



The Border of Life

Abortion and Infanticide in
Contemporary Ethics

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Abstract

This thesis discusses the difficult problem of abortion. In trying to solve the philosophical difficulties with abortion this thesis aims to answer the research question: To what extent and on what normative basis is the ending of (pre-natal) life morally permissible? In order to formulate this answer, first an extensive overview of the most influential philosophical positions on abortion is presented and discussed. These positions are analyzed for their strengths and limitations. After the philosophical basis for the abortion debate is outlined, the normative basis for the moral permissibility of abortion is analyzed in terms of personhood and interests. The main claims of this thesis are that fetal sentience is the minimal basis for a right to life, and self-awareness is the basis for a strong right to life. The link between sentience, consciousness and interests is discussed not only on a normative, but also on a descriptive basis. In placing this central claim in the context of the broader abortion debate, and descriptive scientific research, this thesis aims to provide a broad, holistic answer to the research question.

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Introduction

The issue of abortion is one of wide controversy. Ever since *Roe vs. Wade* (the Supreme Court decision in the US creating legal precedent for abortion) abortion has been legal in the USA (Shrage, 2003: p.9). It is still a central topic in presidential campaigns and a concern for great polarization in American parliamentary politics, as became clear with the recent passing of two anti-abortion bills in Georgia and Alabama (Kelly, 2019)¹. The more secular Europe is also still divided when it comes to abortion, not only with Christian parties opposing the possibility for abortion, but also with regard to the question what the maximum term should be wherein it is legal to carry out an abortion (Millican, 1992). This divergence shows that not only the question *whether* abortion should be legal is a relevant and controversial question in moral and legal philosophy but also *where* the limit for the moral permissibility of killing developing human life should be.

The main focus in deciding this limit is currently based on the notion of *viability*: abortion becomes immoral the moment the fetus is able to live independently from its mother womb (be it with sufficient medical equipment). This was the decided cut-off point in *Roe vs. Wade* but also the legal basis for the end of abortion rights in many European countries. (Shrage, 2003) Although intuitively reasonable to many, this cut-off point can also be seen as *ad hoc* since viability increases with technological development and health-care quality. It is not directly clear why viability should be the basis for deciding when a morally relevant human being comes in to existence, since that seems to imply the nature of moral ‘personhood’ is an inference from medical technological advancements.

Some anti-abortionists² claim every cut-off point is arbitrary. They are generally more concerned with the fetus’ right to life than with bodily autonomy, claiming that a fetus, although developmentally different, is morally equivalent to a human being. The central argument against abortion can be put as follows:

“Premise 1: It is wrong to kill an innocent human being; Premise 2: A human fetus is an innocent human being; Conclusion: Therefore, it is wrong to kill a human fetus.” (Singer in Honderich, 1995: p. 3)

For someone to argue against the conclusion, one (or both) of the two premises has to be rejected on reasonable grounds. Both premises link directly to the most fundamental normative questions surrounding moral relevance, rights to life and human essence and value. This makes abortion an academic issue that is surprisingly polarizing with some arguing for the moral defense of infanticide (i.e. Tooley, 2009) and some arguing the ‘morning-after pill’ to be morally equivalent to murder (i.e.

¹ These laws are still unenforceable, as they are overruled by the Supreme Court’s *Roe v. Wade* decision (Kelly, 2019)

² This thesis will not adhere to the standard “pro-life/pro-choice” terminology surrounding the abortion debate since both terms are specifically used to frame the other side of the debate (pro-choice being anti-life and vice versa).

Marquis, 1989). The nature of this polarization derives from the fact that rejecting one of the premises has far reaching consequences; either about the value of (or right to) life, in case of rejecting the first premise, or about what makes a biological human a morally relevant person, in case of rejecting the second premise. If a fetus is not a person, what about someone in a coma, or a severely mentally disabled person? In this way the academic debate concerning abortion links to a network of bio-ethical stances (Millican, 1992).

Furthermore, abortion is widely rejected on religious grounds. Although religious communities are, obviously, as diverse as other societal groups, the fight against abortion rights is active and organized in religious groups with world-wide demonstrations as ‘the March for Life.’ The religious pre-occupation with abortion can take extreme forms by actively preventing women to enter abortion clinics or even the killing of abortion providers by the Christian radical Paul Hill. The religious aversion against abortion is well-known but not specifically based on straight-forward religious texts (Ehrman, 2005). Religious moral rejection of abortion is thus based on hermeneutics and interpretation that are also open to debate and controversy by scholars.

This makes abortion an important issue for the academic, political, religious and societal world. This thesis will aim to answer the following research question:

To what extent and on what normative basis is the ending of (pre-natal) life morally permissible?

This thesis will give an overview of the different arguments for and against the right to abortion, in order to set up a normative framework for a sensible moral cut-off point of the maximum development to which abortion should be morally acceptable. First, an overview of religious stances will be presented, arguing that there is no rational way to choose one over the other. Secondly, the most extreme arguments on both sides of the debate will be discussed: the view that abortion is always immoral on one side, and the view that not having an abortion is always immoral on the other. Thirdly, the most influential approach to a cut-off point between the two extremes, namely viability, will be discussed and rejected. Finally, arguments are presented for a gradual position on abortion, with a weak right to life based on sentience developing into an absolute right to life based on reflectivity.

Different arguments adhere to different ‘meta-ethical’ schools, this makes that this thesis will not be centered around a specific ethical framework (like deontology or consequentialism). The different arguments will be compared on their own merit. The thesis will go further than just laying out the different arguments descriptively, the arguments will be weighed against each other to show the need for a conclusive normative framework that can serve as a sensible, holistic basis for abortion policy and practices.

Abortion and Religion

'Texts do not simply reveal their own meaning to honest inquirers. Texts are interpreted, and they are interpreted by living, breathing human beings, who can make sense of the texts only by explaining them in light of their knowledge, explicating their meaning, putting the words of the texts "in other words".'

- Bart Ehrman

In this chapter the link between abortion and religion will be discussed. Religious stances are particularly influential in the abortion debate in the West, as it is the main inspiration for the conservative position (that abortion is always immoral). This religious inspiration has strong political influences, as political anti-abortion campaigning is proven to be an effective tactic to attract Christian voters (Adamczyk & Valdimarsdóttir, 2017). Furthermore, the implementation of the *Heartbeat Bills*, controversial legislation passed in five American states (although consistently struck down by the Supreme Court), was predominantly lobbied for by Christian activist-groups (Glenza, 2019). Heartbeat Bills are bills restricting the possibility for abortion after a fetal heartbeat can be recognized, which is at about six weeks of gestation.

A description and discussion of the religious stances will be given, focused only on the Big Three monotheistic religions, namely Judaism, Christianity and Islam. These will not be discussed completely separate, as many of the concepts that these religions use to formulate a stance on abortion overlap (for instance: Sanctity of Life, The Soul, and Human Exclusivity). This overview will be linked to the epistemological and conceptual difficulties with taking a religious stance on abortion.

Arguments will be presented from the viewpoint of religious doctrines. The main claim is that the three monotheistic religions provide contradictory stances on abortion, based on contradictory religious texts. This does not mean that an unambiguous religious view on abortion cannot be formulated. But these views will only be internally consistent. This means that a proponent of a religious view on abortion has no choice but to ignore or dismiss principles that are part of their religious framework, which served as a basis for their view to begin with.

Monotheism and Abortion

A difficult problem in deciding upon an ethical framework on abortion in religious doctrines is the variety of sources and the different interpretation of these sources that have developed historically. The article 'The Complex Problem of Abortion' by Peter Millican (1992) gives a comprehensive overview of this problem in the Christian context. In this overview, Millican analyses the historical developments of Christian views on abortion specifically linked to the doctrines of the Catholic church.

The contemporary position of the Catholic church is that life begins at conception, meaning that a fetus is morally equal to a human adult and therefore abortion is tantamount to murder. There are a

few exceptions, mainly if the pregnancy is a danger to the mother's life. Millican points out that this position is not based, at least not directly, on scripture. The only direct reference to abortion is found in the Old Testament, historically the passage has been at the center of the Christian abortion debate.

The passage comes from *Exodus* 21:22-25 and is translated as follows:

“22 When men strive together, and hurt a woman with child, so that there is a miscarriage, and yet no harm follows, the one who hurt her shall be fined, according as the woman's husband shall lay upon him; and he shall pay as the judges determine. 23 If any harm follows, then you shall give life for life, 24 eye for eye, tooth for tooth, hand for hand, foot for foot, 25 burn for burn, wound for wound, stripe for stripe.” (*Exodus* in Millican, 1992: p.3)

According to this passage, the fetus does not have the same moral standing as an adult human being. This can be derived from the fact that killing a fetus is punishable by fine, whereas killing a human adult (in this case the mother) results in the death-penalty (See also: Zoloth in Maguire, 2006).

In recognizing this difference, Christian scholars and ethicists, as well as secularist thinkers, have been faced with the problem of demarcation between a fetus and a person. This demarcation has been based on primarily physical attributes: the point where a fetus starts to look human. Yet, these physical attributes were seen as signifiers of a more fundamental theory of ensoulment. Aquinas' reading of Aristotle³ was specifically influential in the account of ensoulment, according to Millican. This reading, in short, entailed that fetal development started with a vegetative soul, growing into an animal soul ending with human ensoulment which was reached around 40 days of gestation in male fetuses and 80 days in female fetuses.

This would imply that early stage abortions would be less sinful than later stage abortions. Yet, the majority of Christian ethicists still deemed abortion to be immoral, on account of abortion being unnatural. Abortion, in this reasoning, is conceptually linked to contraception. Generally, abortion and the use of contraception were seen as evenly immoral in the Greco-Roman world as they both are “unnatural”. Yet Noonan (1967) notes that in the early Roman world abortion was mainly rejected in terms of the method, deliberately taking drugs that killed the fetus, as this was seen as a form of witchcraft. This links to the “unnatural-position” but does rely on a distinct logic. Most likely, (early) Christians in the Roman world did practice abortion as the fetus was seen as part of the female body, not as a distinctive moral object. The laws prohibiting abortion by potions were not enforced and other abortion methods such as injecting hot olive oil in the uterus or repetitive jumping, were also often used (*ibid.*).

³ Interestingly, Aristotle as well as Plato were both active proponents of abortion in cases where a family had too many children for the good of the state (Noonan, 1967)

The contemporary Catholic account of abortion started in 1965 by the second Vatican Council declaring abortion to be a 'horrible crime'. The stance of abortion being different from contraception comes, predominantly, from a logic based on the Immaculate Conception of Mary.

The argument is that Mary, as she was conceived without sin, has always been sinless. As Noonan (1967: p. 99) notes: 'The feast in honor of Christ's conception could be explained as a feast for a conception of a divine man; but the conception of Mary was believed to be the conception of a human being by the intercourse of humans. The recognition that she deserved honor at conception had specific implication for the humanity of all men.' It is thus only from the moment the Immaculate Conception of Mary was introduced as an official doctrine of the Catholic Church that the *life begins at conception* imperative became relevant in Christianity.⁴

Zoloth (2006) gives an extensive analysis of abortion ethics in the Jewish tradition. Her starting position overlaps with the analysis of *Exodus*, as quoted above. From that point she looks at supplementary Jewish sources to provide a moral framework for abortion. The Mishnah gives a surprisingly specific example about how fetal life should be considered morally in stating: 'If a woman is about to be executed, one does not wait for her until she gives birth; but if she has already sat on the birthstool [yashvah al ha-mashber] one waits for her until she gives birth....' (Zoloth, 2016: p. 39.)

This example clearly shows that the fetus is seen as part of the mother's body, up until the actual birth, with no independent right to life. Zoloth's reading of the texts makes her conclude that based on a literalist reading of Jewish scripture, fetuses have no right to life, as being an extension of the mother's personhood. This goes as far as actively killing the fetus if it is conceived out of wedlock to prevent the mother from being shamed. Some Jewish ethicists even accept infanticide up to 30 days after birth: 'the period of its life was only a continuation of the vitality of its mother that remained in him' (ibid.). Zoloth provides further examples of Jewish doctrines stating that abortion (at any term) is morally legitimate, if the pregnancy harms the mother physically or mentally.

Obviously, Zoloth's interpretation of Jewish scripture is not one of universal acceptance. More conservative arguments on abortion are also made, based on the Jewish tradition. In the book *Abortion in Judaism* by Daniel Schiff (2002) these more conservative views, alongside the liberal views presented above, are elaborated upon. Schiff presents a dialogue in the Talmudic tractate *Yevamot* between two Rabbis discussing fetal status. It is linked to the prohibitions of eating *terumah*. A pregnant woman is not to eat *terumah* unless the pregnancy has lasted shorter than forty days, as the womb is until then considered to consist of "mere fluid" (Schiff: 2002: p. 34). These forty days are,

⁴ Obviously, the Christian tradition has provided other arguments regarding abortion as well. The arguments presented here are seen as the most influential. Furthermore, many of the arguments excluded here rely on notions of sexual purity given by Augustine, this makes them less relevant for the debate on fetal moral status.

again, linked to the ensoulment of male fetuses in the Aristotelian tradition. Obviously, this cut-off point is not explicitly linked to a right to life, but it is linked to a different moral status for the fetus.

Still, other interpretations of Jewish texts may shine a different light on the matter. Schiff presents a statement from the tractate *Niddah* which states that having intercourse with a woman pregnant for over ninety days should be punished with death, as intercourse was presumed to harm the fetus. This provides a radically different framework, as stating that physically hurting a ninety-day year old fetus should be punishable by death, really begs the question why abortion should be considered moral in the same period. Schiff claims that this logic should be extended to forty days after conception. This because the ninety days do not represent a turning point in fetal moral status, but a presumed difference in the effects of intercourse on fetal health.

