporal but also a normative sequence: anyone who opposed contraception, but not abortion or infanticide, or who defended infanticide, but not abortion or contraception, would have a hard time having his views considered seriously. Second, we may agree with L. W. Sumner that 'it seems safe to count among most people's considered moral judgments the view that, although infanticide may in some circumstances be justifiable, it is a morally serious act' (p. 60).¹ And, third, to make the parallel point with comparable caution, even if contraception should be offensive to morality, the use of contraceptives should not, at least in contemporary pluralist societies, be punishable by law.²

I here argue, within the framework sketched above, for two propositions. First, abortion should be grouped with infanticide rather than contraception, and what is rather brutally called the 'cut-off point' placed at or near conception. And, second, in reaching this conclusion, the concept of potentiality has a legitimate and important role. In arguing for these propositions I shall be responding to Sumner's criticism (especially at pp. 99-104) of what I have written elsewhere.³

¹ Parenthetical references are to L. W. Sumner, *Abortion and Moral Theory* (Princeton: Princeton University Press, 1981).

² Germain Grisez, *Abortion* (New York: Corpus, 1970), 438, writes: 'My view that the Connecticut [anti-contraception] statute [struck down in *Griswold v. Connecticut*] was unjust is based, not on a morally favorable judgment of contraception, but on the view that the use of contraception does not violate any person's rights nor in any clear and proximate way injure the common purposes of civil society'. For Grisez's views on contraception, see his *Contraception and the Natural Law* (Milwaukee, 1964).

³ Philip E. Devine, *The Ethics of Homicide* (Ithaca, NY: Cornell University Press, 1978), Chs. 2-3, esp. secs. 12, 14. (I discuss the question of a cut-off point at pp. 82-88.) I have also confronted the utilitarian approach to the ethics of homicide in 'Homicide Revisited', *Philosophy* 55 No. 213 (July 1980), 329-347, discussion of abortion at pp. 338-341.

Discussion

The deepest question of value at issue in disputes about abortion is whether the existence of a human being—his life—is good in itself, or valuable only as a vehicle or necessary condition of some other valuable state of affairs. To be 'pro-life', in the most fundamental meaning of the expression, is to value human existence as such, while to be 'pro-choice' (where this is conceived of as a rival to a pro-life position) is to value our capacity to determine our own mode of life over life itself, including, sometimes at least, the life of another.

Where the utilitarian tradition breaks with nearly all other moral theories, as well as with the morality of common sense, is in replacing a concern for human beings as such with a concern for them as vehicles for happy states of affairs—states of affairs in which some conscious subject is pleased. Such vehicles are to be discarded when they are no longer serviceable as such: in Kantian language, human beings are treated in utilitarian ethics as mere means to the production of happiness, including their own. And it is possible to agree with Sumner (ch. 6) that the stark, 'classical' form of utilitarianism, for which the ultimate end is the existence of happy states of affairs, without regard to which subjects enjoy them, is more plausible than attempts to patch up utilitarianism to avoid or mitigate the implications of this fundamental evaluation, while at the same time rejecting the utilitarian approach to ethics as out of keeping with the most central of our considered moral judgments.

One context in which the conflict between utilitarianism and the considered moral judgments of most civilized people arises is that utilitarianism appears to require unacceptable infringements of the rights of individuals. But it does not follow that the most plausible alternative to utilitarianism is a theory in which rights are believed to spring full-fledged from the common moral consciousness, or are to be derived by screening out all competing claims about what is good for human beings. On the contrary, utilitarians are quite correct in beginning ethical discourse with a doctrine of the good, and using that doctrine to support claims about obligations and rights. An ethics that starts from the premise that human beings are to be valued as ends in themselves, and not as means merely, will support the claim that they have a right to live, as well as other rights derived from premises concerning the requirements of their flourishing; for example, that it is good for human beings to enjoy knowledge, friendship, and play; and bad for them to suffer enslavement, starvation, and disease.

