

Bioethics

Penultimate Draft

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Even if the fetus is not a person, abortion is immoral: The impairment argument

1. Introduction

Much of the debate on the ethics of abortion has centered around the notion of personhood. This is because many philosophers hold that the morality of abortion is contingent on whether or not the fetus is a person. Of course, there have been some notable philosophers who do not assent to this view. For example, on the one hand, Judith Jarvis-Thomson (1971) has famously argued for the thesis that even if the fetus is a person, abortion is not immoral—it is (often) an instance of justified homicide. And, on the other hand, Don Marquis (1989) has argued that even if the fetus is not a person, that abortion is immoral. This is because, according to him, what makes killing wrong is that it deprives an individual of a future like ours. Since a fetus—even if it is not a person—has a future like ours, it is immoral to kill it. In this paper, I will join Marquis in arguing that even if the fetus is not a person, that abortion is immoral. But I will not do so on the basis of a controversial and abstract view of the ethics of killing like he does. Instead, I will start from the concrete ethical fact that giving a fetus fetal alcohol syndrome is immoral, and will argue that, when conjoined with a plausible principle, this entails that abortion is immoral. For the sake of argument, I grant that the fetus is not a person, and this means that—assuming my argument is successful—even if the fetus is not a person, abortion is immoral. The upshot of this approach is that we can bypass the entire debate about personhood and the entire debate about what exactly makes killing wrong. Furthermore, since my argument is predicated on a concrete ethical fact—or, at least, an ethical statement that has as much claim to being a fact as any other ethical statement—it has the virtue of not forcing the reader to entertain abstract thought experiments (such as Jarvis-Thomson’s ‘famous violinist’) to arrive at its conclusion.

The structure of this paper is as follows. I will first give a brief overview of fetal alcohol syndrome, and argue that a person who knowingly gives her fetus fetal alcohol syndrome has acted immorally. Next, I will argue that this fact, when coupled with what I call “The Impairment Principle,” entails that having an abortion is immoral, and that this is so even if the fetus is not a person. After this, I answer a plethora of objections to this argument, concluding that most of them are not successful, and that the more promising ones, if they are successful, would commit their proponent to a controversial position, and hence will have a limited scope of appeal.

2. Fetal Alcohol Syndrome

2.1 A Brief Overview of Fetal Alcohol Syndrome

In the literature on fetal alcohol syndrome, it is often said that alcohol has long been suspected to cause physical and mental abnormalities in the fetus. The two most cited examples are the book of Judges and Aristotle. In chapter 13 verse 7 of Judges, the author says “Behold, thou shalt bear a son: and now drink no wine or strong drink,” and Aristotle is reported to have said that “foolish drunken and harebrained women most often bring forth children like unto themselves, morose and languid.” The author of Judges, it is claimed, dictates that the (unnamed) wife of Zorah should no longer drink alcohol on account of her pregnancy. Aristotle, on the other hand, describes the children of women who, when pregnant, frequently drank excessive amounts of alcohol. With these texts as evidence, it is then claimed that both the author of Judges and Aristotle suspected that alcohol, when ingested in excess by a pregnant woman, has dire consequences on the fetus. However, it has been argued recently that this analysis is inaccurate: the quote attributed to Aristotle is a misattribution, and the author of Judges, contrary to appearances, does not possess rudimentary knowledge of the effects of alcohol on the fetus

(Abdel (1999)). Fortunately, we need not delve into this debate here. Rather, we can content ourselves to the fact that the *alleged* position of these ancient authors has been confirmed by modern science (for an overview see e.g. (Mukherjee et al 2005), (Jones et al 2003), (Streissguth et al 1980), and (Warren et al 1988)). That is, it is now known that alcohol is a teratogen, causing facial abnormalities, as well as various intellectual and developmental disabilities (e.g. mental retardation). Fetuses and children who suffer from such defects or disabilities due to alcohol are said to have *fetal alcohol syndrome* (FAS). The degree of the effects of FAS are contingent on many factors, e.g. the amount of alcohol drunk by the mother, the mother's metabolism, and the frequency of which the mother imbibed. For example, one child who suffered from FAS was, in addition to various physical ailments and behavioral problems, unable to count or tell time in seventh grade (Jones et al 2003). These symptoms are not unusual for children who suffer from FAS.

2.2 Clarifications

While alcohol consumption causes FAS, it does not appear that just any amount of alcohol consumed will cause it (Grisso et al 1979). Therefore, when I refer to alcohol consumption causing FAS in this article, it should be understood to mean *excessive* and *frequent* consumption of alcohol. Furthermore, many pregnancies go undetected for long periods of time (even up until birth!), and the fetus is vulnerable to the effects of alcohol as early as three weeks (O'Neil 2011). In light of this, the cases that we will be discussing in this paper are limited to those in which a pregnant woman *knew* she was pregnant and *knew* that (excessive and frequent) alcohol consumption leads to FAS. Thus, when I speak of a pregnant woman causing her fetus or child to have FAS by consuming alcohol, it should be assumed that she *knew* she was pregnant and *knew* that alcohol consumption in her state will likely cause FAS.

2.3 The Ethics of FAS

In the case of FAS referred to above (section 2.1), the child, call her Angela, suffered relatively severe mental and physical disabilities. While her impairments were numerous, we will focus exclusively on her inability to count and inability to tell time. Let us make the supposition that Angela's mother *knew* she was pregnant and *knew* that consumption of alcohol in her physical state would (at least very likely) cause her child to have FAS. While the ethical status of actions is often murky and unclear, there are few more perspicuous than this. That is, it is clear, I take it, that Angela's mother *wronged* her; Angela's mother acted *immorally* in consuming alcohol whilst pregnant. I know of no argument to convince someone of this position, and regard it as *fairly* self-evident.¹ (However, I will defend this view in sections 5.1.1 and 5.1.2.) This fact about Angela's mother is indicative of a more general principle, namely Principle 1 (P1): it is immoral to give a fetus FAS.