Lastly, the most conservative view found in the Jewish tradition stems from a debate between early Christians and Rabbi's concerning the afterlife. Inspired by Augustine, some Christians came to believe that abortion was a double wrong, as the fetus was not baptized and would thus suffer an eternity in hell. This sparked a debate in the rabbinic tradition concerning the fate of fetal souls (although this fate was, of course, less related to notions of eternal damnation). A discussion between the Roman Emperor Antoninus Pius and Rabbi grounds the notion of the soul entering the body at conception, based on the Book of Job in the Old Testament (Schiff, 2002). It is not explicitly stated that the coinciding of conception and ensoulment serves as a basis for a right to life, but it is logical to see ensoulment as providing full human status. Although, it must be noted that Job regrets not having died in the womb. This may provide for a logic of ensoulment not directly providing a duty not to abort (Benatar, 2006).

In Islam, the question of ensoulment is also at the heart of different conceptions of fetal moral standing. Generally, Islamic teachings differ from abortion being always tantamount to murder, to abortion being permissible up to 120 days. Based on two verses in de Qur'an (Q 39:6 and Q 23:12-13)⁵, the fetus can be seen as undergoing different stages in increasing moral standing, but the interpretation of these verses is not clear cut. Again, a cut-off point of forty days is considered, as in Islamic tradition the "fetus" is then regarded *nutfā* (semen). The following forty days the "fetus" is considered *alaqa* (cloth), followed by forty days as *mudgha* (lump of flesh). After this an angel is presumed to blow the soul into the fetus (Shaikh, 2016: p. 120).

This ensoulment (after 120 days) may be seen as a cut-off point for the moral permissibility of abortion in Islam. Only after this period a miscarriage will be ritually mourned, and only after this

⁵ He creates you in the wombs of your mothers. In stages, one after another in three veils of darkness Such is Allah, your Lord and Cherisher. (Q 39:6)

We created the human being from a quintessence of clay Then we placed him as semen in a firm receptacle Then we formed the semen into a blood-like clot Then we formed the dot into a lump of flesh Then we made out of that lump, bones And clothed the bones with flesh Then we developed out of it another creation So Blessed is Allah the Best Creator. (Q 23:12-13)

period an intentional miscarriage is considered a criminal offence equal to infanticide. This is the most liberal position in Islam. Other Islamic teachings are more conservative.

More conservative teachings of Islam are based on potentiality accounts. So, even though the cut-off point for ensoulment at 120 days is recognized by most Islamic scholars, the potentiality of ensoulment is, by a minority, seen as a basis for prohibiting abortion at conception. Seeing the potentiality of ensoulment as grounding a right to life does not mean that this right to life is recognized as absolute by the conservative teachings of Islam. Different *fatwa*'s have been implemented in favor of the possibility of abortion in cases of genetic diseases, pregnancy by rape, or severe emotional distress caused by the pregnancy (Saikh, 2016: p.122).

The problems of contradictory religious teachings

The overview of different historical and contemporary views of abortion is far from complete. Still, even this short discussion of religious stances on abortion points towards a number of interesting observations.

Historically religious stances have always been influenced by the scientific and medical knowledge of that time (for instance the Greek teachings of fetal development), and thus changed over time. This is not to say that the teachings are hypocritical, as one should not frown upon changing positions based on the available evidence. It does mean that one can wonder whether some religious stances on abortion are sensible today, and that these questions may best be answered by applying a scientific (secular) method.

Religious principals are thus not set in stone. They are influenced by metaphysical and scientific investigation. This also applies to secular ethics on abortion. Scientific discovery on, for instance, fetal pain may change the way abortion is perceived ethically in a secular framework. So, it is not to say that scientific evidence dismisses religious views on abortion as a whole. It does mean however that scientific evidence should be epistemologically prior to a religious understanding of the world.

Even solely focusing on religious principles, an unambiguous solution to the ethical problem of abortion cannot be derived. Religious principals are shaped by their historical and cultural context. For instance, the Old Testament commandment "*Thou shall not kill*", is interpreted differently based on the question what life actually is. Some may see it as providing ground for the moral impermissibility of the death-penalty, some as ground for the moral impermissibility of killing animals, and some may use it to reject abortion practices (although the context of the Ten Commandments does not point to it applying to abortion). Given the contradictory nature of religious teachings and scripture, there is no standard to which these interpretations can be weighed without having to use ethical standards outside of religion.

On Heartbeats

Given that five American states have issued bills prohibiting abortion after the first fetal heartbeat, and that these bills have been pushed mainly by religious groups, the normative framework for the cut-off point for moral standing will be examined separately from other religious arguments. Since the heartbeat bills are not (widely) defended in the philosophical literature⁶, the discussion of these bills will be based on the arguments put forward by lobby groups pushing the bills. The main (and very successful) lobby group is the Christian activist group Faith2Action (North and Kim, 2019).

The main argument for the fetal heartbeat signifying the moral standing of the fetus is formulated as follows:

“While not the beginning of life, the heartbeat is the universally recognized indicator of life. In frantic efforts to save a life, we often hear: ‘Can you find a pulse?’ ‘Is their heart still beating?’ That’s because science has already shown us a way to determine if someone is alive. The Heartbeat Bill stops discrimination against the young and applies that same measurement to ALL [*sic.*] human life, using common instruments already present in the offices of physicians everywhere” (Faith2Action, 2019).

The document links to an academic paper defending the Heartbeat Bill by David Forte. This paper mainly discusses the legal framework of the viability standard, but does contain an intermezzo on fetal heartbeat as a possible alternative for viability. This intermezzo focusses almost exclusively on the different medical methods of detecting fetal heartbeats, but proposes the following argument:

“While viability is uncertain and ambiguous, the point at which an independent fetal heart rate is detectable (usually between the fifth and sixth weeks of pregnancy), is unambiguous, and is a strong predictor of survivability to term. It does not require determinations based on estimates by individual doctors, but can be objectively identified through the relatively simple application of medical technologies like ultrasonography.” (Forte, 2013: p.142)

Since Faith2Action states that the two arguments prevented above are the main arguments for the heartbeat bills, these will be the main focus of discussion.

The rationale of the first argument is that the heartbeat is a clear sign of life, and (presumably) life ought to be protected. The second argument is an extension of the first in that the heartbeat is seen as more objective than viability, again focusing on the heartbeat as a measurement of life. There are different problems with these arguments.

If one wants to indicate life, identifying a heartbeat is a very stringent and random method to do so. This would mean many entities that are generally considered to be alive, are actually not (for instance: bacteria, plants, trees, jellyfishes). The text states that it stops discrimination of all human lives, and

⁶ I have not found one article defending this cut-off point philosophically. Forte’s article is no exception, as it almost exclusively discusses the *legal* framework of viability.

surely the heartbeat is *a* measurement of human life, but it does not specify why a heartbeat would not grant a dog a right to life. As such it falls back on an unaccounted-for form of speciesism and discrimination against life-forms without a heart.

Furthermore, and more fundamentally, it is not clear why a method of detecting life should be the basis of a right to life. Why should a four-day old embryo not be considered alive, merely because it is not possible to detect its heartbeat? An embryo certainly is alive in the sense that it is a developing biological entity. If one wants to claim that being alive is a sufficient condition for a right to life, they should not focus on the method of detecting life. The method of detecting life may be important for the empirical question of which entities belong to the group of alive beings, but not important for the normative claim that being alive suffices a right to life. As such the Heartbeat Bills do not provide a solution to the main problem of abortion, being demarcating between (human) beings with a right to life and (human) beings without a right to life.

This links to the second argument of fetal survivability. It is irrelevant whether or not a heartbeat is an objectively strong indicator of fetal survivability. The relevant question for the moral permissibility of abortion is whether or not survivability is sufficient for a right to life. Forte (2013: p.148) claims that survivability is morally relevant because it secures the possibility of a future “independent meaningful existence”. This is a claim to potentiality that will be extensively discussed in the section on Marquis’ *Future Like Ours* account in Chapter 2 of this thesis. Here it suffices to say that it is not clear why the heartbeat should be taken as an indicator of fetal survivability, as by Forte’s own account, 70% of pregnancies do not end in miscarriages. *If* the potentiality account is morally valid, 70% of embryos in stage of development before measurable heartbeat will also survive the pregnancy, and thus aborting them would be morally wrong nonetheless.

Recapitulation

Religion shapes the political and ethical landscape of the problem of abortion. Religious views vary in logic, form, and the metaphysical principles they adhere to. Examining the main monotheistic views on abortion show that the differences between these views come from a difference in assigning importance to contradicting scriptures and their interpretations. As such, religious views on abortion may be internally coherent, but not morally decisive in light of the broader religious framework. The interpretation of religious texts is shaped by a historical, cultural, and scientific context. This also applies to secular ethics; thus, this line of logic should not be seen as an *a-priori* argument against the moral legitimacy of religious teachings. Still, when adopting a religious stance on abortion, one should consider how scientific discovery shaped religious stances in the past, and thus in how far these stances are still viable today in light of contemporary science.

An influential contemporary religious view is that the cut-off point for the moral permissibility of abortion should be at the first detectable fetal heartbeat. This is at about six weeks of pregnancy. The

main argument for this stance is that a heartbeat is an objective measurement of life. This argument however confuses a 'method of indicating life' with 'being alive', as clearly a pre-heartbeat embryo can also be alive. Furthermore, it does not provide a logic on why 'being alive' is tantamount with 'having a right to life'.

Abortion as Murder

*'Destroy another fetus now,
We don't like children anyhow,
I've seen the future, baby:
it is murder!'*

- Leonard Cohen

This chapter will deal with the most prominent contemporary anti-abortion arguments. The most radical position is that any intentionally induced miscarriage is morally equivalent to the murder of a human being. This position holds that there is no relevant moral difference between a fetus and a full-grown person. That does not, however, mean that any argument against abortion is based on an ontological equivalence between fetuses and humans, or that the clear developmental differences between fetuses and autonomous people are blindly ignored. Several strong arguments against abortion are put forward and grounded in diverse moral principles.

As stated before, the most general line of argument against abortion has the following form:

“Premise 1: It is wrong to kill an innocent human being; Premise 2: A human fetus is an innocent human being; Conclusion: Therefore, it is wrong to kill a human fetus.” (Singer in Honderich, 1995: p. 3)

The anti-abortion arguments presented below do not necessarily subscribe to premise 2 as presented in the Singer quote. This syllogism will therefore be redefined as follows to align it with arguments presented:

Premise 1: It is wrong to kill an innocent human being; Premise 2: A human fetus has the same moral relevance as an innocent human being; Conclusion: Therefore, it is wrong to kill a human fetus.

The question to what extent the ending of pre-natal life is permissible, is only relevant when it is at least possible to some extent. If life starts at conception in a moral sense, the answer to the question would simply be ‘never.’ This thesis will argue against the anti-abortion view. In this chapter the most important secular arguments will be discussed. These will mainly focus on the arguments of Richard Hare and Don Marquis.

Moral equality: The Golden Rule

In the widely cited article ‘Abortion and the Golden Rule’ (1975), Richard Hare dismisses the relevance of the traditional division between the right to life for a fetus and the right to bodily autonomy for the mother that seem to be in conflict in the abortion debate. Hare claims that:

“Rights are the stamping ground of intuitionists, and it would be difficult to find any claim confidently asserted to a right which could not be as confidently countered by a claim to another right, such that both rights cannot simultaneously be complied with. This is plainly true in the present controversy, as it is in the case of rights to property one man has a right not to starve, another a right to hold on to the money that would buy him food” (Hare, 1975: p. 203)

It is clear that rights sometimes clash. But this is only a problem when rights are to be seen as unconditional. The most famous example is the right to free speech (or expression) being limited by the need for public safety, prohibiting the right-holder to yell ‘fire’ in a crowded area. The example given in the quote about a starving man and someone having the means to still his hunger is based on a too simple understanding of rights. One can, for instance, take a sufficientarian view, holding that property rights ‘kick in’ once everyone is secured of the means for basic living (i.e. Anderson, 1999). Important in weighing rights against each other is the principle on which the rights are based. John Rawls argues for this conditionality of rights by noting that:

“There are many constraints that can reasonably be associated with the concept of right, and different selections can be made from these and counted as definitive within a particular theory. The merit of any definition depends upon the soundness of the theory that results; by itself, a definition cannot settle any fundamental question.” (Rawls, 1999: p. 130)

When rights are viewed as conditional, based on the ethical principle they are grounded on, the right to bodily autonomy can certainly be regarded as relevant in the moral discussion regarding abortion (as can the right to life of the fetus, would one want to adhere to that). Hare thus dismisses the notion of rights too firmly. A right-based approach to abortion can certainly be sensible.

Hare’s positive argument against abortion is based on the Golden Rule principle, which he restates as: “That we should do to others as we wish them to do to us” (Hare, 1975: p. 208). In applying this principle to abortion Hare states that “if we are glad that nobody terminated the pregnancy that resulted in *our* birth, then we are enjoined not, *ceteris paribus*, to terminate any pregnancy which will result in a life like ours” (ibid.).

Although presented as an anti-abortionist argument, this line of thought is not as radical as one might come to suspect at first glance. As Hare himself notes, the ‘*ceteris paribus*’ of the applied Golden Rule formulation is important for the *a-posteriori* decision about whether one should be glad to not have been aborted. The Hare formulation raises the question about what is a life worth living? Abortion can

be justified in the Golden Rule account when a life will develop that involves a great deal of suffering. This makes room for, for instance, the abortion of fetuses that will later develop Tay-Sachs disease: a disease developing in the first three to six months after birth resulting in a very slow and painful death (Vermeersch, 2016). In such a case, it can at least be argued, that such a child might be better off, had it been aborted (meaning, we would have wanted to have been aborted, had we had the genetic make-up for Tay-Sachs), and therefore abortion is not *a-priori* an immoral act.

