

BRYAN WILSON

ON A KANTIAN ARGUMENT AGAINST ABORTION

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In a recent paper in this journal Harry Gensler claims "that abortion is wrong and that certain Kantian consistency requirements more or less force us into thinking this" (1986, p. 83).¹ He argues in two steps. Firstly, a general consistency principle (GR for Golden Rule) is established, and secondly, this principle is used in conjunction with an empirical fact to show the unacceptability of abortion.

This note is to point out, that although interesting, neither argument is sound.

1. THE GENERAL PRINCIPLE

"If you are consistent and think that it would be all right for someone *to do A to X*, then you will think that it would be all right for someone *to do A to you* in similar circumstances.

If you are consistent and think that it would be *all right* for someone to do *A* to you in similar circumstances, then you will *consent* to the idea of someone doing *A* to you in similar circumstances.

∴ If you are consistent and think that it would be *all right to do A to X*, then you will *consent* to the idea of someone *doing A to you* in similar circumstances. (GR)" (*ibid.*, pp. 89–90)

The above is the argument for GR. It is valid but its second premise is unacceptable. Gensler takes 'all right' to mean *normally permissible*, presumably intending the Kantian notion of permissibility. But on this reading it is not at all clear that premise 2 is true, or that it follows from the prescriptivity principle. Kant himself, draws a clear distinction within the class of permissible actions:

According to categorical imperatives certain actions are permissible or impermissible, i.e. morally possible or impossible, while *some* of these actions or their contraries are morally necessary, i.e. obligatory. *Metaphysic of Morals* 220 (my italics).

It is not morally wrong for someone to put sugar in my coffee. It doesn't follow that I will consent to this — I do not like sweet coffee. It is not morally wrong for someone to engage me in conversation. Again, I may not consent to this, without any loss to the consistency of my beliefs. This is just to point out a basic distinction between what is permissible and what is desired. I am able to not desire *A*, and even desire not-*A*, without *A* being impermissible.

Perhaps an objection might be raised here. Sometimes it is not morally wrong to put sugar in my coffee, nevertheless it is not normally permissible. So perhaps Gensler is intending more than just the Kantian notion of permissibility. But what more could this be? Why would putting sugar in my coffee be not normally permissible? Only if it is suspected, believed or known that I do not, or would not consent to this. That is, building some notion of consent into 'normally permissible,' making premise 2 tautologous.

There is, however, another way of understanding 'all right'. Construed, not as not morally wrong, but as just, morally right (or in Kantian terms, obligatory), premise 2 is true, and follows from the prescriptivity principle — that if something is morally right, then it ought to be done:

If you are consistent and think that it would be *morally right*, to do *A* to *X*, then you will consent to the idea of someone doing *A* to you (in similar circumstances).

But what now follows from the argument? GR is:

If you are consistent and think it would be morally right, to do *A* to *X*, then you will consent to the idea of someone doing *A* to you (in similar circumstances).

This, in conjunction with Gensler's empirical fact — "You do not consent to the idea of your having been aborted in normal circumstances" (p. 94) — establishes, if anything at all, only that abortion is not morally right. To get from this to the conclusion that it is morally wrong, another premise is needed, say, 'If something is not morally

right then it is morally wrong', or, 'All actions are either morally right or morally wrong'.

Obviously, these particular premises won't do. There are actions that are neither morally right nor morally wrong, (e.g., my coffee and conversation examples above). What Gensler needs is a distinction between two classes of action: (1) Those to which moral judgements apply; and (2) those to which moral judgements do not apply, that is morally indifferent actions. Class 1 actions are either morally right or morally wrong. So if one could show that an action was in this class, and show that it was not morally right, it would follow that it was morally wrong — if abortion is a class 1 action and it is not morally right, then it is morally wrong.²

Gensler nowhere argues for the first claim, that abortion is in the class of moral acts. His argument, then, shows only that either abortion is morally wrong or it is morally indifferent.

Is it implausible to think abortion morally indifferent? Certainly a lot of the controversy assumes this, but a large group of pro-abortionists *do* claim that the foetus is a human organism without the normal rights of a human person (e.g. Tooley, 1972).³ So, at least some of the actions done to it, including killing it, are not moral actions.

2. THE SECOND STEP

As Gensler makes quite clear in his Section I (pp. 83—85) his motivation in proposing this argument is to avoid problems about the moral status of the foetus. Problems like: Is the foetus a person? Does it have the normal moral privileges of a human being? etc. These are just the problems his second step gets into.

"If you are consistent and think that *abortion is normally permissible*, then you will consent to the idea of *your having been aborted* in normal circumstances. (From GR)

You do not consent to the idea of your having been aborted in normal circumstances.