One issue between defenders and opponents of abortion, once the status of persons as ends in themselves is conceded, is whether an entity should be considered a person because it potentially possesses the traits whose actual exercise (or presence as realized capacities) leads us to regard normal adult human beings as persons. In other words, we must ask what moral relevance pertains to the concept of potentiality, as opposed

to those of actual exercise or realized capacity (what Aristotle calls *hexis*).⁴ Sumner reads appeals to potentiality in consequentialist terms:

Suppose that one regards the existence of rationality as an intrinsic good, so that the more of it there is the better, and the best state of affairs is that in which there is as much as possible. One will then be inclined both to protect rationality where it exists and to foster its development where it does not exist, since both tactics promise to prevent needless rationality losses. On such a view the existence of a potentially rational creature will not be a matter of indifference, for ensuring the development of that creature will be one way of increasing the pool of rationality (p. 101).

With such a reading of the potentiality principle, Sumner has little difficulty in drawing from it the conclusion that ova and spermatozoa should also be protected (p. 104).

But a consequentialist reading of the potentiality principle is not the only one possible. If one believes that some entities are to be treated always as ends in themselves and never as means merely, one then requires some way of specifying what entities are entitled to this position. One way of doing so is to identify certain capacities, e.g. rationality or moral choice, which are deemed to confer upon those who possess them the status of persons. Even if respect is thought due only to those creatures now reasoning or making moral choices, or now capable of so doing, this need not mean that such creatures are valued for their capacity to produce intrinsically valuable states of affairs, i.e. acts of reasoning or moral choice. On the contrary, it is reasoning and moral choice that mark out a creature as entitled to be valued for itself, and not as a means to any ulterior end.

One can imagine a blend of Hume and Kant, for which supreme value rests with individual acts of reasoning or moral choice, such acts being taken to constitute momentary selves. But such a view is not coherent: to reason, or to choose, is to reflect upon one's past and make a decision about one's future, whether of belief or of action. Hence we must ascribe value to persons as continuing beings, not merely as sequences of momentary selves. The issue then arises, how much of the biological life of human beings is to be thought of as comprised within the life of a moral person.

The present enjoyment principle, in its simplest form, includes only uninterrupted stretches of conscious existence: to sleep and to wake is to die and be born again a new person. Sumner finds this position silly (pp. 137-138 n. 12), and it is indeed difficult to see how anyone could take it seriously as a practical norm. But it is of some theoretical interest, since it represents an attempt to hew as closely as possible, within a framework that

⁴ I am indebted to Harold W. Baillie for emphasizing to me the importance of the concept of a *hexis* in Aristotle's outlook.

treats persons rather than their states as intrinsically valuable, to a demand for the actual presence of those traits that make human beings valuable before a creature is accorded special protection by morality. Still, a sense of ourselves as existing from day to day, and from year to year, is almost as central to our conception of ourselves as rational and moral beings as is a conception of ourselves as existing from moment to moment.

A more hopeful version of the present enjoyment principle speaks, not of present acts, but of present capacities. In Sumner's words, 'possession of a capacity at a given time does not entail that the capacity is being manifested or displayed at that time. A person does not lose the capacity to use language, for instance, in virtue of remaining silent or being asleep. The capacity remains as long as the appropriate performance could be elicited by the appropriate stimuli. It is lost only when that performance can no longer be evoked, as when the person has become catatonic or comatose' (pp. 137-138, n. 12).

Two problems arise for a version of the present enjoyment principle that takes capacities as central. First, we must ask at what point we should cease to talk of stimuli eliciting responses and begin talking of capacities coming into being through the interaction of an organism with its environment. I for one find it natural to speak of a curably catatonic, or reversibly comatose, human being having the capacity to speak and reason, although the manifestation of that capacity is hindered by his condition. One of the advantages of the potentiality principle is that it avoids the necessity of drawing a line between capacities and mere potentialities, and views any trait an organism will in due course manifest as a capacity to be taken into account in assigning a moral status to that organism.

Second, the present enjoyment principle, when conjoined with any version of the traits we normally think of as distinctively human, entails that infants are not entitled to full moral standing. And one of the premises of the present inquiry is that infanticide is seriously wrong, at least when performed at the mere discretion of the parents. Hence Sumner, who wishes to preserve this feature of common morality, is led to reject rationality and moral choice as criteria of moral standing, and to appeal instead to sentience (especially pp. 142-154, 226).