A note of clarification is in order here. P1 should be understood as claiming that to give a fetus FAS is immoral *at the time of the consumption of alcohol*. The reasoning for this is simple. Suppose that we stumbled upon a person who is 8 months pregnant. Suppose further that we witness her polishing off a bottle of liquor. In that moment (so I claim), the pregnant person has

¹ This should not be taken as a strike against my position, however, for the same is true for other obviously immoral actions. For example, I know of no argument that can convince a person who does not believe that murder is immoral that it is, in fact, immoral.

acted immorally—her action did not magically become immoral at some later time.² To illustrate this, suppose that the pregnant person was run over by a car 5 minutes after finishing the bottle of liquor, and that this kills both her and her fetus. This tragic situation does not magically erase the immorality of her finishing off a bottle of liquor 5 minutes prior; she is not *morally lucky* for having been run over. Hence, the immorality is present at the time of alcohol consumption.³

But *why* is giving a fetus FAS immoral? To get the answer to this question, we need only look at the effects of FAS. Let us consider the case of Angela above. In that case, Angela's mother acted immorally because she performed an action that made it such that her daughter is (among other things) unable to count and unable to tell time at an age that she should be able to. That is, Angela's mother wronged her by *impairing* her daughter's ability to develop properly.

3. Impairment and FAS

In addition to P1, we will assume the following principle to be true:

The Impairment Principle (TIP): if it is immoral to impair an organism O to the nth degree, then, *ceteris paribus*, it is immoral to impair O to the n+1 degree.

Let us take O to be impaired by an action x if x limits (or entails the limitation of) an ability of hers to any degree. For example, cutting off O's arm impairs her, since, among other things, it limits her ability to use her arm. Injecting O with a drug that prevents her from thinking clearly is also an impairment, since it limits her ability to think. Or, giving O a pill that will prevent her from learning to count later in life impairs her since it limits her ability to develop properly. Impairments can be partial or complete: O's sight is partially impaired by x if x gives her blurry vision, but her sight is completely impaired if x makes her blind. And let us take the *ceteris paribus* clause to be met only if the relevant details surrounding the impairment in the antecedent are sufficiently similar to the relevant details surrounding the impairment in the consequent.

TIP, I take it, is relatively uncontroversial. However, there is some clarification that is in order. If, for example, it is immoral to impair O by cutting off her hand, it might be argued on the basis of TIP that it is therefore immoral to impair her by giving her attention deficit disorder (and not cutting off her arm). This would mean that different types of impairments (in this case, mental and physical) are commensurable. While I think that this thesis is correct—different impairments are, indeed, commensurable—I will not commit myself to it here. Instead, I will take O being impaired to the n+1 degree to mean that O has been impaired in all the ways included in the nth degree *and* that O has at least one additional impairment, or O has all and only the impairments to the nth degree, but at least one of her impairments is more severe. Perhaps some examples will help illuminate what I have in mind here. Suppose that it is immoral to impair O by cutting off her arm at the elbow. By TIP, it would be immoral to cut off her arm at the elbow *and* cut off her leg at the knee. Or, suppose that it is immoral to impair O by making it such that she is unable to remember more than 5 minutes prior to the present. By TIP, it would also be immoral to impair her by making it such that she is unable to remember more than 2

² For more on this, see section 5.1.2.

³ That said, if one rejects P1, then she may take my argument below to be conditional: if P1, then abortion is immoral.

minutes prior to the present. Another way to put this is to say that if it is wrong to give O impairment x, then it is wrong to give O impairments x *and* y, or to give O impairment X (where y is an additional, distinct impairment, and X is a more intense instance of x). Thus, the content of the consequent of TIP is always fixed by its antecedent: the meaning of the n+1 degree is contingent on what the nth degree is taken to be. Finally, I will offer a few examples to illuminate the *ceteris paribus* clause. If, for example, the impairment referred to in the consequent produces a particularly valuable good, but the impairment referred to in the antecedent does not produce such a good (or the good it produces is significantly less valuable), then the *ceteris paribus* clause is not met, and TIP does not kick in. Or, if the impairment referred to in the consequent was *consented* to, and the impairment referred to in the antecedent was not, then the *ceteris paribus* clause is not met, and TIP does not kick in.

From TIP, we can make a second assumption:

Principle 2 (P2): if causing an organism O to have FAS is immoral, then, *ceteris paribus*, killing O is immoral.

Given TIP, P2 is uncontroversial. This is because, again, to cause O to have FAS is to impair her. For example, Angela—the victim of FAS referred to in section 2.3— had her ability to count and her ability to tell time impaired because of her FAS. Thus, the antecedent of P2 is just an instantiated version of the antecedent of TIP. So, in the language of TIP, we may say that giving O FAS impairs her to the nth degree. Furthermore, to *kill* O is to impair her—limit her abilities—more than giving her FAS: to kill O is to *completely* limit *all* of her abilities, whereas to give her FAS is to limit only *some* of her abilities. In other words, since, by our definition, to impair O is to limit her abilities, killing her is the most severe impairment possible—if O is killed, then *all* of her abilities are completely limited (i.e. eliminated). Since this is the most severe impairment that is possible, killing O will always be impairing her to the n+1 degree.⁴ Thus, in the language of TIP, to kill O is (and will (nearly always) be) to impair her to the n+1 degree. Hence, the consequent of P2 is an instantiated version of the consequent of TIP. Thus, P2 follows from TIP.⁵