∴ If you are consistent then you will not think that abortion is normally permissible." (pp. 93—94)

This is not well formulated as it stands. GR, as we saw above (p. 119), is:

If you are consistent and think that it would be *all right to do A to X*, then you will *consent* to the idea of someone *doing A to you* in similar circumstances. (GR)”

Gensler takes the following to be an instance of GR, (call it GR_A) — replacing ‘all right’ by ‘normally permissible’ and ‘to do A to X’ by ‘abortion is’:

If you are consistent and think that abortion is normally permissible, then you will consent to the idea of your having been aborted.

This, as it is stated, is not really a correct instance of GR. The following is:

If you are consistent and think that it is normally permissible to have aborted X, then you will consent to the idea of your having been aborted.

And this principle needs considerable argument. Is it true if X is a mouse? Is it wrong to abort mice? Possibly, but it is certainly not obvious.

Well, one might think that this is just a trivial problem about the range of the variable X, and that there is an obvious implicit reference class here, namely the class of persons. But the problem is much more serious than this. What the reference class is makes an essential difference to the argument.

The principle the argument does depend on, and that GR_A is an instance of, is:

If you are consistent and think that it would be all right to do A to any person, or to anything that will develop into any person, X, then you will consent to the idea of someone doing A to you in normal circumstances.

And this principle seems at least as contentious as the whole abortion problem. It is not at all clear that if I think it is all right to do something to a foetus or embryo that I will consent to it being done to me.

Furthermore, if the action is abortion, this is just a restatement of the problem Gensler is trying to solve.

A principle that seems less contentious is:

If you are consistent and think that it would be all right to do *A* to any person, *X*, then you will consent to the idea of someone doing *A* to you in normal circumstances.

Now, however, it is unclear whether this principle has any relevance to abortion. It is only relevant if it makes sense to replace *A* by abortion. That is, if abortion is something that happens to persons. This will only be true if we count fetuses as persons, and this again, is one (very strong) way of looking at the point at issue.

So it seems that like his first, Gensler's second argument, when sorted out, is unsound. And there are yet further problems.

3. CONSENTING TO THE PAST

Both premises in this second argument use the phrase 'consent to the idea of your having been aborted'. There seems to be no understanding of this phrase that will allow the argument to work.

On Gensler's view it is essential that the phrase be taken literally, as consenting to something that might have happened to you. Now 'something that might have happened to you' can be understood as, an event that involved you and was, at some time in the past, feasible (that is, compatible with all that has gone before together with the laws of nature etc.), but turned out not to be actualized. This literal reading is incoherent.

What sort of things can I consent to or not consent to? There are at least three necessary conditions that an event must satisfy in order for it to make sense to say that I consent or don't consent to it. They are: (i) the event must be one that may or may not happen to me, that is, it must be a presently feasible event involving me; (ii) it must be an event that I should have some say over; (iii) it must be the action of some agent.

Condition (iii) is obvious. Here is an example to give some motivation for condition (ii). Imagine a student who has not done very much

work through the year coming to see you after his exam and demanding that he not be failed. He just will not consent to being failed! he says. Is he being rational in making this consent claim? No; because it is not (any longer) something over which he has a say. It is up to you to decide whether he will pass or fail.

Gensler's use of 'consent' has problems with this condition. Should I have any say over whether I was aborted? Even if this question makes sense, it seems to be one of the questions at issue. It certainly needs argument. Anyway, let's allow that this condition is satisfied, and consider condition (i).

If someone is about to take \$10 out of my pocket I can consent or not consent to her act; but if someone has *already taken* \$10 out of my pocket it makes no sense for me *now* to consent or not consent to this past act. Similarly with non-feasible future events. If there is now no real possibility of an event occurring, it makes no (literal) sense for me to say "I consent to this event". For example, we often say things like, "Sure, you can have my car in a hundred years if you want", but understood as a consent statement this doesn't make (literal) sense. I know that you will not be around in a hundred years, so I know that this is a non-feasible event. (And this is exactly the reason why I made the statement.) Understood literally, consenting to the idea of my having been aborted, is just like the above examples, and makes as little sense as they do.

The reason Gensler thinks that he must take this consent statement literally is that the obvious counterfactual way of understanding it, (put in the interrogative as Gensler does), is, "Would you have consented, while a foetus, to being aborted?" (analogous to, "Would you have consented, yesterday, to being given a thousand dollars?"); and this question is nonsense. It presupposes an ability the foetus doesn't have.