Sentience as a criterion of personhood has vegetarian implications, implications that Sumner accepts (pp. 199-200 n. 7). He employs the fashionable pejorative 'speciesism' (p. 92) to denote those who believe that what is crucial in the abortion dispute is whether human as opposed to animal or vegetable life is present in the womb. But argument by epithet gets us nowhere: opponents of racism aspire to a colour-blind society, while some feminists entertain similar hopes about gender. But a society that draws no legal or customary lines between human beings and, for example, turkeys, is difficult to imagine, even if vegetarianism should triumph. (Nor does Sumner entertain any such aspirations (p. 199).) For the rest, having discussed the moral issues raised by vegetarianism else-

where,⁵ I am content to leave to the reader the issue whether a criterion of moral standing with vegetarian implications is acceptable.

It is now possible to restate the case for the potentiality principle. What makes the difference between human and other life is the capacity of human beings to enjoy a specially rich kind of life. This does not mean that we are to value human beings for their capacity to produce that kind of life: only that such a life distinguishes human beings from animals, and provides us with a reason for assigning to human beings the specially protected status they enjoy in our morality.

Now the life already enjoyed by a human being cannot be taken from him, only the prospect of such life in the future. Human beings exist in time: to kill one of them is to bring his existence to a close earlier than it would otherwise have ended. If human beings were of value just because they produced valuable experiences, it would follow immediately that, in deciding what moral importance should be accorded to a life, we should look to the valuable experiences it promises to contain.

But, for those who value human beings as ends in themselves, no such simple argument is possible. Those, like Kant, who locate the source of human dignity in the noumenal realm will be hard put to it to explain why the duration of human phenomenal existence should be of crucial moral importance. A workable ethics requires that our bases of valuation be linked to observable events, though not necessarily that there should be a one-one correlation between moral standing and a trait featured in some preferred scientific theory.

If persons are to be treated as ends in themselves and not as means merely, what constitutes so treating them must be defined in part by reference to their character as human animals. Hence also we can conclude that a human animal has an interest in continued life, whereas goods enjoyed in the past are beyond the possibility of loss.

Finally, the prospect of continued life is possessed as much by a foetus or an infant as by an adult. That potentiality might not figure in some preferred biological theory does not mean that it may not be invoked in ethical discourse; even though they may prefer not to talk in such terms, biologists have not discovered that it is not the function of the heart to pump blood through the body, or among the functions of the genital organs to produce offspring. Nor have they discovered that a foetus is not potentially an adult human being.⁶

⁵ In 'The Moral Basis of Vegetarianism', *Philosophy* 53, No. 203 (October 1978), 481-505, and in my rejoinder to Bart Gruzalski, in *Ethics & Animals*, June 1981.

⁶ For a critique of mechanistic biology, see Charles Taylor, *The Explanation of Behaviour* (London: Routledge & Kegan Paul, 1965), esp. Pt I.

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Moreover, in rejecting as absurd the view that persons include only those now awake (pp. 137–138 n. 12), Sumner already has reference to a category of natural teleology—that of developed capacity or *hexis*. The capacities of an animal are of a different order from those of a machine—even a pet cat will sometimes refuse to eat although perfectly able to do so.

One objection to relying on potentiality in order to accord moral standing to fetuses and infants is that such reliance requires us also to accord moral standing to the potentialities in the human sexual cells. Thus Sumner argues that, in the sense that 'it is normal for zygotes to develop into fetuses and infants, even if most are spontaneously aborted, . . . it is also normal for ova to be fertilized and for spermatozoa to fertilize. . . . Since both are gametes (sex cells), fertilization is what they are *for*' (pp. 103–104).

Apart from an insistence on interpreting the potentiality principle in consequentialist terms, this objection is not formidable. It is normal for a spermatozoon to fertilize an ovum (and in the process to cease to exist), but, except for believers in homununculi, it is not normal for a spermatozoon to become an adult human being. It is a bit more plausible to assert a continuity of development between an ovum and an embryo. But even here the radical shift in genetic structure that takes place at conception, and the fact that the ovum is, biologically speaking, a part of a woman, leads me to the conclusion that the ovum is an entity having the (passive) potentiality of becoming something capable of developing into an adult human being rather than an entity, like a foetus, having the (active) potentiality of doing distinctively human things. (A distinctly secondary consideration, though not one wholly without weight in shaping my judgment here, is that many more zygotes become adult human beings than ova become zygotes.)