4. Even if the Fetus is not a Person, Abortion is Immoral

4.1 Is the Fetus a Person?

There has been much controversy about whether or not the fetus is a person. For example, some philosophers have argued that the fetus does not satisfy certain necessary conditions for personhood (e.g. Michael Tooley (1971), Mary Anne Warren (1973), and Kate Greasley (2017) and in her contribution to Greasley and Kaczor (2017)), whereas others have argued, contrary to the aforementioned philosophers, that the fetus does satisfy the conditions for personhood (e.g. Stephen P. Schwartz (1990) and Christopher Kaczor (2014) and in his contribution to Greasley and Kaczor (2017)). Suffice it to say that no philosopher has yet provided a compelling and uncontroversial account of personhood that shows that the fetus is or is not a person. However, despite some notable dissenters (most famously Jarvis-Thomson (1971) and Don Marquis

⁴ Assuming, of course, that the organism referred to in the antecedent was not killed by her impairment.

⁵ Whether the *ceteris paribus* clause is met, I will address in section 5.3.2.

(1989)), there does appear to be a strong majority of philosophers who think that the ethical status of abortion is contingent on whether or not the fetus is a person.

Despite this apparent consensus, I will argue that the ethical status of abortion is *not* contingent on whether or not the fetus is a person. Indeed, I will grant, for the sake of argument, that the fetus is *not* a person. Therefore, for the remainder of this paper, the term “fetus” should be taken to refer to an entity that is *not* a person. Thus, no questions will be begged in my argument since its subject is not assumed to be a person. Indeed, its subject is assumed to be a *non-person*.

4.2 The Impairment Argument

So far, we have affirmed P1, P2, and TIP. These theses, I will show, enable us to construct an argument for the immorality of abortion based on the notion of impairment. Let us call this The Impairment Argument (TIA). We may state it as follows:

- (1) Causing an organism O to have FAS is immoral. (From P1)
- (2) If causing O to have FAS is immoral then, *ceteris paribus*, killing O is immoral.
(From TIP)
- (3) Therefore, killing O is immoral.⁶
- (4) If one aborts O, then she kills O.⁷
- (5) Therefore, to abort O is immoral.

Since we have affirmed P1, P2, and TIP, premises (1) and (2) are uncontroversial, and therefore - assuming the *ceteris paribus* clause is met - premise (3) is uncontroversial as well. Premise (4) is, by the nature of abortion, uncontroversial. (I will address this issue more in section 5.4 and section 5.5.) Hence, (5) follows: abortion is immoral. Furthermore, it should be clear that *personhood* does not play a role in this argument, since I have granted that the fetus that suffers from FAS is not a person. Therefore, (5) holds even if the fetus is not a person.

In contrast to Don Marquis, I have not tried to articulate *why* killing (anyone) is wrong. This too is a strength of TIA: instead of delving into the abstract ethics of killing, I have proceeded from (what is hopefully) a self-evident instance of immorality (i.e. P1) and from a self-evident principle (i.e. TIP); that is, it is a strength of my argument that it is not committed to controversial ethical theses or to controversial theses about personhood.⁸ In other words, I have proceeded from the macro scale: I have made use of self-evident theses, avoiding committing myself to several highly contentious positions (e.g. the personhood of the fetus). In what follows, I will examine a plethora of objections to TIA, arguing that they are not successful—or, if they

⁶ I assume that the *ceteris paribus* clause is met, and omit it from the argument hereafter for the sake of simplicity. (If I did not omit the clause, the argument would look slightly different: premise 3 would read "Therefore, *ceteris paribus*, killing O is immoral" and the conclusion would read "Therefore, *ceteris paribus*, to abort O is immoral." But nothing substantial turns on this: the only difference would be that the objections I entertain (and reject) to premise 2 would then be entertained (and rejected) to premise 5.) I defend this assumption in section 5.3.2.

⁷ Whether or not all abortions are instances of killing is controversial. I address this in section 5.4.

⁸ Of course, I do not want to pretend that I make no controversial assumptions. Rather, I am merely suggesting that I avoid a couple particularly contentious subjects.

are successful, they must assume a controversial thesis, and hence will have a limited scope of appeal.

5. Objections to TIA

5.1 Objections to P1

If P1 is false, then TIA will fail. Therefore, in this section, we will look at two common objections to P1.

5.1.1 Intentions and P1

While I have construed P1 as uncontroversial, it is possible to challenge it. For example, one might object to it on the grounds that if a pregnant person *intended* to have an abortion, then her giving her fetus FAS via alcohol consumption was not immoral. After all, she never intended for the fetus to develop to a state in which it would suffer the effects of her decisions, and hence her actions were not immoral.

To see why this objection is mistaken, let us return to the case of Angela and her mother (see section 2.1 and section 2.2). We have supposed that Angela's mother *knew* that she was pregnant, *knew* the effects of alcohol consumption during pregnancy, and yet continued to drink excessively and frequently, resulting in Angela developing FAS. Let us add one more detail to the story. Let us suppose that she *intended* to abort Angela prior to giving birth, but never got around to having the abortion—she got busy, and it ended up slipping her mind. In this case, there is no doubt that Angela's mother still acted immorally in consuming alcohol during her pregnancy—Angela still has been seriously wronged by her mother, despite her intentions to abort her. Hence the intention to abort, or kill, did not render her giving Angela FAS not immoral. And, more generally, the intention to abort or kill does not suffice to render the actions of the of the pregnant person who gives her fetus FAS not immoral—if it were, then Angela's mother would not have acted immorally. But she did.