However, dying a slow and painful death in infancy is not the sad fate most of suffer. Hare himself admits that some people are *not* glad that they have been born, but those people are still not justified in aborting fetuses that will become people that are glad to have been born. If one shows that the Golden Rule argument against abortion is not valid for even (the potentiality of) the best life a human can possibly get, a stronger argument is given against including fetuses in the moral sphere of the Golden Rule universality.

Here, the distinction between never being born and dying becomes relevant. What does it mean having an interest in being born, does it differ from an interest in continuing on living? These questions are specifically relevant since Hare wants to avoid a qualitative equivalence between fetuses and people, in favor of a potentiality relationship (Hare, 1975: p. 210). Using Derek Parfit's *Non-Identity Problem* and David Benatar's *caution argument* this section will show that 'gladness to having been born' is not a matter of subjective experience, but an appreciation that cannot be meaningfully compared to never having existed at all.

Hare recognizes the difficulties with potential life having the same moral relevance as actual life. It tends to lean to, what he calls, the 'extreme conservative' position wherein refraining from procreation is in conflict with the Golden Rule *if* the potential person would have been glad to have been born. This closely links to the *Non-Identity Problem*. This problem holds that if certain suffering is a necessary condition for someone's existence, an existence that is still worth having, the suffering is not immoral since the only alternative to the suffering is non-existence. As Roberts (2015) notes, this problem is closely related to pro-creational ethics:

"When the act of conceiving a child is moved forward or backward in time by months or even moments, or when the manner of conception is itself altered (accomplished, e.g., via in vitro fertilization rather than coitus), the result, very probably, will be the conception of a distinct child altogether. After all, any difference in timing or manner very probably will place a distinct inseminating sperm cell (out of hundreds of millions!) in proximity to the ovum or even result in a distinct ovum being inseminated. And a distinction in sperm and egg cells would seem in most cases sufficient to insure the conception of a distinct child." (Parfit in Roberts, 2015)

If the Golden Rule was strictly applied to potential life, every one of the potential persons never born due to failed procreation is seriously harmed by their non-existence, as Hare recognizes. To avoid this

problem Hare puts forward several counterarguments of which the most important one (according to Hare) is the following.

Hare claims that contraception (including abstinence) is an omission, where abortion is an act. This difference serves as a moral basis for appreciating contraception differently from abortion. It must be noted that the act/omission divide is itself controversial, especially when it comes to the Golden Rule principle that Hare himself purposefully defined according to its directive form “that we should do to others as we wish them to do to us.”, the prohibitive form being “that we should *not* treat others in ways that one would *not* like to be treated” (Flew, 1979).

Take, for example, the situation of a drowning man. Would he not want to be saved by others, does that not give him an active moral duty to save other people from drowning? This question shows that the distinction between acts and omissions is not relevant when prescribing to the Golden Rule principle (for a deeper analysis of this problem in regard to the Hare text see: Boonin, 1997). Hare recognizes this weakness, but makes another distinction to yield a *practically* sensible use of the act/omission distinction, while recognizing it is a *theoretically* false distinction in light of the Golden Rule principle. Hare claims:

“[...] there may be no morally relevant distinction, so far as the Golden Rule goes, between killing and failing to keep alive in otherwise identical cases; but if people have ingrained in them the principle that it is wrong to kill innocent adults, but not always so wrong to fail to keep them alive, they are more likely in practice to do the right thing than if their ingrained principles made no such distinction.” (Hare, 1975: p. 216)

This line of reasoning is contradictory and unsatisfactory. The appeal to common sense institution in the general population is in contradiction with the Golden Rule principle, as failing to keep someone alive is in contradiction with it, as is shown by the example of the drowning man. Furthermore, Hare’s goal is to show *why* failing to procreate is morally different from abortion. Adhering to the act-omission distinction as practically useful, because it allows people to make the abortion/contraception distinction in their everyday life, is unsatisfactory. Hare still has to argue whether this practical use of the distinction is ethically valid. It is not relevant what moral intuitions in the population are, but what these intuitions ought to be.

Even *if* it was granted that the distinction is practically useful, the consequences of this reasoning are absurd, since safe forms of birth control get different moral standing than unsafe ones: using a condom is certainly an *act*, something a man actively puts on, while periodic abstinence is an omission. There does not seem to be a big difference between the two apart from the second one being the most unsafe form of contraception (Trussell & Grummer-Strawn, 1990).

The act/omission distinction aims to save the Golden Rule principle from the ‘extreme conservative’ position in regard to the moral standing of the individual. Hare aims to show that individual potential people are actively hurt in the process of abortion, but not in the process of contraception. This person-based defense of the Golden Rule principle fails, since still many potential people are *not* born, that might claim to have been glad to have been born if contraception had not been used. Since Hare regards preventing someone from getting born that would have preferred to be born., as an immoral act, an unlimited procreative duty for everyone would still be a logical consequence of his argument.

Still, even though Hare does not *want* to claim that everyone has an active duty to procreate, although this position is a logical consequence of the Golden Rule objection against abortion, it should be taken seriously. This brings forward the previously mentioned *caution argument* by David Benatar (2006), who argues that potential humans, that are not yet born, *never have an interest in being born*. If this interest is indeed not present, not only the extreme conservative position should be rejected, but the Golden Rule objection to abortion as a whole. If there is no interest in acquiring a certain state, such as existence, it is nonsensical to claim that one should be glad this state is being met.

The difference between not having an interest in being born and having an interest in not being born must be made clear beforehand. Benatar also argues that coming into existence itself is a serious harm, but this is a separate argument that will be discussed in the pro-abortion segment of this thesis.

In the discussion whether one should be glad to have been born (relevant for the Hare claim), a comparison must be made with never having been born. The caution argument by Benatar relies on an asymmetry in the possible appreciations of this comparison. One can either be glad in having been born, compared to never having been born, or not glad in having been born, preferring never having been born. These two appreciations link to two possible ‘mistakes’ that one can in the decision whether or not to abort.:

1: aborting a fetus that would have been glad to be born;

2: not aborting a fetus that develops not glad to have been born.

Important for the caution argument is that in mistake 1 no one is actually hurt by mistaken presumption (if the fetus is aborted before the development of cognitive faculties allowing for pain/interests), while mistake 2 leads to a life-time of suffering (Benatar, 2006: p. 153). If one never comes into existence, the cognitive faculties necessary for experiencing a sense of regret are never developed. Therefore, the question whether one is glad to have been born must always be compared to a situation that is impossible to regret. In this sense, Benatar argues, not coming into existence is *never* a harm. One can, obviously, appreciate life greatly and rejoice positive things life has to offer. This does not mean that not coming into existence is *worse* for anyone, while coming into existence comes with an actual danger of a situation that is worse than non-existence. Benatar does not claim that *this*

argument supports his pro-abortion views, but it does show that 'being glad to not having been aborted' is a philosophical unsound position, that cannot serve as a basis for the Golden Rule (ibid.).

Hare seems to be aware of this problem of ascribing properties to non-existing people by noting:

"Lastly, a logician might object that these potential people do not exist, and cannot be identified or individuated, and therefore cannot be the objects of duties. [...] It would be strange if there were an act whose very performance made it impossible for it to be wrong. But if the objection were correct, the act of aborting a possible person would be such an act; by preventing the existence of the object of the wrongdoing, it would remove its wrongness. This seems too easy a way of avoiding crime" (Hare, 1975: p. 219)

Though not a direct response to the Benatar claim, this objection could also be applied to the caution argument. The problem with this response is that it is not really an argument, but more an expression of an intuition. Saying that non-existence is inherently neutral and therefore not 'wrong' may be very simple, but it is still a fact that has to be considered. Even more so since not recognizing this fact leads to the absurd position of a moral duty to procreate. If such a 'simple' counterargument against the Golden Rule objection does indeed show that the argument is not valid, it can be concluded that the Golden Rule objection is not a sound argument against abortion.

Missing out: A Future like Ours.

In his very influential paper 'Why Abortion is Immoral' (1989) Don Marquis argues against abortion by exploring why it would be wrong to kill a full-grown human being. Why is death a bad event? Marquis argues that if a general ethical principle is agreed upon that murder is bad, a principle that is also applicable to fetuses, then abortion is at least as wrong as killing persons. A too broad discussion on the ethics of death goes beyond the scope of this paper. However, presumed that death is a permanent state of non-existence, see for instance Nagel (1970), then non-existence is a morally neutral state of mind, so it is not clear why murder should be wrong.

Marquis takes death to be a bad thing, he argues for this claim as follows:

“The loss of one's life is one of the greatest losses one can suffer. The loss of one's life deprives one of all the experiences, activities, projects, and enjoyments that would otherwise have constituted one's future. Therefore, killing someone is wrong, primarily because the killing inflicts (one of) the greatest possible losses on the victim. [...] This being the case, it would seem that what makes killing an adult human being *prima facie* seriously wrong is the loss of his or her future.” (Marquis, 1989: pp. 189-190)

Marquis calls this ethic of death a 'Future Like Ours' account, since, in this view it is seriously wrong to kill anything that has a future like ours. Taken that death is a bad thing because it is a deprivation of future experiences (given that these experiences are predominantly positive), it is not immediately clear why these future experiences should be 'like ours.' Surely killing an animal deprives it of its future experiences, although those may be quantitatively and qualitatively different from ours, so there is no clear reason to presume that killing a non-human animal is *less bad* than killing a human being. Marquis recognizes this difficulty, but accepts that this argument may be used as a radical opposition to speciesism (Marquis, 1989: p. 191). This might be considered a weak point in Marquis's death account, but it will not be directly argued against here.

The real strength of this account of the wrongfulness of death is that it is non-discriminatory against cases that are difficult to account for in other theories of the wrongfulness of death. Theories about intrinsic values of human life often refer to the rationality of human beings, the suffering inflicted on the victims of murder, or a subjective desire to not die (see for instance Tooley, 2009; Benatar, 2017; Young, 1979). In these cases, it is not clear why, for instance, sleeping infants, the comatose, depressed people, or severely mentally ill people should be considered to have a right not to be murdered (or why it should be immoral to kill them, if one rejects a 'rights' account of ethics). The Future Like Ours position can account for the immorality of these deaths, while not resulting in an extreme 'sanctity of life' attitude that forbids euthanasia for people with a future of extreme suffering.

Of course, it can be argued for that these cases (infants etc.) in fact *do not* have a right to life. Killing infants may still be bad for some other reason than the deprived future of an infant (for instance the suffering such a loss may cause to families), but not for the infant (or comatose, or depressive etc.) itself. Marquis considers this option, but holds that the intuitive strength of his account of death is sufficient to take it more seriously than other accounts of the wrongfulness of death. Especially because these accounts often come up with *ad hoc* explanations why killing infants is wrong.

Although egalitarian at face value, the Future Like Ours account cannot sufficiently explain why it would be wrong to kill someone with a future deprived of valuable experiences (because of, for instance, an illness that causes constant suffering). These people may nonetheless claim to want to live, as Marquis himself notes (1989: p. 195). These cases are rare, and there may be other reasons why killing such people is bad. The Future Like Ours argument does have the strange, though maybe intuitive to some, property that the longer one had been able to live, were they not killed, the more immoral the murder is (since more valuable future is deprived of). Marquis accepts this consequence of his argument (Marquis, 2007: p. 407).

Marquis claims that the main relevant property in the moral evaluation of ending lives is whether or not this life has a valuable future. There might be other reasons why killing is bad, but the Future Like Ours account is at least sufficient (so maybe not necessary). Since fetuses, if not aborted, generally do have a Future Like Ours, aborting a fetus is immoral, at least as immoral as killing a human being. In holding this position, Marquis aims to escape the difficulty of defining personhood, and he avoids giving moral duties to potential people (the unborn) since the unborn do *not* have a Future Like Ours in actuality (Marquis, 1989; Benatar 2007). Marquis thus argues that life starts at conception and abortion, in any term, is wrong:

“The future of a standard fetus includes a set of experiences, projects, activities, and such which are identical with the futures of adult human beings and are identical with the futures of young children. Since the reason that is sufficient to explain why it is wrong to kill human beings after the time of birth is a reason that also applies to fetuses, it follows that abortion is *prima facie* seriously morally wrong” (Marquis, 1989: p. 192)

The Future Like Ours objection against abortion is relevant to this day, though highly contested. This thesis will present the main counter-arguments against this account, aiming to show that it does not hold up to philosophical scrutiny, since it holds serious flaws regarding the nature of identity, and the meaning of interests. Eventually, it cannot escape having to give a definition of personhood that is different from a genetic description.

In defending that the Future Like Ours account is morally sufficient to give a basis for the wrongness of ending lives, a central question is *whose* future? Which entity will have a Future Like Ours?

This question is specifically relevant since Marquis wants to exclude potential persons from his objection against abortion. In the consideration of this question, Marquis presents four possible subjects of harm by contraception, being 1) some sperm or other; 2) some ovum or other; 3) a sperm and an ovum separately; and 4) a sperm and ovum together (Marquis, 1989: p. 201). Marquis rejects these subjects, claiming that a future begins with the fertilized ovum as follows:

“Choosing (1) is arbitrary because one could as easily choose (2). And (2) is arbitrary because one could as easily choose (1). Subject (3) cannot be right because then there would be too many futures—that of the sperm and that of the ovum—rather than only the one future of the person who would result were contraception not practiced. Finally, he says that (4) cannot be correct. There is no actual combination of sperm and ovum. If it is a possible combination, we cannot say, of all the possible combinations, which one it is.” (Benatar on Marquis, 2007: p 158)⁷

When defending that contraception falls outside the category of lost valuable future, Marquis’s argument starts to fall apart. Because he does not want to assign morally relevant properties to subjects except for their being able to have a future, category 4, significant for contraception *is* a relevant subject deprived of a future.

