

## **The moral status of the human fetus: a pro-choice approach**

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I have been asked to consider the status of the human fetus from a pro-choice perspective. I should therefore state from the outset that there is no one fixed pro-choice position on this matter as those who support a woman's right to choose may do so whilst holding a wide range of views regarding the embryo's status, some of which will look very similar to those held by opponents of abortion.

When debating the issue of embryo research and assisted reproduction in the context of English law Dame Mary Warnock famously asserted that the likelihood of getting people to agree on the moral status of the embryo was slim to non-existent. In light of this she felt that what was needed was an approach to the issue that allowed enough people to think things were 'alright' rather than establishing what was 'right'. It may be helpful to hold on to this way of thinking when considering the fetus, because even if we cannot agree on the moral status of the fetus we nonetheless need to find a way of making decisions about it.

Despite the tendency to disagree we continue to worry about this issue of moral status, and particularly in relation to abortion we seem convinced that before we move to discussing the relative rights of women and fetuses we need to establish what type of being we consider the fetus to be. In doing so we make a metaphysical and/or religious claim which will go on to have profound moral consequences, sometimes far beyond the issue at hand.

The fact that a fetus is carried in a woman's body means that even once its identity and moral status is determined there is further work needed to establish a way forward in terms of how to treat the fetus, particularly when a conflict of interest arises. Early feminist commentators sometimes worked with the idea of a woman exercising a right of self-defence against the fetus which did not rely upon limiting the moral status of the fetus, but rather considered the place the fetus occupied in the woman's body and life and the impact thereof. Subsequent pro-choice advocates would probably agree that whilst it might be helpful to establish some sense of the moral status of the fetus in order to debate the rights and wrongs of abortion, it is not always going to be seen as sufficient to settling the argument.

In many ways the simplest position to hold is that the fetus as a form of human life has special moral status from the very beginning of its existence. This claim can be made in a number of different ways, some of which depend upon sharing particular religious beliefs such as the sanctity of human life and the concept of ensoulment, some of which depend upon making secular claims about the intrinsic value of humanness, and others of which rely on arguments of potentiality – that is the idea that because it could become a fully-fledged person the fetus should be given the rights afforded to persons, particularly the right to life.

All these approaches have been challenged, even those of religious faith can differ in their beliefs about issues such as when the soul enters the body. More importantly these types of explanation are only compelling to people of faith or those with a particular world view. They are not subject to

proof or scientific observation, but when enshrined in law they can be imposed on others who do not share the beliefs upon which they rest.

Potentiality based arguments are subject to a number of criticisms. Just because something has the potential to become something else this does not mean we have to treat the thing it is now in exactly the same way as we would treat the thing it could become. So for example we choose to protect aged oak trees because of their beauty, their history and their relationship to the wider environment, yet we don't feel the need to save and propagate every acorn that falls from the tree. Similarly the destruction of a small sapling whilst regrettable would not be seen in the same way as the felling the 200 year old tree. Whilst we sometimes rely on potentiality arguments in relation to people who are already born, being careful not to thwart their potential to thrive and trying to give them as open a future as possible, this need not necessarily go alongside a commitment to support the existence of all possible people through the prohibition of contraception, embryo research and abortion.

Having said this it is important to acknowledge that a fetus changes significantly through the nine months of a pregnancy, and it is unsurprising that many people would consider linking a growing moral status to that biological development. This is often presented in terms of a claim that at some point during its biological development something happens to signal the beginning of a person in the morally meaningful sense of the word. Somewhere along the line human material becomes a human being, and many would accept that as this human being develops moral status grows. In the context of this debate the most significant shift occurs when the fetus acquires a right to life which requires others to respect and potentially protect its existence.

The development of sentience is often suggested as a morally significant development and has been influential in terms of time limits set on both embryo research and abortion. It is however important to acknowledge that basing a fetus's right to life on its ability to feel pain raises profound questions about our responsibilities to other sentient beings such as non-human animals. If the ability to feel pain affords special status we need to question many of our practices in relation to other sentient beings, many of which we harm or kill to serve our own interests. For a pro-choice advocate who allows for the possibility of abortion sentience may speak to the question of when and *how* to end a fetal life so that it can be done painlessly.

In common sense terms birth appears to mark the definitive arrival of a new human being in the world and few would question the right to life of a new born baby. Having said this, some dispute the moral relevance of travelling down the birth canal or being lifted from the womb claiming that the fetus prior to and immediately after birth is exactly the same being and should be afforded the same rights. Others would claim that birth this is the definitive marker of the fetus's viability – its ability to exist independently of the woman – and only once it has been born does it acquire rights exactly equivalent to the woman and other persons. For some philosophers birth is irrelevant because they see the term 'person' as being attached to certain advanced capacities or characteristics of human beings such as self-consciousness, the sense of a past and a future and the possession of goals and intentions a full right to life none of which are present at birth. This leads them to hold that the life of a new born baby has less moral status than a more developed human being and consequently fewer rights.

So, the position is this. People fundamentally disagree about the identity of a fetus and therefore find it even more difficult to agree on its moral status and the claims that can be based on that. At the same time few believe that any form of human life is without *some* special status, requiring that we treat it in particular ways for example by governing what is done to it and with it with great care and avoiding causing it pain. Others would claim that the way in which we treat any form of human life is an important marker of our societal values and a sign of our virtue (or lack of such). Whilst its status remains disputed we understand that we will be judged by how we behave in relation to the fetus. We therefore need to reach some form of societal consensus on the important question of how to treat the fetus in the full knowledge that we may never agree on its moral status. If this is the case it seems particularly problematic to settle on the most conservative and therefore restrictive interpretation, which means that all women are required to accept the full and equal moral status of the fetus, particularly if it is increasingly challenged within the society in question.

The status that it is important to establish is the *legal* status of the fetus, and in establishing the legal status of the fetus we cannot ignore the extent to which the fate of the fetus is bound up with that of the woman carrying it. We cannot ignore the fact that a *prima facie* claim to status may not always win out in competition with competing claims.

Those who have a clear and definite view of the *moral* status of the fetus will always be free to make their own choices within a more permissive legal regime. If one believes that the fetus has a God given right to life from the moment of conception you will remain free to make choices consistent with that belief. However, for as long as the law depends entirely upon a claim of equal status that many find difficult to sustain outside of a particular religious framework women will be subjected to life changing and even life threatening decisions based upon a metaphysical claim which in their eyes may be neither valid nor definitive. An increasingly contested account of the moral status of the embryo and fetus can only hold sway through the exertion of political power affording it a societal significance it no longer deserves. The battle is not therefore between competing accounts of the moral status of the embryo but rather between moral liberalism and absolutism.

In conclusion a pro-choice account of the status of the human embryo acknowledges the uncertainty and disagreement at the heart of the matter and asks that we desist from seeking agreement where none will be found. The pro-choice position also asks that in place of imposing a unitary approach on this most metaphysical of issues we should trust women to act morally and make choices that they can individually live with. Those who have moral reservations based upon their interpretation of the status of the human fetus will remain free to act in accordance with their conscience and at the same time other women will have a new found freedom to act in ways that they find both necessary and ethically permissible.