Or suppose that Angela's mother, at 6 weeks pregnant, intended to have an abortion and therefore consumed excessive amounts of alcohol frequently, resulting in Angela having FAS. Now suppose at 8 weeks—after Angela has acquired FAS—Angela's mother no longer intends to abort her. Suppose further that at 10 weeks, Angela's mother changes her mind again and intends to abort her. And, finally, suppose that at 12 weeks Angela's mother changes her mind one last time, and no longer intends to abort her. If the morality of giving Angela FAS is contingent on her mother's intentions, then Angela's mother's actions that resulted in her having FAS (which occurred at 6 weeks) have gone from moral, to immoral, to moral, to immoral. But this moral oscillation is absurd. Hence whether the mother has an intention to abort her fetus does not determine whether giving her fetus FAS is immoral.

Let us briefly consider one final case to illustrate this point. Suppose that a drug D is developed that, when injected into an organism at any stage of life, gives it the equivalent of FAS. Now, suppose that a person S walked into a hospital with a needle full of D, and that she proceeded to inject a newborn with it, thereby giving it FAS. Suppose further that S *intended* to kill the infant shortly after giving it FAS. However, after injecting the infant with D, S was apprehended by hospital security and rendered unable to kill the infant. If intentions are

sufficient to render giving a fetus FAS not immoral, then S did not act immorally here.⁹ But she did. And hence intentions will not suffice to undermine P1.

5.1.2 Fate and P1

While the mother's intentions do not suffice to undermine P1, it might be objected that the actual fate of the fetus does. That is, one might object that if the fetus that has contracted FAS is *actually* aborted or killed as an infant (relatively) soon after birth, then it was not immoral for her mother to give her FAS.

To see why this objection fails, consider the following. Suppose that Angela's mother is 8 weeks pregnant with her and that she has, despite her pregnancy, continued to drink excessively and frequently. And suppose further that she intends to give birth to Angela. But suppose that Angela's mother is involved in a collision, which results in the death of her fetus (i.e. Angela). If the fate of the fetus is what determines whether giving a fetus FAS is immoral, then this would mean that, fortunately for Angela's mother, her actions were not immoral. But this is absurd: Angela's mother is not *fortunate*, morally speaking, that a car crash killed Angela—why would a collision that resulted in the death of Angela be a good thing, morally speaking, for Angela's mother? Or, to return to a prior example, suppose that Angela's mother is seen, while 8 months pregnant, drinking an entire bottle of liquor. The person who sees her drinking the liquor no doubt rightly judges her to be acting immorally, and this is true—her actions are immoral—even if she is hit by a car and killed (along with her fetus) the next day.

Finally, suppose again that the morality of giving a fetus FAS really does depend on the fate of the fetus. If this is the case, then the morality of Angela's mother actions mentioned in the last scenario (i.e. finishing a bottle of liquor while 8 months pregnant) is *undetermined* until Angela's fate has arrived. Now suppose that Angela is indeed aborted, that means that her mother's actions did not become morally permissible until she was aborted. But clearly this is absurd—Angela's mother's actions were either moral or immoral at the time of her consumption of alcohol. Or suppose, conversely, that Angela was not aborted. Instead, she was born and lived a long, healthy, and happy life. At what point did Angela's mother's actions (magically) become immoral? Was it the moment that Angela fully exited her mother's womb? Ten minutes after birth? A week? Due to their arbitrary nature, none of these answers are adequate. Again, the fact is that when Angela's mother gave her FAS, her actions were either moral or immoral. The moral status is determined at that time, not some arbitrary point in the future. This point is true in general: the status of the actions of a pregnant person who imbibes is determined at the time of alcohol consumption—not some point in the future. Hence the fate of the fetus does not determine whether giving it FAS is immoral.¹⁰

⁹ We could alter this case to be more analogous by supposing that he injected a young fetus with D through the mother's womb (unbeknownst to the mother) and intended to kill the fetus at a later date, but was apprehended prior to doing so.

¹⁰ Another way to think about this is as follows: suppose that a person intentionally injected a newborn child with a needle that was contaminated with HIV, thereby giving the infant HIV. Now, suppose that 5 minutes after the injection, the infant was killed (either by the person that injected the newborn, or by natural causes). Despite the death of the infant shortly after the injection (before she could suffer any of the effects of HIV), the person who injected the newborn no doubt acted immorally.

5.2 Objections to TIP

TIP is the foundation of premise (2). Therefore, if TIP is false, then premise (2) will be unmotivated, and TIA will fail. Therefore, in this section, we will examine several objections to TIP.

5.2.1 Animal Torture and TIP

An objection to TIP might be raised on account that it is wrong to *torture* an animal, or subject it to inhumane living conditions, but that it is not immoral to kill it (perhaps for food). Indeed, as Michael Tooley says, “we do not usually view the killing of a newborn kitten as morally outrageous, although we would regard someone who tortured a newborn kitten for an hour as heinously evil” (1972: 63). What Tooley is suggesting here is that torturing a newborn kitten is immoral, but killing it is not. In this scenario torturing a kitten is understood as impairing it to the n th degree, and killing it as impairing it to the $n+1$ degree. Hence, since, it is claimed, the latter is not immoral but the former is, this renders TIP false.

There are several problems with this objection. To begin with, the proponent of this objection would have to hold that *killing* an animal is indeed morally permissible. Perhaps the objector is right on this point, but it is nevertheless a controversial assumption to make. Hence, this objection will only be available to a limited number of people.