Firstly, it is an epistemological uncertainty which sperm will fertilize the egg, but not a morally relevant one (for Marquis’s account): *some* valuable future is deprived, had we had enough information about every direction of every sperm, we would already be able to calculate which one (see Norcross, 1990 pp. 269-271).

Secondly, excluding 1) from the moral sphere is only viable in the contingent situation of diploid procreation, would the sperm-cell (or ovum) contain *all* genetic information it would be morally indistinguishable from a human in the Marquis account (see Benatar, 2007 pp. 158-159). It is not clear why one genetic disposition should be the full basis of a moral relevance to life, although it has to be for the Marquis account to exclude sperm-cells from having the same moral stance as children.

Thirdly, identical twins can be formed in the womb up to two weeks after conception. For this reason, one can still not argue that an abortion before this period is the deprivation of one *specific* Future Like Ours, as Nichols (2011: p. 505) notes. Since Marquis notes that one determined individual future must be lost for murder to be immoral, abortion should at least be considered moral up to two weeks (as an embryo can still split into 2 in this period). If this view is rejected, the epistemological uncertainty argument excluding category 1) should be rejected, since the physical process of conception is formally determined, and one is back to the Future Like Ours account being an argument against contraception (and masturbation) in general (Singer & Marquis, 2006).

⁷ The original Marquis argument (1989, pp. 201-202) is formulated unnecessarily lengthy, the Benatar summary of the argument does not differ substantively from the original argument.

Conclusively, the Future Like Ours account takes fetuses to have greater moral standing than adults, since they have, *ceteris paribus*, a longer future than adult human beings. In the Future Like Ours account therefore, one loses moral relevance progressively with every moment one gets older. This seems counterintuitive at the very least. Another definition of life interest is generally more intuitive and seen as the most promising account to replace the Future Like Ours: Time Relative Interest (DeGrazia, 2007; McMahan, 2002). In this account what causes the badness of death is one's psychological, dispositional interest in future events of value. What matters in this account is psychological continuity. When psychological interests are taken as the moral basis for the wrongfulness of death, a fetus has no moral stance since it has no psychological connection to its future self.

Recapitulation

The two most promising arguments against abortion are the Golden Rule Objection and the Future Like Ours account. These arguments claim that fetuses are morally equal or more valuable than adults which provides the conclusion that abortion is morally akin to murder. They both, however, cannot provide a clear distinction between contraception and abortion, or even abstinence and murder. Given the moral neutrality of non-existence it is not clear why there should be a duty to procreation. Furthermore, the extreme position of dutiful procreation is something that these arguments want to exclude, yet they fail to do so. There is currently no normative basis to reject abortion *a priori*, this does not mean that the killing of any human being is morally justified. Thus, a positive argument for what qualities provide moral standing has to be presented.

Abortion: Radical Permissibility

'We get to choose which forms of life we feel are sacred, and we get to kill the rest.

Pretty neat deal, huh? You know how we got it? We made the whole thing up!'

- George Carlin

Having established that there is no good reason to claim that life starts at conception, or at least that the most prominent pro-life arguments suffer from serious argumentative flaws, the question arises where does life start from a moral point of view. In this chapter the different accounts of personhood on the other extreme will be discussed. These will be mainly focused on the pro-death view of abortion defended by David Benatar, and Michael Tooley's influential and controversial defense of infanticide.

The pro-death view holds that, once pregnant, *not* having an abortion is immoral: the pregnant woman has an active duty to abort. The Tooley view holds that abortion is permissible at every term of pregnancy and for the first period of infancy.

This chapter will conclude that both the Benatar and Tooley accounts are too radical, giving a need for a moral framework for a cut-off point in pregnancy where abortion becomes unethical, or a cut off-point in the first period of infancy that is less stringent than in Tooley's account. First the Tooley defense of infanticide will be discussed, secondly the Benatar 'pro-death' view of abortion.

Abortion and Infanticide

In his controversial paper 'Abortion and Infanticide' (1972) Michael Tooley argues that there is no sensible cut-off point in pregnancy. According to Tooley one should, when rejecting the 'extreme conservative' view that life begins at conception, also hold that infanticide is morally permissible. According to Tooley there is no morally relevant difference between a fetus and a newborn. In his paper he aims to define personhood: what property gives a (biological) entity a right to life? Tooley claims that "an organism possesses a serious right to life only if it possesses the concept of a self as a continuing subject of experiences and other mental states, and believes that it is itself such a continuing entity." (Tooley, 1979: p. 40)

This is called the self-consciousness requirement. This requirement excludes newborns up to 10 weeks from having moral standing. This makes, when accepted, abortion permissible for any reason throughout the full duration of a pregnancy. Important for understanding this position is Tooley's notion of rights and interests. From these definitions his conclusions about the 'rights to life' are drawn. Tooley considers the following (very brief):

1) When A has a right to X this means that if A desires X, then others are under a prima facie obligation to refrain from actions that would deprive her of it.

2) For A to desire X, A must have a behavioral disposition towards X. This means that A is the sort of thing that is a subject of experiences and other mental states, therefore A is capable of desiring X.

3) Having a right to life thus means that A is capable of desiring to continue to exist as a subject of experiences and other mental states, and if A does desire to continue to exist as such an entity, then others are under a prima facie obligation not to prevent him from doing so.

4) A being capable of desiring a state of continued existence means that A has the conceptual framework to understand what it means for a proposition to be true: the (linguistic) proposition being to continue to exist as a subject of experiences and other mental states.

5) Therefore, it is a necessary condition of beings having a serious right to life that it possesses the (linguistic) concept of a self as a continuing subject of experiences, and that it believes that it is itself such an entity.

(Tooley 1979: pp. 44-47)

When applied to infants of a very young age, it can be said that they lack the conceptual framework of a continued self, and therefore a right to life. It must be made clear that sentience is not a necessary, nor a sufficient condition for a right to life in the Tooley account. According to Tooley, kittens, for example, are (probably) sentient but lack the linguistic tools for conceptualizing a sense of self.

Tooley also presents a few exceptions to the argument, to avoid counterexamples that might work as an intuition pump against his argument. Tooley states that “[...] an individual's right to X can be violated not only when he desires X, but also when he would now desire X were it not for one of the following: (i) he is in an emotionally unbalanced state; (ii) he is temporarily unconscious; (iii) he has been conditioned to desire the absence of X.” (ibid.)

These exceptions are not further defended with arguments, but will also not be refuted here. When disputing the self-consciousness account of personhood, one of the four premises must be shown to be false, or a more meaningful alternative account of personhood must be presented. Since the publishing of the article many refutations have been given. The most important ones will be laid out.

Davis argues that Tooley's account of personhood is not as descriptive as he claims it to be, and Tooley is begging the question. It is not clear why the concept of a person should be limited to psychological traits, while ignoring the social- and political context of personhood (Davis, 1985: p. 440). A person can also be understood as a member of a political society, and therefore the societal context of abortion should be considered as well, as communitarian philosophers argue. The nature of interest utilitarianism, which Tooley defends, is deemed as too individualistic in this counterargument. Personhood is not defined by Davis in terms of psychological properties, as Tooley does, but as the following: “[Being a person] involves being a full member of the moral community, and the

identification of a being as a person involves constructing, and not simply revealing, this community.” (Davis, 1985: 440)

A more extensive analysis of interpersonal moral personhood can be found in the chapter 4 on Viability. But as Davis uses this communitarian form of personhood as her main critique on Tooley, it is also worth considering here.

Davis’ account of personhood seems rather contingent as, in her own words, it relies on the identification of infants by the moral community. A moral community, for Davis, is based on recognition. This is important to note as Davis herself claims that a moral community is in this way constructed, not revealed. The moral standing of a subject in this view can be restated as *being recognized by a community in having moral standing*. Surely, in some communities (such as orthodox Christian communities), fetuses and infants are recognized as having moral standing. Yet in other communities (such as some Hindu communities) infants are *not* recognized as having moral standing (Manring, 2018). Both examples are rather extreme, but it does show the problem of contingency in the communitarian account of moral standing. One should be able to identify if the recognition of moral standing is ethically grounded by a principle outside the empirical reality of the (lack of) recognition by a certain community. Or one should accept that an infant in orthodox Hindu communities can be (morally legitimately) killed where an infant in a Christian community cannot.

A more important counterpoint to Tooley’s defense of infanticide is that it is not epistemologically clear how impoverished the ‘thought-life’ of a neonate actually is. So even if the personhood account is valid, one is still stuck with the ‘other-mind’ problem in deciding *when* an infant (or fetus) becomes a person.⁸ Neurological and psychological research can provide important information on this problem. There is clear evidence, for instance, that a fetus is not sentient before the 24th week after conception (Benatar, 2001). This will be further elaborated upon in 5 chapter: Abortion and Personhood. It is however, an important point for Tooley’s account. It is much more difficult to gain knowledge of the psychological attitudes in non-linguistic subjects like infants, than it is to gain knowledge of sentience.

As it is difficult to gain knowledge of the preferences of non-linguistic subjects, it is not clear why other practices, like torture of animals and infants, should be deemed immoral in the self-consciousness account. Tooley does consider this. He claims that a kitten has a right not to be tortured, but not a right to life:

“Something that lacks the concept of a self cannot desire that a self not suffer, it can desire that a given sensation not exist. The state desired the absence of a particular sensation, or of sensations of a certain sort can be described in a purely phenomenalistic language” (Tooley, 1979: p. 63)

⁸ This is not, as will be argued, an empirical impossibility per se. The aim of this thesis is to show that consciousness can be inferred by third persons, but inferring a competence for linguistic competence in infants is still very difficult and will certainly differ per case.

When accepting that not every desire should be grounded in a linguistic competence, the self-consciousness basis for a right to life becomes superfluous. This is an important problem for the Tooley account, as an infant can have a phenomenistic desire (that is morally relevant for Tooley) for which continued living is a necessary condition. A phenomenological desire is understood here (as Tooley does not further specify this concept) as a desire that is not based on conceptual propositions, like understanding one-self as a continuous being in time, but rather on phenomenological experience.

A kitten can feel pain and aims to avoid this pain. It does not rely on any conceptual tools for this desire. Including these desires, as Tooley does, is very problematic for his defense of abortion. For instance, an infant can be thirsty. For its thirst to be stilled, continued living is necessary. So, while life may not be a primary interest for an infant, and not an *a priori relevant interest*, it becomes a relevant interest by means of being a necessary condition for satisfying interests that Tooley does deem relevant. Also, desires change retrospectively. A child can have a desire to have candy for breakfast, but a desire not to have had candy for breakfast when stomach ache kicks in afterwards. This leaves room for morally considering future desires that the self-consciousness framework cannot account for (Pahel, 1987).

For these reasons the self-consciousness view as a necessary condition for a moral standing is too stringent and conceptually contingent. Although the strength of the argument lies in a definition of properties that must be present in actuality rather than potentially, and so avoids a position of moral relevance that is too general, it is not clear why a right to life is based on these properties. Another principle for a minimum of relevant principles must therefore be considered. This because sentience may yield interests that do not require a linguistic conception of the self, but yet require continued existence as a necessary condition. For the Tooley account to be valid, a solution must be formulated to this problem.⁹

⁹ This is discussed more extensively in Chapter 5: Abortion and Personhood. The position defended in this thesis is most similar to Tooley's in structure and focus on self-awareness, yet less radical.

The Pro-Death View

David Benatar's Pro-Death view of abortion holds that "it is not any given abortion that requires justification, but rather any failure to abort" (Benatar, 2007: p.161). This view has gained broad controversy, as the previous presented arguments have. Furthermore, the position is included in this paper because it is a relatively new argument, even though most recent literature concerning abortion deals with the older potentiality arguments discussed in the second chapter, and also because it is a surprisingly strong argument.¹⁰

Benatar holds that coming into existence is always a harm and that life is generally bad. Therefore, there is an interest in *not* coming into existence. *If* coming into existence is a serious harm, abortion is in the interest of the fetus, contrary to general intuition. This does, obviously, presupposes that "being a zygote or fetus" is not already a state of existence in the relevant sense of the word. To see if this is a valid presupposition, the arguments for *why* existence is a harm will be first presented.

The main argument for the pro-death view is the "asymmetry argument" which holds that there is an asymmetry between existence and non-existence. Being deprived of good things is not a harm to non-existing people, since those people cannot be harmed, but pain is a harm for those that do exist. This argument can be made clearer in the following matrix:

Table 1: the asymmetry argument.

	Scenario A (X exists)	Scenario B (X never exists)	
-	(1) Presence of pain (Bad)	(3) Absence of pain (Good)	+
+	(2) Presence of pleasure (Good)	(4) Absence of pleasure (Not bad)	0

¹⁰ Still, Benatar's argument will be analyzed less extensively than the previous positions, as his position is already partly discussed in the section on Hare and will be further discussed in Chapter 5.

(Benatar, 2007: p. 46)

Benatar does consider other asymmetries and arguments against existence but they are generally variations on the matrix presented above. Since the possibility (and avoidance) of pain is the relevant factor in this argument, Benatar holds that one has a duty to abort up to the point of the fetus being able to feel pain, and presents lengthy neurological research for that point being around 28 weeks of pregnancy. Here the focus lies on the asymmetry argument: is non-existence a preferable state?