A familiar counterfactual that doesn't have this problem is, "Would you have consented if you could have?". Thus, in his robbery while asleep example (p. 91), we have, "Would you have consented to being robbed while asleep, if you could have?". And in the foetus cases, "Would you have consented to being aborted or blinded while a foetus, if you could have?". But is this much help? What do these questions amount to? Are there any coherent possible worlds where sleeping people can consent/not consent to anything? If so, would a piece of

wood consent to being chopped up if it could? Perhaps it is more coherent to imagine worlds where fetuses can consent/not consent, but if they have this ability what other abilities would they have? Wouldn't we treat them much differently from the way we in fact do? A situation where fetuses had this ability would amount to one where they obviously had a moral status comparable to that of persons, and so the moral situation would appear quite different.

There are other, better, counterfactuals that we could use to analyse our present consent reactions to past events. For example, the one I prefer in the robbery while asleep case is, "Would you have consented, just before going to sleep, to being robbed while asleep?"; but this is no help to Gensler. In the fetus cases it is clear that these also presuppose an ability the fetus does not have.

4. OTHER ATTITUDES

If consent to the past won't work, then perhaps some weaker attitude that doesn't have the same problems with past, unactualized actions might do? Say, like/dislike? GR would be:

If you are consistent and think that it would be all right to do *A* to *X*, then you will like the idea of someone doing *A* to you in similar circumstances.

This is clearly just false. There are hundreds of actions that I think are all right, and think are all right to do to me, and even think are desirable, that I do not like; e.g. going to the dentist. And replacing 'like' by 'not dislike' won't help.

Might approval/disapproval work better? The approval version of GR is:

If you are consistent and think that it would be all right to do *A* to *X*, then you will approve of the idea of someone doing *A* to you in similar circumstances.

And again this is no good. What does 'approve of' mean here? If it means, will allow to be done to me, then this principle is false. There are things that I think are all right, but nevertheless I will not allow them to be done to me, because I don't like them, or don't feel like it at

the time — (the coffee/conversation examples). If ‘approve of’ just means, do not think is morally wrong, or something similar, then the consequent follows immediately from the antecedent and the principle is just a tautology.

Construed literally, Gensler’s phrase ‘consenting to the idea of your having been aborted’ doesn’t make sense. Taken, as I think consenting to the past must be, in any plausible non-literal counterfactual way, his argument gets into trouble, and weakening ‘consent’ to any other epistemic attitude seems not to help.

5. “LET COPULATION THRIVE . . .” *KING LEAR*, ACT IV, SCENE 6

Gensler claims that his argument is Kantian in that it works using consistency requirements alone. In fact it is not Kantian at all; it is just consequentialism in disguise.

If the argument goes through then it also goes through for contraception and abstinence. So we should conclude that any sort of action, less (literally) productive than maximum reproduction, is immoral. It goes through because if you do not consent to having been aborted then it seems you will also not consent to having had your conception prevented. So, we can construct an exactly analogous argument against contraception:

If you are consistent and think that contraception is normally permissible, then you will consent to the idea of your having had your conception prevented.

You do not consent to the idea of your having had your conception prevented.

∴ If you are consistent you will not think that contraception is normally permissible.

And again, an exactly analogous argument goes through for abstinence. Any reason for your not consenting to having been aborted or having had your conception prevented is also a reason for your not consenting to having had your conception prevented by abstinence.

Thus it seems that Gensler’s argument establishes far too much. Of course, Gensler sees this problems and responds as follows:

My first reaction is to disapprove of the idea of my parents not having conceived me — to think it would have been wrong for them to have abstained or used contraceptives; but the universalizing requirement forces me to change my reactions (whereas it doesn't do this in the abortion case). If I hold 'It is wrong to have an abortion in this (my) case', then I have to make the same judgement in all similar cases; but I can easily hold (consistently) that it is in general wrong to have an abortion. But if I hold 'It is wrong to prevent conception (by e.g. abstinence or contraceptives) in this (my) case', then again I have to make the same judgement in all similar cases; but I cannot hold (consistently) that it is in general wrong to prevent conception — since this would commit me to desiring a policy which would bring about a greatly overpopulated world of starving people at a very low level of human life. So, in order to be consistent, I change my first reaction and come to judge that it would have been morally permissible for my parents not to have conceived (me) on August 5, 1944 — but instead to have conceived (someone else) on September 5, 1944 — and I come, though with hesitation, to consent to the possibility of their having done this. To sum up: the universalizing requirement points to an important difference between *aborting* and *not conceiving* — I can 'will as a universal law' a general prohibition against *aborting*, but not one against *non-conceiving*. (p. 96)

Here Gensler invokes the universalizability principle again as a way of revising an attitude he has — not consenting to having had his conception prevented. The principle, as he states it, is "that we make similar sorts of judgements about the same sort of situation (regardless of the individuals involved)" (p. 90). And he claims that it follows from this, that his attitude to his own contraception should be revised. It follows, he says, because of the consequences of no contraception. These consequences show that we should regard contraception as generally acceptable, and so, on grounds of consistency, acceptable in his own case.