A more severe problem with this objection is that the *ceteris paribus* clause of TIP is not met. This is because impairment via torture is *painful*. It is the pain, according to Tooley, that renders the impairment immoral. However, killing the newborn kitten involves little pain. Thus, in order to meet the *ceteris paribus* clause, we must either hold that (a) killing the newborn kitten causes as much pain as torturing it, or (b) torturing the kitten causes as little pain as killing it. Suppose we endorse (a). If that is the case, then, by Tooley’s criteria, it would be immoral to kill the newborn kitten, and hence this is no longer a counterexample to TIP. Suppose, instead, that we endorse (b). If that is the case, then Tooley’s objection to impairing the newborn kitten melts away—since his objection is rooted in the pain that is caused to the kitten, and, on (b), the kitten feels only a negligible amount of pain, impairing it via torture is not immoral. Thus, when the *ceteris paribus* clause is met, this ceases to be an objection to TIP.

5.2.2 Lethal Impairment and TIP

Generalized, Tooley’s objection above can be seen as a strategy of objecting to TIP by identifying a case in which *lethal impairment* is not immoral, but non-lethal impairment is. Examples of this might be cases of self-defense, (voluntary or non-voluntary) euthanasia, or capital punishment. That is, one might argue that the above cases are instances in which it is not immoral to impair O to the $n+1$ degree (i.e. lethally impair O), but it is immoral to impair O to the n th degree (i.e. non-lethally impair O). For example, it is not immoral to euthanize O, but it is immoral to non-lethally impair her. Or it is not immoral to kill O in self-defense, but it is immoral to non-lethally impair her. And so on.

Let us grant, for the sake of argument, that it is indeed not immoral to kill O in the above instances. This begs the question: *why* is it not immoral to kill her? Presumably, it is not immoral to kill (lethally impair) O in the above cases because killing her brings about a particularly valuable good. For example, in the case of self-defense, it saves the life of the person being

attacked. This, of course, brings our attention to a key discrepancy between impairing O to the n th degree (which is any degree lower than killing her) and impairing her to the $n+1$ degree in the above cases. That is, impairing O to the $n+1$ degree in the above examples (allegedly) brings about a valuable good, whereas impairing her to the n th degree does not. But this, of course, means that the *ceteris paribus* clause is not met, and therefore these lethal impairment cases are not counterexamples to TIP (see section 3). In order to meet the clause, we must either hold that (a) impairing O to the n th degree brings about a valuable good, or (b) killing O does not bring about a valuable good. Suppose we endorse (a). If that is the case, then it is not immoral to impair O to the n th degree, and this is not a counterexample to TIP. This is because the good that comes about from O's impairment justifies our impairing her to the n th degree. Suppose, instead, that we endorse (b). If that is the case, then killing O does not bring about a good, and it is therefore immoral to kill her—the only reason it was permissible to kill O was that it brought about a good, and hence to remove the good it to render killing O immoral. Thus, when the *ceteris paribus* clause is met, these lethal cases of impairment are no longer counterexamples to TIP.

5.3 Questioning Premise (2)

In this section, we will examine two objections to premise (2) of TIA.

5.3.1 Is Aborting Impairing to the $n+1$ Degree?

Perhaps one might object that to abort a fetus is *not* to impair it to the $n+1$ degree. This is because, our objector continues, an adult suffering from FAS has several impairments that the fetus does not have, and, therefore, killing the fetus does not, by our definition above (see section 3), amount to impairing it to the $n+1$ degree. And hence premise (2) is false.

This objection misunderstands premise (1) of TIA. For it was made clear (section 2.3) that causing an organism to have FAS is immoral *at the time of alcohol consumption*. Thus, the relevant impairments are those that occur at the time the fetus 'contracts' FAS. The impairments amount to, in their most general form (in the case of Angela), a limiting of the ability of O's cognitive faculties to develop properly. However, killing O obviously limits the ability of her cognitive faculties to develop even more severely—if O is killed, then the ability of her cognitive faculties to develop properly is as limited as can be: it is *eliminated*. Hence, premise (2) is unscathed by this objection.

5.3.2 Is the *Ceteris Paribus* Clause Met in Premise (2)?

The clever objector might grant the failure of the objections in section 5.2 on account of their not meeting the *ceteris paribus* clause, but argue that the *ceteris paribus* clause is not satisfied in premise (2) of TIA, and hence premise (3) does not follow. This is because killing O (i.e. impairing it to the $n+1$ degree) brings about a valuable good but giving O FAS (i.e. impairing it to the n th degree) does not. Hence, the *ceteris paribus* clause is not met, and premise (3) does not follow from premises (1) and (2).

What goods are brought about by having an abortion? Presumably, the good of autonomy is one such good; a woman who has an abortion acts autonomously, and this is a good. But, of course, the good of autonomy obtains as well if a pregnant person gives her fetus FAS: drinking alcohol when she feels like it is an act of autonomy. Thus, the good of autonomy obtains in having an

abortion and in giving a fetus FAS, and thus the *ceteris paribus* clause is met. Perhaps, though, it will be suggested that to have an abortion avoids the suffering of child birth, and thus a good comes about while having an abortion that does not come about when giving the fetus FAS. This will not do, though, since abortions are not themselves without suffering: to have an abortion is not to avoid suffering, and hence the *ceteris paribus* clause is not threatened.¹¹ Perhaps it might be suggested that the good of not having to be an unwilling parent obtains if one has an abortion, but not if one gives a fetus FAS. This objection, too, fails. For the fact is that one need not be a parent if she gives birth; one can give up her newborn for adoption if she so chooses. And hence this good is not exclusive to abortion - this good obtains if the mother decides, after giving her fetus FAS, to give it up for adoption once it is born - and thus the *ceteris paribus* clause is not threatened. A more fundamental problem with the suggestion that this good (i.e. the good of not having to be an unwilling parent) obtains is that there is no reason to think it is actually a good; doing x unwillingly does not entail that doing x is bad and doing not-x is good. So, there is no reason to think that this threatens the *ceteris paribus* clause since there is no reason to think this is a good at all. Finally, perhaps one would argue that the good of not having a child obtains when one has an abortion, but it does not when one gives a fetus FAS. Hence, the *ceteris paribus* clause is not met, and TIA fails. The problem with this is that, as Kaczor (Greasley and Kaczor 2017) has pointed out, after conception, there already exists a child (there is an organism that shares its DNA with its parents), and hence this good - if it is indeed a good to not have a child (which is dubious in my view) - does not obtain from having an abortion. And hence this is not a threat to the *ceteris paribus* clause.