In meaningfully comparing non-existence to existence, the focus generally lies on whether a life is *worth living*. Benatar argues that no life is worth starting, but one can have an interest in continuing life once one already exists, especially if the goods in life supersede the bad. Certainly, for some people it is better to never have been, as is discussed in ‘the Golden Rule’ in chapter 2. But this is only the case if there is a *net harm*. For those who live a life of *net benefit* this comparison is neutral, since non-existence is a state that cannot be regretted (DeGrazia, 210). For this reason, fetuses may not have an interest in existence, but also not an interest in non-existence.

Furthermore, it is not self-evident that the only way things can be bad is if they are bad *for someone*. A universe without sentience may still be bad *compared to* a universe with subjects living a life worth living. Benatar’s account of the impersonal benefit of harm-avoidance in non-existence is what is called ‘the slogan’. Goods can be impersonal, just as the lack of harm can be an impersonal good. When taking the framework of comparative states of possible universes, a lack of sentience (the clear result from no life being born) can actually be a bad thing, without anyone being hurt (Smilansky, 2008). This makes Benatar’s view too focused on individual avoidance of suffering.

Recapitulation

There is no conclusive reason to suppose that abortion can take place at any term of the pregnancy or beyond that time. Also, changing the moral pith of the matter to pro-abortion rather than pro-choice is too radical of a stance since (impersonal) sentience can have value, given that a sentient being does not suffer from a net harm once brought into existence. There is thus no good reason to say abortion is *always* morally permissible *a priori*. Thus, a positive argument for what makes a human has moral standing needs to be presented.

Viability

'There is no stronger bond than the one that shackles mother to child.'

- Milan Kundera

Currently, the focus for a cut-off point of the moral permissibility of abortion lies on the viability account: the human being able to live outside the womb in a state of physiological independence (not actual independence since the human can be allowed to be dependent on medical equipment). This position is mainly, philosophically, based on Thompson's 'A Defense of Abortion' (1971) and it is the general legal cut-off point in countries where abortion is permitted (Tooley, 1979; Thomson, 1971; Shrage, 2005).

Since the viability approach has influential legal consequences, this approach will be considered in further depth than the other position. Thompson's account of viability is philosophically rejected by the anti-abortionist as well as many abortionists, but still defended by some contemporary abortionists. None of the positions presented above deem the viability account to be morally valid. Still, it is an influential position in the philosophical literature concerning abortion. Thompson's argument is based on a thought experiment:

One wakes up connected via a blood line to a violinist. If one agrees to stay connected to the violinist for 9 months, he will live, if one chooses to disconnect, he will die.

(Thompson, 1971)

Thompson sees staying connected to the violinist as a morally supererogatory act. This means that staying connected to the violinist is morally good, but disconnecting oneself not morally bad. One has no moral duty to stay connected to the violinist on account of bodily autonomy. So even though the violist has a right to life, it does not have the right to use others bodily functions to exercise that right without their consent. The same goes for fetuses, Thomson claims. Even if it is presumed that fetuses are persons with a right to life, their physiological dependence on the mother allows for the possibility of abortion. This possibility stops at viability, since at that point the physiological dependence is overcome.

The benefit of this argument is that it makes the question whether a fetus is a 'person' irrelevant. Following the viability approach abortion is morally defensible even if the premise that a fetus is a person is accepted. The fetus has the same moral standing as human adults, the fact that its bodily survival is completely dependent on an infringement of the bodily autonomy of someone else (the mother) makes that it loses a right to life: the mothers bodily autonomy trumps the right to life of the fetus (Thompson, 1971). This position thus avoids the difficulties of conceptualizing personhood, or (arbitrarily) deciding morally relevant characteristics.

Still, the viability approach does not escape the conceptual scheme of the abortion approach as summarized in the syllogism by Singer:

“Premise 1: It is wrong to kill an innocent human being;

Premise 2: A human fetus is an innocent human being;

Conclusion: Therefore, it is wrong to kill a human fetus.” (Singer in Honderich, 1995: p. 3)

In steering the moral intuition to the mother’s bodily autonomy, premise 1 is rejected. It is not *a priori* wrong to kill an innocent human being, according to Thompson. She does not give additional arguments for the claim that a right to life is conditional. Thompson takes murder to be morally wrong and claims, based on viability, that abortion is not murder even though it is an act of ending life (Thompson, 1971: p 4-5).

A lot of problems arise with this account. Because this position is so influential, philosophically as well as legally, the most raised objection to the viability approach will be examined in greater depth. The most common objections to the viability approach are the *tacit-consent objection* (raising questions about sexual consent); the *stranger versus offspring objection* (raising questions about responsibility toward direct family); and *the killing versus letting die objection* (raises questions about negative versus positive ethical actions). Since the last one has already been discussed in the chapter on the *Golden Rule* approach, this objection will not be dealt with in this chapter. The aim of this thesis is to show that these common objections fail, but the viability approach should be rejected on being morally and technologically contingent.

Tacit Consent

The objection of Tacit Consent refers to the involuntary nature of the violinist/woman predicament. In the thought experiment the woman “suddenly wakes up” hooked up to the famous violinist. Whereas with conception, cases of rape excluded, the physical act leading up to pregnancy are consensual (even though the pregnancy might still be involuntary). This objection can be summarized as follows:

“Because the woman's pregnancy is the result of a voluntary action, she should be understood as having tacitly waived her right to expel the fetus or (what amounts to the same thing) as having tacitly granted the fetus a right to stay” (Boonin-Vail, 1997: p. 288)

In cases of rape it is clear that the woman does not have a responsibility for her pregnancy. So, the tacit consent objection is not a sufficient basis on which abortion in rape-cases should be deemed as morally impermissible. Excluding rape-victims from the moral impermissibility of abortion does have a weird consequence, as Thompson notices: “Surely the question of whether you have a right to life at all, or how much of it you have, shouldn't turn on the question of whether or not you are the product of a rape.” (Thompson, 1971: p. 2)

Furthermore, the question about consent raises questions on the relevance of contraception. Is, in cases of failed contraception, the pregnancy still consensual? This question is empirically relevant as in the USA, 45% of the pregnancies were unintended. That is, ‘the woman became pregnant when she either did not want a child or had wanted to delay having a child’ (Finer & Zolna, 2016). Thompson argues that in cases of failed contraception the woman cannot be seen as responsible for the pregnancy, as she sought active means to prevent it. Still, having protected sex means knowingly taking the risk to get pregnant, as contraceptive is known to sometimes fail. In this sense, the woman (or couple) is responsible for a pregnancy *even* in the case of failed contraception (Beckwith, 1993), since the only infallible contraception is abstinence.

The difference between ‘consensual’ and ‘voluntary’ is important in judging whether the right to bodily autonomy is waived in voluntary intercourse. Even though action A leading up to situation S was consensual, this does not mean situation S is consensual. Boonin-Vail (1997) reformulates the thought experiment. Suppose one takes a stroll at night in a park *knowing* that kidnappers *sometimes* hide in the bushes waiting for a victim to use for saving the violinist. The fact that someone entered the park knowingly and *voluntarily* does not mean that ending hooked up to the violinist is *consensual*. In other words, action A can have foreseeable yet non-consensual situation S as a result. As is the case with failed (or non-use of) contraception.

This principle can even be extended to explicit consent. Imagine that one consensually hooks herself up to the violinist. But after two months the procedure becomes too painful, or emotionally stressing. Is it then immoral to free oneself from the violinist? This seems to be morally tantamount to explicitly consenting to donate a kidney, but bethinking it just before the operation. Even if that causes the to-be receiver to die, the explicit consent does not waive the right to bodily autonomy. The tacit consent objection to the viability approach does so rest on a confusion between an act and the situation created by that act which can be summarized as follows: “The mere fact that [A’s] pregnancy resulted from voluntary intercourse for which [A] is responsible, then, cannot be reasonably understood as evidence that [A] has consented to anything with respect to the fetus.” (Boonin-Vail, 1997: p. 295)

Strangers vs. Offspring

The second objection to Thomson’s argument is a rejection of the abstract individualism of the thought experiment. The woman and the violinist are complete strangers, where, in the case of abortion, the fetus and the mother (and father) are closely relationally connected. This objection is most explicitly put forward by Beckwith (2005) in his book *Defending Life*.

Personhood is relational, according to Beckwith, and different relations come with different responsibilities. A parent’s responsibility to a child is more pressing than to an unknown individual. Beckwith comes with a thought experiment closer to real life than the violinist thought experiment.

A couple has protected sex, the contraception fails and the woman secretly carries the child to term. The father does not want, nor has he ever wanted, to have a child and is unaware of the mother's pregnancy. Soon after the child is born, the mother seeks financial support from the father, which he refuses. She takes him to court and he loses.¹¹

Beckwith claims that:

“There is no doubt that the father was careful and precautionary in his sexual activity with his child's mother, and he had indicated by both his contraceptive actions and his words that he did not want to become a father. Yet, the child support laws virtually everywhere offer a different moral understanding of this man's responsibility, one that does not put a premium on autonomy, choice, or explicit intention. Under these laws, the child's father is obligated to provide financial support for his child precisely because of his paternal relationship to this child, a reason that Thomson would consider not morally relevant.” (Beckwith, 2005: p. 182)

It is not clear why a legal consensus can serve as a moral argument. Would Beckwith's position be different had he lived in a state where child-support was *not* a legal obligation? This seems to be contingent. Still, this is not the central argument. The question considered is whether a parental relationship waives the right to bodily autonomy. To understand what a confirmative response to this question entails, the kidney transplant example briefly mentioned in the previous subtext becomes relevant.

Suppose a woman (knowingly) carries the gene for a kidney disease with a heredity chance of 25 percent. This woman acts parallel to the thought experiment described by Beckwith. The infant unluckily falls prey to the kidney disease. The woman now sues the (unknowing and unwilling) father to force him to give away his kidney to save his child.

It is not clear why the father's (unknowing and unwanted) parental relationship to the child is a sufficient ground to force him to undergo a severe operation like a kidney transplant. Surely a parent has greater responsibility towards his/her child, but the relatively mild personal consequences of paying child support are not analogous to the severe bodily harm and suffering that involuntary giving birth or enforced kidney transplants entails. What Beckwith proposes is not only an infringement on property-rights on the basis of parental relations, but an infringement on bodily autonomy and integrity. Strangely enough Beckwith considers this and admits that one cannot have a moral obligation to donate a kidney but “that this case is not analogous to pregnancy and abortion” (Beckwith, 2005: p. 184).

Beckwith does not give a formal argument for why parental relationships are sufficient grounds for a moral rejection of abortion. His claim is that the parental relationship objection is:

¹¹ The original thought experiment is formulated unnecessarily lengthy, this is a summary of the key points.

“[Grounded] in deep moral intuitions, that seem prima facie correct, that [...] our notion that parents have a natural, pre-political, obligation to care for their child even if the child’s existence was not the result of a conscious plan to bring the child into being.”

(Beckwith 2005: p. 184, and similarly pp. 177; 179; 183 of the relevant chapter)

Even if this is true, moral intuitionism applied to abortion ethics is a flawed method of epistemology. Many of our intuitions are the product of our evolutionary history, especially when it comes to the general attitude towards children. These intuitions are biased towards pro-natalist, anti-abortionist positions and, as such, do not reflect a necessarily valid approach towards abortion ethics (for an extensive explanation of this evolutionary background see: Benatar, 2006: pp. 8-13). Committing to generally held moral beliefs, especially in the case of abortion, is in this way a naturalistic fallacy. A discussion on meta-ethics goes beyond the scope of this thesis, but ethical intuitionism is widely disregarded in contemporary political philosophy, especially when it comes to issues of great disagreement of which abortion is one (Stratton-Lake, 2014).

Moral Contingency

Tacit consent and relational responsibility do not hold sufficient ground to reject Thomson’s argument that personhood is irrelevant to the moral question of abortion. Yet both arguments do not defend the position that personhood is in fact a necessary factor in the ethics of killing, but rather look at the limits of rights to live. The moral contingency objection is less prevalent in the philosophical debate on abortion. This section aims to build the case that viability is a non-coherent and irrelevant condition for yielding a right to life, creating a need for a definition of personhood on which a moral standing can be based.

In her book ‘Abortion and Social Responsibility’ (2003) Shrage criticizes the viability approach by stating that, although viability cleans the debate from religious and metaphysical presumptions, its focus rests too much upon scientific and medical advancements. Shrage refers to Zaitchik who explains why viability should be seen as the point where a fetus can be kept alive artificially, with the most advanced technological means possible:

“Clearly enough those who want to assign moral significance to viability do not want viability to depend upon morally arbitrary factors such as geography or socioeconomic status. No one would want to say that by flying from Cambridge to Calcutta a woman suddenly gained the right to destroy a formerly "viable" but now "pre-viable" fetus, or that the fetus suddenly ceased to be a person or human, or that it suddenly lost a "right to life." So, when we say that a viable fetus is one which could be saved through artificial means, given the current "state of available medical technology" (Zaitchik in Shrage, 2003: p. 14)

Zaitchich's definition can even be extended, as it is not clear why the state of accessible medical technology should be currently available. At present, the borderline limit of artificial viability is 22 to 24 weeks. Yet, technological developments are expected which can increase viability to 16 weeks, although the time of availability of these technological means lies too far ahead to make clear predictions on when this will be (Nardoza, 2016). Holding on to the definition of viability on the current state of medical technology, means that a fetus *now* has a right to life at 22 weeks, yet a *future* fetus has a right to life at 16 weeks. This gliding scale makes viability more restrictive on abortion rights as time passes, until abortion would be completely restricted once the technology for artificial wombs is developed:

“[Viability] does not mean that the newborn is able to survive without any technology, such as ventilator assistance. Therefore, the current approach of using viability to determine abortion rights would come under challenge with a working artificial womb because a fetus would always be able to survive outside of its mother's womb, so long as it was placed in an artificial one.” (Schultz, 2009: p. 889)

This makes a right to life, and the ethics of abortion, a matter of luck when it comes to viability. A woman wishing to undergo an abortion at 18 weeks of pregnancy is lucky that the technological developments for 16-week fetal artificial viability is not yet realized. Her right to bodily autonomy (or the fetus' right to life) is under constant threat of science. And, as the nature of personhood is not considered in viability, a right to life and bodily autonomy become completely irrelevant in the broader temporal view of scientific developments. It is not necessary that the reference point for viability should lie ahead. No one that cannot live (biologically) autonomously, has a right to life, as at some point in the past they would have been non-viable.