But the universalizability principle is also the basis of Gensler's main argument — it is the basis of GR. Here it shows, in conjunction with his attitude to his own contraception, that contraception in general is unacceptable.

So Gensler has two attitudes — that contraception is generally all right, and that his own contraception is not all right. These do not explicitly contradict each other, but considered in conjunction with the universalizability principle, a contradiction follows. How is this contradiction to be resolved? Gensler thinks that the universalizability principle resolves it (see the last sentence of the quote above), but, as we have just seen, this is not how it is resolved but how it *arises*.

It turns out that what is relied on to get a resolution is a *consequentialist* argument that tries to show that his attitude to his own contra-

ception should be revised. The reason being that the consequences entailed by this and the universalizability principle are unacceptable, whereas those entailed by his general view and the universalizability principle are not unacceptable. (It should be noted that the consequences Gensler points out are actually only obviously consequences of maximum reproduction, and not consequences of not using contraception, or even of not abstaining for any but the most vigorous.)

When I first raised this objection I made the following inference. If you do not consent to your having been aborted then you will not consent to your having had your conception prevented, because any reason for the first is a reason for the second. The above consequentialist argument really amounts to producing a reason why you can consent to your own contraception but not to your own abortion. That is, a reason why this inference is invalid. It is invalid because there is a reason why your own contraception is all right, but no analogous one why your own abortion is all right.

What is the analogous situation for abortion? The universalizability principle and not consenting to your own abortion entail that abortion is not normally permissible. The universalizability principle and consenting to everyone else's abortion entail that abortion is normally permissible. There seems no analogous reason here why you should revise your attitude to your own abortion. There are no such obviously unacceptable consequences of a general prohibition of abortion. (This, of course, is a very controversial claim, but let's just assume it to see if it helps Gensler.) But again we are arguing as consequentialists. It is not the universalizability principle alone that shows abortion to be wrong, but a decision about its consequences given universalizability. The reason contraception is all right and abortion is not, is because they have different consequences (actually, because their complements have different consequences). The universalizability principle is used just as an heuristic device (to find more consequences against abortion).

Is this consequentialist argument sound? It is not too hard to imagine a world where failure to perform abortions would have similar consequences to those Gensler uses against failure to use contraception. In a world where contraception had not been discovered, where each act of sex produced an offspring, and where sexual activity was a *necessary* part of living (i.e. without it one died), given the universalizability

principle there would be a choice presumably, between engaging in sex and producing an over-populated world, or refraining from it and the species dying out. Furthermore, if Gensler is building in an implicit reference to the actual world, there are some anthropologists who argue that abortion and even infanticide are necessary means of population control in some actual situations (see for example Scrimshaw, 1984).⁴

In conclusion let me summarize. Gensler's argument, though interesting, is unsound. Premise 2 in the argument for GR is ambiguous. The reading on which the argument is sound wouldn't establish that abortion is wrong, but only that either it is wrong, or that it is a morally indifferent action. GR itself seems problematic — uncontentious versions don't establish anything about abortion. There are enormous, and seemingly insoluble problems with Gensler's idea of consenting to past, unactualized actions. No way of understanding this allows the move from GR to the immorality of abortion to work. And finally if the argument can be made to go through it also shows that contraception and abstinence are immoral, contradicting our basic intuitions about these cases.

The moral that should be drawn from all this is not that abortion is permissible in all or any circumstances, but that for abortion, as for any other serious moral problem, there are no easy solutions, Kantian or otherwise.

NOTES

¹ Gensler's paper originally appeared with its pages out of order (1985). It was correctly reprinted (1986) and it is to this latter that I refer.

² This seems in the spirit of Gensler's deontological approach. If an action is morally wrong, then we ought not to do it. Those actions in class 1, if not morally wrong are morally right, and it seems plausible to claim that we ought to do them. Thus for moral actions, it seems plausible that the prescriptivity principle applies.

³ For an argument that this claim is nonsensical see Hare, 1975.

⁴ This paper concentrates on infanticide, but mentions abortion. For an interesting discussion of the whole problem, particularly infanticide, from an ethological and sociobiological perspective, see the volume edited by Hausfater and Hrdy, 1984.

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Department of Philosophy,
University of Otago,
P.O. Box 56,
Dunedin,
New Zealand.