5.4 Questioning Premise (4)

While most methods of abortion are instances of killing (see e.g. Bygdeman et al (2008) for a description of some abortion methods), some arguably are not. For example, in an abortion by hysterotomy, the fetus is removed without killing it, and left to die naturally. Hence, premise (4) is false—or, at least needs to be revised.

Whether abortion by hysterotomy is an instance of killing is less than perspicuous—at least to me. For example, suppose that one leaves her infant in a car on a hot summer day and allows her to die. Is that not an instance of killing? It appears to me that it is. Whether this example is sufficiently similar to abortion by hysterotomy, I will leave up to the reader to decide. Instead of delving into this murky issue, I will simply grant that not all forms of abortion are instances of killing. Therefore, the person who thinks that abortion by hysterotomy or other similar methods are not instances of killing may replace premise (4) with (4*) *In most cases*, if one aborts O, then she kills O.

And (5) with

(5*) Therefore, *in most cases*, to abort O is immoral.

5.5 Is Abortion Before Three Weeks Immoral?

¹¹ Furthermore, it is arguable that valuable goods come about from giving birth, and that the birthing process is good, see e.g. Stump (2010: 5-6). So, for this objection to work, one would need to show that the bad of suffering outweighs the good of childbirth (or that there is no such good), and this is no small task.

As noted above (section 2.1), excessive and frequent intake of alcohol by a pregnant woman can cause FAS in a fetus as early as three weeks. Thus, the objector might claim, abortions prior to three weeks are not immoral—since FAS cannot be ‘contracted’ prior to three weeks, it is not immoral to consume alcohol prior to then, and therefore, it is not immoral to have an abortion before then—or, at least, TIA does not show that it is immoral to do so.

This is not exactly an objection to TIA; the objector here could accept that the premises of TIA and merely change the conclusion to reflect the fact that it does not show that abortion is immoral until three weeks.

While TIA may, in this specific form, only show that abortion is immoral once alcohol can act as a teratogen, it should be clear that the argument, when generalized, renders abortion immoral as soon as it is even possible for any substance (or outside force) to impair O in an immoral manner. In other words, my argument does not necessarily depend on the current science behind FAS. While I have chosen to use FAS as a jumping off point for my argument, it could just as easily be run with a hypothetical drug. For example, suppose that there was a drug invented that had similar psychological effects to cocaine, but which acts as a teratogen at the moment a human organism begins to exist (there is some debate about when the human organism begins to exist, see e.g. Miller and Pruss (2017)). And suppose further that the effects of this drug on the fetus are roughly equal in severity to those impairments that commonly result from FAS. Since it would be wrong to give the human organism at its earliest stage the rough equivalent of FAS, it follows from TIP that it is immoral to have an abortion and kill the human organism at its earliest stage of existence. (More generally, the first premise of my argument could be substituted with *any* form of non-lethal impairment and the conclusion would still follow.)¹²

5.6 Interest Theory and FAS

A referee reconstructs my argument as follows:

- (6) It is seriously morally wrong to inflict a non-lethal injury on a fetus.
- (7) A lethal injury is worse (more seriously wrong) than a non-lethal injury.
- (8) Abortion inflicts a lethal injury on the fetus (kills the fetus).
- (9) Therefore, abortion is seriously morally wrong.

The referee then proceeds to criticize it on account of premise (7) being false; they think that it only applies to organisms with interests, and therefore we cannot say that it holds for organisms that do not have interests, such as fetuses. They say:

"From the fact that it would be worse for you or me to be killed than to be injured non-fatally, the author assumes, without argument, that the same is true for the fetus. But that assumes that the non-sentient fetus has interests, and in particular, an interest in continued existence, which is thwarted if the fetus is killed."

¹² Recall my prior point that killing an organism will *always* be impairing it to the n+1 degree. It follows from this that so-long as there is an instance of non-lethal impairment that is immoral, we can arrive at the conclusion of TIP.

But, of course, this is not an accurate reconstruction of my argument. I never suggest that it is *worse* to be lethally injured than non-lethally injured. Whether an injury is worse than another is often difficult to tell. Rather, what I have claimed is that the *degree of impairment* of an organism that is lethally impaired is always higher than the degree of impairment of an organism that is non-lethally impaired, and hence having an abortion (i.e. lethally impairing a fetus) is always impairing the fetus to the $n+1$ degree (see section 3). This is a relatively straightforward consequence of our terminology and the nature of abortion; contrary to premise (7), it is relatively uncontroversial.

The referee proceeds to challenge premise (7) of their reconstruction of my argument. They suggest that we have no reason to think that lethal impairment is always worse than nonlethal impairment; lethal impairment is only worse if the thing that is impaired has (relevant) *interests*. They say:

"The reason it is wrong for a woman to binge-drink during her pregnancy, inflicting fetal alcohol syndrome on the fetus, is that, once born, the child has an interest in normal functioning, and an interest in avoiding preventable disabling conditions. The woman's decision to drink heavily during pregnancy thwarts the interest of the future child."