Hence nothing that is done before conception is homicide, however objectionable some people may find it on other grounds. Nor is there any reason to suppose that anything done before conception is, in Sumner's phrase, 'just as wrong as homicide' (p. 104):

Another objection to the potentiality principle arises from its reliance on an intuitive sense of the ordinary course of events (not the same thing as a law of nature in the sense of Newtonian or quantum mechanics). An attack on a conception of the natural as the normal is the theoretical point of the bizarre examples—of kittens so injected that they will grow up into supercats, or of philosophers awakening with violinists attached to their kidneys—that have bulked large in scholarly disputes about abortion. Casuistically, these examples can be handled in either of two ways: by rejecting the analogy between them and real-life cases, pointing out that the very features that make them bizarre also distinguish them from the situations they are intended to illuminate; or by accepting the analogy, allowing our judgment about the bizarre cases to be governed by our considered judgments about more ordinary situations, and ascribing any

strangeness in the resulting judgment to the bizarre quality of the examples.⁷

But such casuistical solutions neglect the fact that examples are intended to enforce what Sumner calls a 'modern' as opposed to an 'ancient' conception of human nature (sec. 20). In the ancient conception, according to Sumner, 'a uniform conception of the human good survives as long as some particular world view, natural or supernatural, continues to hold sway' (p. 169). In the modern conception, 'a set of shared assumptions is supplanted by a market place of diverse hypotheses [and] it becomes harder to maintain the distinction between truth and error. At this point, the choice of a life style becomes a matter of subjective preference' (p. 169).

Such an appeal to modernity is also involved in Sumner's rejection of a criterion not directly at issue in the present discussion, what I have called the species principle and Sumner calls the 'natural kind argument' (p. 97)—the view that all (and perhaps only) members of the human species are persons. Apart from pejoratives like 'speciesism', the case against such a criterion of moral standing rests on an intuition that natural categories like that of a species are in principle incapable of carrying significant moral weight. Supercats and the like are not primarily problems for moral judgment, but rhetorical devices designed to enforce a perception that the distinction between *Homo sapiens* and other forms of life is as arbitrary as that between races. (Sumner's complaint about the indirect relationship between humanity as a natural kind and the distinctive modes of life of which human beings are capable (pp. 97–98) is in any event less troubling outside a rigidly consequentialist framework.)

Sumner makes two arguments in defence of what he calls the modern conception of human nature. He argues that 'nothing but a subjective model can make sense of *individual welfare*' (p. 173) and that 'the price we pay for embracing an ideal theory [one that holds that goodness is independent of preference or enjoyment] is the loss of one form of individuality: respect for persons as beings who are competent to determine what their interests are' (p. 173).

As for the first argument, it surely makes sense to say that it is bad for a young child, who lacks a conception of death, and thus has no preference on the matter, to die. At least in the absence of express preferences to the contrary, we are entitled to ascribe those ends normally pursued by human beings to every member of the human species. As for the second, that goodness is independent of preference does not mean that we are poor judges of our own welfare, or that others are more competent to judge than we are. Moreover, one can argue, as Mill does in *On Liberty*, that choosing a way of life for ourselves is good for us, even though many people prefer

⁷ I make both sorts of argument in *The Ethics of Homicide*.

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conformity, only if one is prepared to assert that human preferences sometimes require education.

Many contemporary men and women experience the world as a place to which the concept of normality is alien. And ordinary morality takes for granted a mass of assumptions about the normal course of events, so that characters in the more extreme modern novels, and those real life persons whose experience such novels represent, find ordinary moral rules of all sorts irrelevant to their condition.

But utilitarianism, no more than any other ethical theory, is able to sustain itself in a universe to which the concept of normality is alien. Utilitarians assume that human beings normally like getting what they want, and do not normally regret their enjoyments afterwards. When a person is disgusted with himself for having done what he wanted to do, and enjoyed doing, the utilitarian must ascribe this phenomenon to the warping of the person's spontaneous responses, for example by his having been instructed in traditional morality.

Nor can utilitarians long sustain the strategy of selective moral nihilism that someone like Sumner espouses. If the choice of a mode of life is a mere matter of subjective preference, it is hard to see why anyone should take the trouble to overcome the habits and prejudices that stand in the way of adopting a utilitarian mode of life. Utilitarians, as much as adherents of traditional morality, need to see the world as a place hospitable to their efforts.⁸

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⁸ I reach this conclusion by another route in my essay, 'The Conscious Acceptance of Guilt in the Necessary Murder', *Ethics* 89, No. 3 (April 1979), 221-239.