The reliance of moral judgement on technological development is the first problem with viability. The second problem is that of a contingency in moral relevance. This is clearly explained by an example given by Tooley: “[An] example is the case of Siamese twins who have learned to speak. One doesn't want to say that since one of the twins would die were the two to be separated, it therefore has no right to life.” (Tooley, 1983: p. 393)

Thomson does not in fact, as the Tooley example implies, pose that a fetus has *no* right to life. She only claims that this right does not imply the right to use someone else's body. Still, the Siamese twins example poses difficult problems for the viability approach. Conjoined twins do not have the right to kill each other, nor does a third person has a right to kill one of the two, even if one of the two explicitly asks for this. Himma (1999) further develops this argument and claims that bodily autonomy does not necessarily limit the possibilities for a third person to actualize his right to life by using someone else's body.

Himma states that rights describe the obligational relationships between a group of equal members that are *autonomous* and *independent*. Of course, the violinist and the woman in Thomson's experiment are not *independent* as they are physically connected, yet they share a history of independency that is infringed upon without mutual consent. Whereas with Siamese twins, and fetuses, the physical relationship is *interdependent* by nature. Himma states:

“Clearly, one independent autonomous being can acquire a right to use the body of another only if the latter does something to give the former that right. But this kind of analysis does not apply to [Siamese Twins] because their history of physical interdependence limits [...] contractual capacity with respect to [each other's] body.” (Himma, 1999: p. 431)

That does not adversely mean that that a fetus has right to use the body of its mother, as one part of a Siamese twin *does* have the right to use the body of his brother. The difference between a Siamese twin and a pregnant woman is that in the latter the counterpart is not an autonomous entity.

Himma holds that the lack of autonomy waives a fetus' rights, not a respect for bodily autonomy. Whether autonomy is a necessary or sufficient condition for right-bearing is beyond the scope of this chapter but will be discussed further in the chapter on personhood. The Siamese twin example makes clear, however, that the viability approach is not fruitful in yielding a moral cut-off point for abortion as it relies too much on physical aspects of pregnancy and fetal biology. The same holds good for the problem of viability and technological development.

Recapitulation

The viability approach is very influential in the abortion debate, philosophically and legally. However, the great benefit of viability, that it does not need an account of personhood, is also its weakness. The two major objections against viability are the tacit-consent objection and the stranger vs. offspring objection. These objections do not rely on an account of personhood but respectively fail in a coherent definition of consent and explanation of the limits of parental responsibility. A third objection, which is not discussed as broadly as the former two in literature, is here called the moral contingency objection. It poses that the problem with viability is that moral standing is derivative from physiological independence, which is contingent for two main reasons. The first is that physiological independence relies on morally insignificant variables like place and time. The second is that physiological independence may be important in Thomson's thought experiment, but are not applicable to fetuses, as they are physiological dependent by nature. An abortion ethics independent of personhood is thus not fruitful, creating the need for a cut-off point in personhood between non-existence and violinists.

Abortion and Personhood

I used to be nothing. I did not exist, and never had a bad day.

- Doug Stanhope

This chapter will look at different accounts of ‘moral personhood’, meaning the characteristics that endow a being with moral standing, more specifically a right to life. A first account of personhood was already discussed in Chapter 3, with Tooley’s linguistic approach to personhood. Also, Himma’s condition of autonomy, briefly mentioned in Chapter 4, can be seen as an account of personhood or at least as a defining characteristic for a right to life. This chapter will consist of two parts. First, a description of personhood will be developed, based on contemporary philosophy of mind and identity. Secondly, this description will be linked to empirical research on antenatal development, to infer when personhood is actualized in the fetus.

The first part on describing personhood will not be exclusively descriptive, as it is a personhood *grounding moral stance*. Not all aspects of personhood may therefore be relevant. For instance, one might say that personhood is partly socially constructed, and therefore based on the relational environment of a subject (for instance: Butler, 2004). This might, or might not, be true, but it is not directly relevant to a right to life (as discussed in Chapter 4). So, a constant link will be made between the “descriptive” theory of mind, and the normative theory of moral inclusion. In doing so, this thesis will propose a new cut-off point for abortion. A cut-off point that is not based on physiological properties, nevertheless scientifically sound. The second part will be exclusively empirical and therefore less lengthy.

Consciousness and Sentience

Central to the question of personhood the concept consciousness. Consciousness is not only hard to explain, but hard to operationalize to begin with. However, before getting to consciousness, a more basic concept in philosophy of mind is introduced: sentience.

Sentience plays a central role in the philosophy of mind as well as in ethics. Sentience is an influential basis for arguments on moral extentionism to the animal sphere (Chan, 2011), but is also often regarded as a prerequisite for moral consideration (Bortolotti, 2005). This thesis will argue that sentience is a prerequisite for moral consideration *and* personhood. First, sentience will be defined. Subsequently, a case will be made for sentience as a prerequisite for moral consideration. Lastly, it will be defended that although sentience is necessary for moral standing, it is not, in itself, a sufficient condition for a right to life.

Defining Sentience

The most influential paper in the definition of sentience is Thomas Nagel's *What is it like to be a Bat?* (1974). Nagel describes sentience as a 'what-it-is-likeness.' What-it-is-likeness is defined as the subjective character of experience, outside the objective realm. Nagel puts it as follows: "But no matter how the form may vary, the fact that an organism has conscious experience at all means, basically, that there is something it is like to be that organism." (Nagel, 1974: p. 436)

This subjectivity is what is meant with sentience. It is a first-person point of view. This is not to say that sentience is conceptually aligned with consciousness. There can be sentience, at least in theory, without consciousness. For instance, Chalmers (2015) claims that every part of physical reality holds a subjective quality as well, a position called pan-psychism. Atoms, for example, experience "raw subjectivity" without an understanding of these qualitative properties, according to Chalmers.

A rebuttal of Chalmers' ideas is beyond the scope and point of this paper. Yet, Chalmers' theory of pan-psychism aims to show that sentience is at least conceptually different from consciousness. The position of this thesis holds the assumption that sentience is a state of being that can be absent: there is a way that it is like (feels like) to be a bat, but not a way that it is like (feels like) to be a glass of water. It is possible, so it is assumed, to have a world without sentience. (For an extensive rebuttal of Chalmers' "universal subjectivity", see for instance Carroll, 2016). It is thus also possible to be an entity without sentience.

In defining sentience in terms of 'what-it-is-likeness,' it is not necessary to have any understanding of sentience for the subject holding it. For instance, it is likely that a cat has sentience, that it is an entity with experience, but it probably does not realize that pain is a signifier of physical harm. So, a cat is sentient, but not conscious in the sense of being able to reflect on itself and its environment.¹² Of course, a cat will lick its wound, but it is (at least) very probable that the feeling of pain triggers an intuitive response (licking), rather than a reflective response (considering whether to lick the wound). This is important to point out, since here the difference between sentience and personhood becomes clear. To be sentient is different from being a person.

Sentience and moral inclusion

According to Jaworska (2018), to have a right to gain moral standing, an entity has to have interests that matter for the entity's own sake. It is not immediately clear what this means in practice as 'the interests that matter for an entity's own sake' is hard to define. The purpose of this section is to argue for sentience as a minimal requisite for moral standing. One may read this as sentience being a necessary and sufficient condition for moral standing, but this is not strictly the case. A person in a

¹² This is not a claim to human moral exclusivism. Sentience may provide some animals moral standing equal to some humans. See for instance Singer (1975)

(temporary) coma, has moral standing, as will be argued, but lacks sentience. To understand why this is the case, a further elaboration on the meaning of interests is necessary.

Generally, four different kinds of interest are defined in the literature on moral standing. These can be summarized in the following taxonomy:

Functional interests: these are the interests of artifacts. An example is a bike having interest in having breaks, to function properly.

Biotic interests: these are the interests of non-sentient organisms. An example is a plant having interest in sunlight.

Conscious interests: these are the interests of sentient organisms. An example is an animal having interest in avoiding pain.

Reflective interests: these are the interests of sentient animals with high-order cognitive capacities. These differ from the third category in the explicitness of their character. An example is having interest in self-realization. (Benatar, 2006: p. 135-136)

Although very useful, it must be noted that category 3, conscious interest, is easy to misinterpret. As Benatar himself notes, having a conscious interest is something very different from being conscious of an interest. For instance, a dog may have an interest in being forced to wear a muzzle to stop it from chewing on a wound, as it will minimize its long-term suffering. Yet a dog will, generally, resist actively the wearing of the muzzle, as dogs find muzzles annoying, which can be perceived as stating an interest against wearing a muzzle. This means that the dog is not conscious of its interest in wearing a muzzle, but it is in its interest regardless. So, the third category should rather be called *sentient* interest, interests that have to do with sentience.

This list of different interests is incremental. A well-functioning adult human being has an interest in self-realization, avoiding pain, and in having access to water. A fish only has an interest in avoiding pain and having access to water.¹³ A plant only has an interest in access to water. As stated before, this section will defend that only category 3 contains interests that are morally relevant (and by extension category four as the interests are incremental).

First, an overview is given of arguments defending that functional and biotic interests should be given moral consideration. These arguments will be rejected. Secondly, arguments on why sentient interests are morally relevant will be examined. Lastly, arguments are given on why sentience itself does not endow a being with an absolute right to life.

¹³ This is not to say that this list presupposes moral exclusivity for humans. It is a descriptive list of incremental interests. Normatively, reflective interests may not be relevant where sentient interests are. Yet, reflective interest encapsulate sentient interests. This will be the main topic of discussion of this chapter.

Functional and biotic interests

To understand how functional and biotic interests may be morally relevant, two sorts of interests are to be distinguished. These two interests are interests as *wants* and interests as *well-being* (Regan, 1976). As it is obvious that non-sentient entities cannot *want* anything, the focus of this discussion is on the second form of interests: interests as *well-being*. Examples of interests in well-being for non-sentient entities are gasoline for a car and water for a plant. The first example is problematic and illustrative for a broader problem with functional interests (and not biotic interests).

To say that a gas-filled tank benefits the well-being of a car, actually means it benefits the well-being of the car-owner, being able to make better use of the car's function. This means that a car (or any other functional artifact) has merely *external* value. Suppose that a group of Neanderthals were to stumble upon a car, they would not know how to operate it. They may, however, use it differently: change its *function*. If they use it as a hiding place for predators, the gasoline or tire-pressure would not at all benefit the *well-being* of a car. It is therefore non-sensical to speak of functional interests as well-being for an artifact itself, but only sensible to speak of its external value.

The same does not hold true for biological beings such as plants, trees, bacteria, or viruses. Access to water is actually good for a plant itself, in the sense that it benefits its flourishing and without it, it will die. An approach to argue for the moral consideration of interests of all living things (interests as well-being that is) is the Kantian approach. Kant himself did not argue that biotic interests should be considered from a moral position, but Kantian principles are used to defend the moral consideration of biotic interests. For instance, Schweitzer (1976) applies the Golden Rule to formulate a reverence for life. Schweitzer's main claim is that one ought to respect the will-to-live of non-sentient beings as she respects her own. Will-to-live should not be interpreted as a *want* but as a general striving to exist (Schweitzer in Steinbock, 1992).

This is a very broad notion of moral standing, and it does lead to very complex problems. Applying this principle would make many every-day activities seem seriously immoral. An example is the use of anti-biotics. To kill billions of bacteria simply to cure a non-lethal infection would be a moral crime in the reverence of life view. The same holds good for picking a flower for one's partner, or eating a potato salad. Further difficult questions arise with deadly bacteria or viruses: is it immoral to kill them because letting them live would kill their host? These examples show that equating 'being alive' with 'having a moral right to life' has rather extreme and seemingly absurd consequences.

A reason why this seems absurd is because non-sentient biological beings do not *want* to live. They do not want anything. This points in the direction that the Golden Rule might not be applied in a completely valid way. Stating that one should not treat others in ways that one would not like to be treated already signifies that things *matter* to oneself. Stated more comprehensibly: in order to *want* to (not) be treated a certain way, one should be able to *want* in the first place. There is no reason why one

would *want* to be watered if ‘they’ were a plant, because a plant does not *want* to be watered. Steinberg summarizes this as follows: “Only beings with interests can have claims against moral agents. Biological life alone does not endow a being with interests because interests are compounded out of beliefs, aims, goals, and concerns. Therefore, non-sentient, nonconscious beings do not have interests.” (Steinbock, 1992: p. 4). The next logical step is to examine arguments for sentience endowing moral beings with standing, and specifically a right to life.

Sentient Interests

Sentient interest are interests that have to do with subjectivity. Sentient interests are interests of entities capable of subjective experience. This sub-section will primarily draw on arguments developed by Steinbock (1996) and Benatar (2005), who claim that sentience is a necessary condition for having one’s interest morally considered. Further arguments are presented on why this does not yield the conclusion that the capability for sentience endows a being with an absolute right to life.