The referee, therefore, endorses the interest theory of rights, which holds (roughly) that rights are grounded in the interests of things, and hence if a fetus has a right to life, it has interests (in particular, an interest in continued existence). As I stated above, I have not affirmed premise (7), and therefore a challenge to it does not threaten my argument. But this fact is not sufficient to do away with their criticism, for their claim can be used to deny premise (1) of my argument: they can use the interest theory of rights to challenge the claim that giving a fetus FAS is immoral. That is, one might object that giving a fetus FAS is not immoral since it does not have interests, and hence premise (1) is false, and the impairment argument fails.

If the interest theory of rights proponent chooses to follow this line of attack, she will run into several difficulties. Firstly, it amounts to an endorsement of a highly controversial position (i.e. the interest theory of rights) and will therefore only be available to those who hold this contentious position. Thus, this objection will be of limited use even if successful. Secondly, while I did not explicitly define the term "person" in my article, a person is often defined as a being that has a right to life (e.g. Tooley 1972, Kaczor 2011),¹³ and that is how I have used the term. Thus, my argument is claiming that it is immoral to have an abortion even if the fetus lacks a right to life. Therefore, I need not take a stand on the interest theory of *rights* - it is possible that it is immoral to kill O while O does not have a right to life - and, therefore, I need not delve into the murky and contentious water of the grounding of rights at this point.¹⁴ I do not pretend that this suggestion of mine - that it being immoral to kill O does not entail that O has a right to life - is completely uncontroversial. However, a good example in support of this thesis is that it is

¹³ Though, of course, the term is used in different ways as well.

¹⁴ This point stands even if one does not take a person to be a thing that has a right to life. In other words, the definition of "person" aside, I am claiming that it is immoral to have an abortion even if the fetus lacks a right to life.

immoral to kill a tree for no good reason, but a tree does not have a right to life. Hence it being immoral to kill O does not necessarily entail that O has a right to life. But suppose that the proponent of this objection wishes to use interests to ground *all* moral truths: they might claim that it is immoral to do x to O only if doing x to O frustrates or harms the interests of O. Call this *broad interest theory*. The broad interest theorist, then, might claim that since fetuses do not have interests, it cannot be immoral to impair them. However, it is simply not true that it is *only* immoral to kill or impair an organism if it has interests; that is, we cannot extend the interest theory of rights to account for all moral truths. Again, it is (plausibly thought to be) immoral to kill a tree for no good reason, yet a tree does not have interests. More controversially, my defense of P1 - that giving a fetus FAS is immoral - functions as an argument against broad interest theory. That is, if it really is immoral to give a fetus FAS (as I have argued throughout this article) and a fetus does not have interests,¹⁵ then this should lead us to conclude that it is not necessarily true that it being immoral to kill or impair O entails that O has interests. Hence, that it is immoral to kill O does not entail that O has interests, and hence broad interest theory is false.

Of course, this does not mean that interests do not play any role in making actions immoral. Rather, it means that they are, at most, *a* factor in making *some* actions immoral. And hence I am not committed to denying the interest theory of rights in its entirety; I only deny broad interest theory. And thirdly, the referee themselves has tacitly conceded that even if the interest theory of rights is correct, it can still be immoral to impair O if O has no interests, and that it is immoral to give a fetus FAS.¹⁶ From this, we can use TIP to get us the rest of TIA: since the referee has conceded premise (1) and has not challenged TIP or premise (2), the impairment argument goes through. So, it is not clear that the referee even disagrees with my argument.¹⁷

I do not pretend that these examples of mine decisively refute the interest theory of rights or broad interest theory objections to my argument (are there any decisive refutations in ethics or philosophy?), but they certainly add (at least some) credence to claim that these objections fail. Thus, I conclude that at the very most, the interest theory of rights and broad interest theory objections to my argument will have a limited appeal: namely, they will only cut ice for interest theorists. And this is a result I am content with. However, more ambitiously, I claim that - on account of the above reasoning - we have cause to think that there are some things of which it is immoral to kill that do not have a right to life, and hence (a) broad interest theory is false and (b) even if the interest theory of rights is correct, it does not threaten my argument, and hence objections to my argument rooted in interest theory fail. Of course, there is much more to say on this topic, but this is not the place to say it; establishing (or refuting) a theory of morality or

¹⁵ Though, see Tollefsen (2011) for reasons to think that a fetus does have interests.

¹⁶ See the previous quote of the referee where they suggest that giving a fetus FAS is immoral (wrong) on account of the future child's interests. On this view, of course, the fetus does not have interests - only the 'future child' does - and hence it is immoral to impair the fetus despite its lack of interests. Or, if the referee thinks that the interests of the future child count as the fetus having interests, then it follows that the fetus does have an interest in continuing its existence, since the future child has that interest, and hence their objection based on the fetus not having such an interest melts away.

¹⁷ Of course, I only have their comments to go off of. They may very well object to TIP or a premise of TIA that they have not voiced; my point is only that the comments that they have given me support premise (1) of TIA and do not challenge any other premise.

rights here is beyond the scope of this article. However, I do hope that I have illustrated how one might begin to respond to objectors that make use of interest theory.¹⁸

6. Conclusion

In this paper, I have argued that even if the fetus is not a person, that abortion is immoral. The argument started from the fact that giving an organism fetal alcohol syndrome is immoral, and then made use of The Impairment Principle to conclude that abortion is immoral, and that this is so even if the fetus is not a person. I have defended this argument against a plethora of objections to different parts of it, arguing that the objections either fail or force its proponent to endorse a controversial position. Of course, it is possible that one simply rejects the thesis that it is immoral to cause an organism to have fetal alcohol syndrome. I have no arguments in my arsenal that could convince such a person otherwise. But, again, this is not atypical for ethical positions.¹⁹ Hence, if this is a weakness of my argument, it is not a *unique* weakness. The most plausible response—though, in my view, not very promising—is to try to reject The Impairment Principle (TIP). However, I have argued that various attempts to reject TIP are unsuccessful. Thus, if one seeks to avoid my conclusion, her best shot to do so is to either propose a new objection to TIP, or to strengthen an objection to TIP I already examined. Finally, it is worth mentioning that I do indeed hope that my argument can be shown to be a failure: all those involved in the abortion debate should hope that pro-life arguments fail and, further, that there will eventually emerge a successful pro-choice argument; the world contains far less injustice if the pro-life position is false. That is, we should all hope that abortion is not (nearly) tantamount to murder or worse than giving a fetus FAS. So I warmly welcome all challenges to my argument. While there is some hope for showing that my argument fails, there seems little hope that a successful pro-choice argument will emerge. Alvin Plantinga has said that "most attempts to explain why God permits evil - theodicies, as we may call them - strike me as tepid, shallow, and ultimately frivolous," (1985: 35)²⁰ and similar things, in this author's view, can be said about most pro-choice arguments: they are tepid, shallow, and ultimately frivolous. And if the past is indicative of the future, it is (unfortunately) unlikely that this will change.²¹

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7. References

¹⁸ For a statement of the interest view of rights, see Steinbock (1992), for criticism see e.g. Marquis (1994), and for a balanced discussion of interest theory see Tollefsen (2011).

¹⁹ Or, for that matter, for non-ethical positions.

²⁰ This was said, of course, prior to his (2004) in which he provides a forceful defense of the *felix culpa* theodicy.

²¹ For an article on issues broadly related to my argument, see Wilkinson et al (2016).

- Abel, Ernest. (1999). "Was Fetal Alcohol Syndrome Recognized by the Greeks and the Romans?" *Alcohol and Alcoholism* 34: 868–872.
- Bygdeman, Marc and Kristina Gemzell-Danielsson. (2008). "An Historical Overview of Second Trimester Abortion Methods" *Reproductive Health Matters* 16: 196-204
- Greasley, Kate. (2017). *Arguments About Abortion: Personhood, Morality, and Law*. Oxford University Press.
- Greasley, Kate and Christopher Kaczor. (2017). *Abortion Rights: For and Against*. Cambridge University Press.
- Grisso, Jeane Ann, Eve Roman, Hazel Inskip, Valerie Beral and John Donovan. (1979). "Alcohol Consumption and Outcome of Pregnancy" *Journal of Epidemiology and Community Health* 38: 232-235
- Jarvis-Thomson, Judith. (1971). "A defense of abortion", *Philosophy and Public Affairs*, 1: 47–66.
- Jones, Wilson Martha and W. Thomas Bass. (2003). "Fetal Alcohol Syndrome." *Neonatal Network* 23: 63-70.
- Kaczor, Christopher. (2011). *The Ethics of Abortion: Women's Rights, Human Life, and the Question of Justice*. Routledge.
- Marquis, Don. (1989). "Why Abortion is Immoral." *The Journal of Philosophy* LXXXVI: 183-202.
- Marquis, Don. 1994. "Justifying the Rights of Pregnancy: The Interest View." *Criminal Justice Ethics* 94: 67–81
- Marquis, Don. (1997). "An Argument that Abortion Is Wrong." In Hugh LaGollette (ed.) *Ethics in Practice: An Anthology*.
- Miller, Calum and Alexander Pruss. (2017). "Human Organisms Begin to Exist at Fertilization." *Bioethics* 31: 534-542.
- Mukherjee, Raja, S. Hollins, Mohammed Abou-Saleh, and Jeremy Turk. (2005). "Low Level Alcohol Consumption and the Fetus: Abstinence from Alcohol is the Only Safe Message in Pregnancy." *British Medical Journal* 330: 375-376.
- O'Neil, E. (2011). 'Developmental Timeline of Alcohol-Induced Birth Defects'. Embryo Project Encyclopedia. ISSN: 1940-5030 <http://embryo.asu.edu/handle/10776/2101>.
- Plantinga, Alvin. (1985). "Self-Profile." in James Tomberlin and Peter van Inwagen (eds.) *Alvin Plantinga: Profiles*. Springer: 3-100.
- Plantinga, Alvin. (2004). "Supralapsarianism, or, 'O Felix Culpa'" in Peter van Inwagen (ed.) *Christian Faith and the Problem of Evil*. Eerdmans Publishing Company: 1-26. Schwartz,

- Stephen. (1990). *The Moral Question of Abortion*. Chicago: Loyola University Press, Steinbock, Bonnie. (1992). *Life Before Birth*. New York, NY: Oxford University Press.
- Streissguth, Ann Pytkowicz, Sharon Landesman-Dwyer, Joan C. Martin and David W. Smith. (1980). "Teratogenic Effects of Alcohol in Humans and Laboratory Animals" *Science* 209: 353-361.
- Stump, Eleonore. (2010). *Wandering in Darkness: Narrative and the Problem of Suffering*. Oxford University Press.
- Tollefsen, Christopher. (2011). "Fetal Interests, Fetal Persons, and Human Goods" in Stephen Napier (ed.) *Persons, Moral Worth, and Embryos: A Critical Analysis of Pro-Choice Arguments* 163-186
- Tooley, Michael. (1972). "Abortion and Infanticide." *Philosophy and Public Affairs* 2:37-65.
- Warren, Kenneth R. and Richard J. Bast. (1988) "Alcohol-Related Birth Defects: An Update" *Public Health Reports* 103: 638-642
- Warren, Mary Anne. (1973). "On the Moral and Legal Status of Abortion". *The Monist* 57: 43-61.
- Wilkinson, D., Skene, L., De crespigny, L. and Savulescu, J. (2016), "Protecting Future Children from In-Utero Harm." *Bioethics*, 30: 425-432.