Steinbock uses an analogy to argue that having interests in something is tantamount to having stakes in something. This analogy is originally proposed by Feinberg. Subject A having an interest in something means that a certain state of the world is superior to another in terms of A’s well-being. Steinbock (1996: p. 14.) states that ‘this way of thinking about interests connects them to what we care about or want, to our concerns and goals, to what is important or matters to us.’ Here the notion of subjectivity becomes relevant for the notion of interests. To have an interest in X to *care* about X. Caring about something is clearly a propositional attitude to the world that can only come from a sentient being.¹⁴

Benatar notices that these interests go further than well-being, but go not as far as interests as wants. Sentient beings can have interests without them being aware of those interests. Steinbock notices this as well saying that ‘X may be necessary for [A] to achieve Y, about which [A] does care, and [A] may be ignorant or willfully blind about the connection between X and Y (Steinbock, 1996: p. 15). An important distinction that Steinbock seems to miss is the difference between having moral status and having a moral status sufficient for a right to life. In order to understand the importance of ignoring this distinction, the formalized notion of Steinbock’s argument, formulated by Benatar, is presented first:

“(1) To say that an interest is morally relevant is to say that it matters (morally). (2) If an interest is to matter morally, it must matter to the entity whose interest it is. (3) For an entity’s interest to matter to it, there must be something that it is (that is, feels) like to be that entity. (4) There can only be something that it feels like to be a particular entity if that entity is conscious. (5) Therefore, only conscious beings can have morally relevant interests.” (Benatar, 2005: p. 141).

¹⁴ A counter-argument to this view which is often made is that it ignores the difference between having an interest in something (Steinbock’s position) and something being in an entities interest (see for instance Regan 1976). This argument links to the notion of biotic interests, discussing it again in this subsection would lead to repetition.

Both Steinbock and Benatar claim that this argument is sufficient to endow a being with a right to life, but a problem arises with step 2 of the argument.

For something to matter for an entity it must have an impact on the entity's conscious state of being. Surely death has an impact on the conscious state of being, in that it annihilates this conscious state of being, but this is not an impact immanent to sentience. This links to the argument made by Tooley presented in Chapter 3 of this thesis. It must first matter to an entity to continue to exist, for it to have a (morally significant) interest to exist. Steinbock and Benatar are thus right in arguing sentience interest to be morally significant, but this does not mean that every sentient being has an interest in life.

Still, Tooley's claim was rejected in Chapter 3 of this thesis. The counter-argument was that life is a necessary condition to satisfy other interests that an entity may have. To restate the Steinbock claim:

Life may be necessary for [A] to achieve Y, about which [A] does care, and [A] may be ignorant or willfully blind about the connection between life and Y.

This is true, to a certain extent. A sentient being can have pleasurable states of which it has an interest in prolonging. But, departing from Steinbock and Benatar, these interests must be rooted in actual present desires in the case of late fetuses and neonates. This means concretely that one has a (weak) duty not to cause pain in fetuses and neonates, but an interest in avoiding pain is still something different than an interest in continuing existence. Therefore, the conclusion that abortion at any stage of the pregnancy is morally permissible, is still open (be it with anesthetics in aborting sentient fetuses).

The argument for this position (that aborting sentient fetuses can sometimes be morally justified) is based on a more general counter-argument to Benatar's asymmetry of pleasure and pain argument. The asymmetry of pain and pleasure was already briefly discussed in the critique on the *Golden Rule* (chapter 2). The central claim of the critique is that if the absence of pain is a good thing and the absence of pleasure is not a bad thing, death is preferable over life if one's future holds more suffering than pleasure. Obviously, this argument only works if one takes an epicurean account of death (as death being the annihilation of the subject). This account of death shall simply be presumed in this thesis. If one wants to uphold other accounts of death in which dead people still have experience, the burden of proof is on their side.

The issue of the asymmetry argument leading to a desirability of suicide is seen as one of the biggest problems for Benatar's theory by critics and Benatar himself (Harman, 2006; Benatar, 2019). A discussion on pro-mortalism (that it is rational to commit suicide) is beyond the scope of this argument. It is however relevant to note the counter-claim against the desirability of suicide that Benatar makes, as it contradicts with his stance of sentience as the cut-off point for the moral

permissibility of abortion. Applying Benatar's counter-argument to the pro-mortalism critiques of the asymmetry arguments on abortion shows why sentience alone is not sufficient to endow a being with a (strong) right to life.

Benatar claims that death is a bad thing by providing two arguments:

- 1) Death is bad because it deprives us of the further goods we would otherwise have experienced in our lives.¹⁵
- 2) Death is bad because we acquire a subjective interest in living.

The second argument is relevant for the moral standing of fetuses. Benatar claims that: "If we had never come into existence, no interest would have been thwarted. [...] However, once we do exist, we acquire and then have an interest in continuing to exist." (Benatar, 2017: p. 122)

It is thus the actual desire of being alive that yields an interest in being alive. To have a stake in living, one must aim to be alive. Here the difference between fetal pain and fetal pleasure becomes relevant. If a subject (be it human or animal) is experiencing pain, the aim of avoiding this pain lies in the unpleasantness of the experience itself. While in the deprivation of pleasure, one must be able to imagine a self that is experiencing this pleasure to be bothered by this deprivation. So, a fetus may have a weak right to life, as it has an interest in avoiding unpleasant states or not losing pleasurable states (but not in not being deprived of future pleasure). A fetus does not have an absolute right to life, as long as it has not acquired a reflective interest in existing.

A weak right to life in this context means that an entity has a right to life, *a-priori*. Unless there are stronger sentient interests, or reflective interests in conflict with a weak right to life, the entity has a moral standing. This means that the mother has a duty to refrain from harming a sentient fetus, if she does not have conflicting interests with that sentient fetus. Absolute rights to life refer to rights that (almost) can never be overridden (Gewirth, 1981)¹⁶.

¹⁵ A sharp reader might have noticed that this is the same argument Marquis uses against abortion (the Future Like Ours Account). This argument has been thoroughly discussed in chapter 2 and shall thus not be further expanded on here.

¹⁶ An absolute right to life must not be understood as "being in a position where it is always immoral to be killed". For instance, a psychopath murderer attacking an innocent person might have reflective interests, yet may still be morally killed by means of self-defense (as a last resort). This kind of conditional situations are beyond the scope of this thesis, but are extensively discussed in McMahan's (2009) 'The Ethics of Killing'.

Reflective interests

To have a linguistic concept of a self as a continuing being in time and space, which Tooley argues is a necessary condition for a right to life, is too stringent and can be partly countered by Benatar's and Steinbock's objection of life as a necessary condition for other aims. But being sentient is not the same as having strong a right to life based on this objection, as being sentient does not always correspond with having an interest in continuous existence, or having aims that require life. An interests in continued existence may be a derivative interest based on weaker interests, being sentient alone does not yield a direct interest in continued existence.

One thus has an obligation not to hurt the fetus, but not therefore an obligation not to end its life. Once the fetus becomes sentient, abortion would be only morally acceptable with sufficient anesthetics (for the fetus). Steinbock's and Benatar's arguments for restricting the possibility of the abortion in sentience as not to deprive the fetus of any pleasurable states in, does not hold ground. This is because, as is argued, pleasure deprivation is not immoral to sentient beings that do not have the conceptual capacity to imagine a state wherein the pleasure is enjoyed. The obligation to not hurt the fetus in the medical process of abortion does require the need for solid epistemological work regarding fetal pain.

This makes reflective interests the main focus of moral consideration. Reflective interests are the most sophisticated interests of this list. They are interests that are conscious, and stem from explicated desires that *can be* but do not necessarily *have to be* recognized by the subject. The defense of reflective interests endowing a being with a right to life will be primarily linked to the article by Giubilini and Minerva (2007). First, the argument for considering reflective interests will be presented. Secondly, the main objections to this view will be analyzed after this the practical implications of the framework will be laid out, based on empirical and philosophical work on sentience and consciousness.

The basic claim of Giubilini and Minerva is the following:

“Both a fetus and a newborn certainly are human beings and potential persons, but neither is a ‘person’ in the sense of subject of a moral right to life’. 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.” (Giubilini & Minerva, 2007: p. 3)

The argument for this claim is that to have a right to life, one must have specific aims. To be able to have conscious aims takes cognitive functions that are simply not present in fetuses (and newborns). This does not mean that every reflective interest is an interest that a subject is *aware of*.

The point of reflective interests is that these are interests that stem from an understanding of possible states of the self and the world. It should not be seen as an interest that one is constantly understood, as one can lack the epistemic tools to understand one's interest. An example of this is given by the authors. If a person holds a winning lottery-ticket, that is replaced by a losing ticket without them knowing, that person is still harmed in her interest and the replacing is thus immoral. The reason one's reflective interest is harmed, even though the interest is not actively reflected upon, is that it is possible for the person to at least imagine a world wherein she had won the money.

Embryo's, fetuses and (early) neonates are not able to reflect this way on themselves and the world, therefore their interests do not endow them with an absolute moral standing to life. This is not to say (contrary to Giubilini & Minerva) that one can kill a sentient fetus or neonate for any reason. The statement of this thesis does not differ from these authors in claiming neonates do not have an *intrinsic right to life*. The argument is that the *actual* reflective interests from the immediate family can conflict with the duties of raising a child, and therefore allow for infanticide, if there is sufficient reason.

This argument can be formalized as follows:

“1) It is impermissible to intentionally kill a creature T only if T is a person; 2) T is a person only if T is creature-conscious; 3) T is creature-conscious only if T is capable of having mental states that are state-conscious; 4) A mental state M of T is state-conscious only if T is aware of M; 5) T cannot be aware of M without being aware that she herself is in M; 6) T cannot be aware that she herself is in M without possessing a concept of self; 7) It is reasonable to believe that there is some age at which human infants do not possess a concept of self; therefore, 8) It is reasonable to believe that there is some age at which it is permissible to intentionally kill human infants.” (Hassoun & Kriegel, 2008: p. 45)

Although Hassoun and Kriegel mainly discuss the moral standing of human beings, they do recognize that some animals are creature-conscious as well, and therefore it would be inherently immoral to kill creature-conscious animals. It is also important to note that the paper discusses an *absolute* right to life. As discussed, sentience beings that do not have a creature-conscious (meaning a reflective interest in continuous existence) can have a *weak* right to life. As the formalized argument is quite technical, it will be restated as follows for means of clarity:

1) A creature only has an absolute right to life if it is a person. 2) personhood requires self-awareness (a concept of a self as a continuing being in time). 3) self-awareness requires intentional mental states. So not only phenomenal mental states (sentient states), but intentional mental states: states that are

reflective. 4) intentional mental states require awareness. 5) awareness requires the cognitive capacities to notice that one is experiencing a mental state. 6) this awareness requires a concept of the self (otherwise one cannot be aware that a *self* is experiencing a mental state) 7) (human) infants lack these cognitive capacities up until a certain age. 8) up until a certain age (human) infants do not have an absolute right to life.

The most important premises of this argument are premises 1) and 2), which are already argued for in the discussion of Guilibini and Minerva, and Benatar and Steinbock. Premises 3) until 6) are a formalized description of reflective interests, premises 7) is an empirical claim analyzed in the empirical section of this thesis, and 8) follow logically from the previous ones.

The main problem for his argument is that, in this form, it is allowed to kill creature-conscious entities in states such as being asleep or being comatose, as they have no *actual* creature-consciousness in these states. One may accept this conclusion, but this would *de facto* mean that any entity that will ever suffer temporarily loss of consciousness has no right to life, as it is moral for them to be killed when they are unconscious. Furthermore, there are good reasons for claiming that the argument does *not* allow for killing the unconscious that would have reflective interests if they were conscious.

The argument that the self-awareness account allows for the killing of the unconscious is underpinned by Liang (2013):

“Our propensity to sleep, fall unconscious, go into comas, pass out and so on, demonstrates, in no uncertain terms, that we very often exhibit our status as potential persons and become incapable of attributing value to our own existence. Our abilities can and do fluctuate indeed every night when we go to sleep and fail to ‘lay a claim’ on our lives. Potentiality and fluctuating actuality is a feature of the human condition and efforts to predicate value on perceived valuable actual states that persons exhibit is question-begging.” (Liang, 2013: p. 317)

The main argument against this claim is based on the difference between *have-been-conscious substances* and *never-been-conscious-substances*, and Singer’s account of ideal desires.

Have-been-conscious substances have to do with past interests that are still morally relevant in the present, even though the moral subject is not aware of the interest in actuality (meaning not actively thinking about the interest). An illustrating example that Räsänen (2017) gives is faithfulness. A man committing adultery on his sleeping partner is still harming her interest even though she does not have the desire not be cheated on at that exact moment. The woman (in this example presumably desiring monogamy) values faithfulness and expresses a reflective interest in a faithful partner, even though she is not aware of this interest constantly. Have-been-conscious substances can be seen as, what Singer calls “ideal desires”. He conceptualizes these desires as “the preferences a being would have if that being were fully informed and thinking clearly” (Singer in Schaler 2009: p. 191).

To see how this links to have-been-conscious substances, the example of the cheating husband is again considered. Surely, the woman would recognize her interests to be harmed if she was fully informed (the partner would not hide the adultery) and thinking clearly (being not asleep). Ideal desires reflect the interests of a moral subject more accurately than desires that are affected by temporary impaired states of mind.

Still, one could argue that the ideal desire of a fetus would be to not be aborted, and as such this account provides an argument against abortion (Marquis in Schaler, 2006 p.141). This is, however, a misunderstanding of the concept of ideal desires, as Singer notes: “Adjusting a person’s actual desires for errors is one thing; attributing a wholly new desire to a being that is not capable of having any desires at all, or any desires of the relevant kind is something else altogether, and something for which there is no obvious motivation” (Singer in Schaler, 2009: p. 192).

Here the difference from have-been-conscious substances, and never-been-conscious substances becomes clear. If a being was never capable of attaining any reflective interests, it never had an absolute right to life. Once a being becomes capable of- and does attain reflective interests (in continuing existence), this endows the being with an absolute right to life.

Empirical Evidence: Sentience and Personhood

Before concluding this chapter, the practical implications of the position presented above will be linked to empirical data regarding sentience and consciousness. The two most relevant issues are:

- 1) Fetal pain: at which stage of development is a fetus able to feel pain? This is relevant because inflicting pain on a fetus is immoral;
- 2) Consciousness: at which stage of development is a fetus/neonate able to reflect upon itself and its environment?

This intermezzo will be rather short, as this thesis is mainly concerned with the ethical conditions surrounding abortion. Yet, defining a cut-off point for when a being attains a right to life is also a practical manner (see also the practical issues with the *Viability Approach* in Chapter 4). The empirics of fetal and neonatal development may provide a reference point to see how the ethical framework may be implemented in practical reality, although it should not be confused with policy proposals.

Fetal pain

A lot of research has been done on fetal pain. Different operationalizations of fetal pain make for different conclusions, yet the scientific consensus points to fetal sentience somewhere between 28 and 30 weeks.

The problem with measuring fetal pain is that pain is a subjective experience difficult to detect in beings that cannot express themselves (such as fetuses). In her article ‘New Insights into Fetal Pain’ Bellieni (2019) lists five necessary conditions for the physical possibility of feeling pain for humans. This is not to say that these five conditions are together sufficient for the ability to feel pain, but they can provide an empirical framework for when a fetus *might* start to be able to experience pain. The five necessary requisites are: 1) nociceptors, 2) pain neurotransmitters, 3) centripetal fibers that lead the stimulus to the brain, 4) the thalamus, 5) connection with the cortex.

As the article by Bellieni focusses mainly on the impact and effectivity of anesthetics in fetal operations, the development of the five requisites will be linked to research done by Swaab (2010). As these conditions are all necessary, the theoretical starting point for the possibility of fetal pain is at the last of these requisites to develop. This is, as further explained below, the connection of the nervous system to the cortex, which takes places around the 26th week of fetal development.

Swaab looks at the anatomical and neurological development of fetuses. He gives a clear overview of the different stages of nerve-development in infants to induce at what point pain-functions can (probably) arise in the fetus. At 7 weeks development the pain-sensors in the skin are developed. Spinal cord reflexes develop at 8 weeks development, making the fetus ‘react’ to external stimuli. This does, however, not indicate pain but a merely indiscriminate, reflective response. For pain-experiences

to be possible, the cortical plate and the thalamus must be connected, along with the cerebral cortex. The cortical plate and the thalamus connect with each other at about 16 weeks, but only link to the cerebral cortex at around the 26th (between 23 and 30) week of development.

The blood flow providing enough oxygen for the cerebral cortex to function properly only starts to function at the 27th week. From this point on, according to Swaab, pain-functions are theoretically able to operate in the brain. Swaab is extremely careful in claiming a fetus is sentience at this point, referring again to EEG-scans showing only a difference in activity between regular touch and pain stimuli at the 35th week of development. Given this evidence, Swaab concludes that fetal anesthesia before the 26th week development should not be a part of abortion procedures, as they make the procedure more dangerous for the mother.

Neonatal consciousness

Different tests for self-awareness have been developed in psychological literature. This segment will draw from the comparisons made from a range of these tests. The main empirical experiments for inducing reflective consciousness used here are those listed in the article ‘Consciousness and the Moral Permissibility of Infanticide’ by Nicole Hassoun and Uriah Kriegel (2008). They consider the different conclusions to only apply to neonates or to further developed infants. That is why this subtext is titled *neonatal consciousness* rather than fetal consciousness: even in the most generous approaches to self-awareness, fetuses seem to lack it.

A famous, though also criticized, experiment for inducing self-awareness is the mirror test (Swaab 2010). Self-recognition in a mirror is seen as a sufficient response for inducing that a sentient being is able of self-awareness. Chimpanzees are able to recognize themselves in the mirror, gorillas are not (Suarez & Gallup in Hassoun & Kriegel, 2008: p. 49). Self-recognition is not *identical to* self-awareness as Hassoun and Kriegel note: “Now, although it is extremely implausible to treat mirror self-recognition as a definition of self-awareness, it is quite plausible to take mirror self-recognition to be evidence for the presence of self-awareness.” (Hassoun & Kriegel, 2008: p. 49)

This is where the mirror-test becomes problematic. It surely is interesting to understand which animals are capable of self-awareness, and the mirror-test may be a good experiment for deciding for which animals this is the case. But it is not per se a good test for deciding which animals are *not* capable of self-awareness. The mirror-test shows self-awareness mainly in animals that evolved to live in groups (Swaab, 2010). So, it may be possible that an animal has not evolved the neurological tools for self-recognition (as it served no evolutionary benefit), but is nonetheless self-aware.

Regardless, as humans are social animals, the mirror-test may be a good way in deciding on what point in time infants develop self-awareness. According to a study done by Amsterdam (1972), infants start to recognize themselves in a mirror between the ages of eighteen months and twenty-four months (Amsterdam in Hassoun & Kriegel, 2008). They take this as evidence that infanticide should be

morally permissible up until this period, yet the methodological problem noted above makes this conclusion controversial at least.

Another way of inducing self-awareness is to take facial imitation as an indicator. Meltzoff (1977) notes that facial imitation is a sign of self-reflection as it shows that a subject can ‘equate their own unseen behaviors with gestures they see others perform.’ (Meltzoff, 1977: p.75). When this approach to self-awareness is taken, infanticide should be permissible up until the second week after birth, as this is the point where facial-imitation becomes a part of neonate behavior.

Lastly, Hassoun and Kriegel make an important point regarding self-awareness research. In their defense of infanticide, they claim:

“Some may not want to conclude that neonates probably lack a self-concept immediately after birth. After all, a mistake regarding this fact may have devastating moral consequences. That may be fair enough. But, to be consistent, one should be equally hesitant to conclude from the lack of evidence that many other animals have a self-concept that it is acceptable to eat them. Few will accept this general principle.” (Hassoun & Kriegel, 2008: p. 49)

Granted that maybe few people will accept this general principle, this is still no reason not to take this counter-argument very seriously. Generally accepted moral principles can still be immoral (also see Chapter 4 of this thesis on Beckwith). Since there is no clear way to operationalize self-awareness and to test it experimentally, infanticide should not be taken lightly from an empirical point of view.

Recapitulation

There is a difference between sentience and consciousness. Sentience is a state of being that can be signified by a ‘what-it-is-likeness’, consciousness is a state of being wherein one can reflect on his/herself, the world and one’s aims and desires. Sentience and consciousness link to different forms of interest. Although sentient interests are morally relevant, they do not endow an entity with an absolute right to life, but do endow them with a weak right to life, as an interest in life cannot be formulated without cognitive processes additional to sentience. Conscious (or reflective) interests do endow a being with an absolute right to life, as this is the level where a being can actually value its own continued existence.

The central argument against this view is that it allows for unconscious adults to be killed, as they have no actual reflective interests. This is based on the misconception that reflective interests are interests that one is *constantly* aware of. For an interest to be reflective, the entity does not need to be constantly aware of it, but at least capable of being aware of it. The notion of ideal desires is used to argue that interests can be corrected for errors (missing information or temporary irrationality (which both link to a state of unconsciousness)). This notion of ideal desires does not apply to fetuses as they never had (the capability for) reflective interests to begin with.

Based on the current empirical data on sentience and consciousness, abortion without fetal anesthetics would be morally permissible up to the 28th week of fetal development, and infanticide would morally permissible up to the second week after birth, according to the moral framework set out above. Still, the epistemic difficulties with operationalizing consciousness should raise questions about the moral acceptability of neonate infanticide. Because, if later research showed neonates younger than 2 weeks to be self-aware, euthanizing them would have been a great (moral) harm in hindsight.

Conclusion

This thesis has considered the most influential and currently debated positions on abortion. These positions tend to move to extremes with abortion being proposed as morally desirable to being morally akin to murder. After the discussion of these extreme positions, the most legally referred to cutoff point, viability, is discussed. Consequentially, a position based on sentience and self-awareness is defended. This gives the thesis a broad overview discussing the most used principles for deciding the moral stance of (unborn) life. This serves to answer the following question:

To what extent and on what normative basis is the ending of (pre-natal) life morally permissible?

The monotheistic positions on abortion are politically, and historically also philosophically, very influential. They are based not only on scripture, as (especially Jewish and Christian) scripture does not give straightforward moral guidelines on the subject. The religious positions are shaped by historical, cultural and scientific understandings of the world, and so they differ in their views. There is no rational way to compare one position to the other, although the positions may sometimes be internally consistent. As there is no way to decide upon different religious positions, and as the positions are already shaped by scientific discovery, it is sensible to introduce a rigid secular philosophical and scientific understanding of the world in religious positions.

Today, an influential, religiously motivated stance on abortion is that abortion is immoral once a fetal heartbeat is detected. This position is based on a presumed objectivity of deciding whether or not a fetus is alive, combined with a 'sanctity of life' position. This view is based on a confusion between a method of measuring life, and an actual state of being alive. An embryo without a measurable heartbeat (every embryo before 6 weeks of gestation) is alive. It should therefore be argued why 'being alive' accredits a 'right to life', which the heartbeat position does not do.

On the conservative position the most influential arguments are "The Golden Rule" and "The Future Like Ours" positions. On these accounts, potentiality to human life is the ground on which the moral standing of fetuses is argued for. The "Golden Rule" approaches the issue from a Kantian point of view, claiming that if one should not have wanted to be aborted, one should not abort others. "The Future Like Ours" position claims that a fetus has a valuable future from which it is deprived when aborted. However, these accounts both fail to convincingly argue why contraception should be morally permitted, as with the use of contraception potential persons are denied the opportunity for existence, just as in the case of abortion. Furthermore, potential persons seem to refer to some metaphysical void whereas non-entities already have attained interest. This position is therefore not viable since non-existence is, per definition, a morally neutral state of being.

On the abortionist position the most influential (or convincing) arguments are the "(linguistic) self-consciousness account," the "Pro-Death" view, and the "viability" approach. The first aims to show

that having a conception of a continued self is the property on which a right to life should be decided. This position, as presented by Tooley, is not convincing as it defines personhood too stringently and relies too much on linguistic competence to give a viable approach to a right to life. The “Pro-Death” view argues that coming into existence is always a harm and therefore abortion should be the norm. This argument is based on a flawed comparison between existence and non-existence with a pessimistic bias in denying (too much) value to positive experience in life. The viability approach aims to define the cut-off point at physiological independence. There is in this case, however, no rationale behind determining a cut-off point, as viability depends on medical and technological development. Therefore, viability changes from one time period to the next, and from one geographical place to another.

This creates the need for a new approach to abortion, that defines the capacities that underpin a right to life differently than the extreme permissive and conservative positions. This new approach is defended by considering the different levels of interest that a being may have. The different interests are clustered in four kinds: functional, biotic, sentient, and reflective interests.

Functional interests are mere artefacts of external interests, and yield no moral standing to an entity on their own. Biotic interests are interests as *well-being*. To morally consider these interests has extreme consequences that are not acceptable given that mere biotic interests do not *matter* to anyone (no entity with mere biotic interests has a *stake* in satisfying them). Sentient interests endow a being with a weak right to life. A being with only sentient interests may not have direct interest in continuous existence, but may have interests that *require* continued existence. Reflective interests endow a being with an absolute right to life, as having a stake in continued existence is only possible with the cognitive capacity of self-awareness.

This is directly linked to the research question: ‘to what extent and on what normative basis the ending of (pre-natal) life morally is permissible?’ The normative basis for the moral permissibility of ending pre-natal life is that this form of life lacks sentience (up to the 24th week of gestation). A non-sentient fetus has no interest, no stake in its own continued existence. This is an overridable right to life, as explained above. Once a being becomes conscious, self-aware, it gets, *ceteris paribus*, the direct interest in continued existence, following this self-awareness, this interest is the normative basis for the absolute impermissibility of ending its life.

The strength of this position is that it gives a gradual account of the moral permissibility of abortion. A further strength is that it is not based on ontologically vague accounts or moral standing like potentiality or comparisons with a state of non-existence (like, respectively, the “Future Like Ours” and the “Golden Rule” account are based on). The self-awareness position also avoids a conceptual reliance on conditions outside the fetus like technology (as the Viability approach relies on). It defines

moral standing on a basis of gradual cognitive properties that are scientifically grounded, and inherent to human, and some non-human life.

Empirical research shows that fetuses acquire sentience around the 24th week of gestation, and neonates may become self-aware in the second week after birth. So, this account defends, in principle, a position wherein euthanizing a neonate is (under exceptional conditions) morally defensible. This is a position that is controversial, both philosophically as well as in the opinion of the general public. The political feasibility of this position is thus weak.

Furthermore, although the gradual nature of the position can be seen as a strength of this position, additional calculi have to be proposed for which interests override the weak right to life of a sentient fetus. Such calculi are not proposed in this thesis. This thesis should therefore be seen as the groundwork for a position that leaves room for influences by further philosophical research on weighing contradicting interests and rights

Conclusively, the empirical research on self-awareness suffers from contradicting operationalizations and methodologies. This is not problematic for the central argument of this thesis, that an absolute right to life requires self-awareness, but it is problematic for the practical applicability of the arguments presented in this paper.

Until the scientific understanding of self-awareness becomes more rigid, euthanizing not yet self-aware neonates should be extremely restricted. If further research showed early neonates to be self-aware, the arguments presented in this paper do no longer justify infanticide (and would show infanticide to be a serious moral harm). Therefore, the practical applicability of the arguments presented in this thesis is very much depended on further empirical research on the development of consciousness and self-awareness.

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