



Fuller Defenses and Partial Critiques: a Discussion of “Ectogestation and the Problem of Abortion”

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Abstract

In this commentary, I discuss Christopher Stratman’s article, “Ectogenesis and the Problem of Abortion.” First, I try to offer some better defenses of assertions that Stratman makes. Next, I question Stratman’s supposition that “there is no morally relevant difference between a fetus and a cryopreserved embryo.” Finally, I challenge the claim that immoral actions cannot give rise to rights.

Keywords Ectogenesis · Personhood · Pre-birth · Post-birth

In “Ectogestation and the Problem of Abortion,” Christopher Stratman offers a provocative thesis that, even if the fetus is not a person, there is no right to secure its death, when ectogenesis is possible. In most arguments about ectogenesis and abortion, fetal status plays a central role, but Stratman challenges this supposition.

Stratman writes, “Moreover, if the fetus is a proper part of the pregnant woman’s body, then, at least for late-term fetuses, the pregnant woman would have duplicate hearts, livers, genitalia, and so on.” This point can be better defended. Just as a human embryo can be *in* a glass petri dish but not be *part* of the glass petri dish, the fetus is a whole, living, unique human being *in* the body of the woman, but the fetus is not a *part* of the body of the woman. Unlike a part of an individual’s body, the prenatal human being can have one blood type and the woman another, the fetus can be male and the woman is female, the prenatal human being can live and the woman can die (or vice versa), and the fetus may be of a different race than the woman. Pregnant women do not have two heads, two hearts, four lungs, and (half the time) a penis, but if the fetus is just part of a woman’s body, then these absurdities follow.

Stratman writes, “it is difficult to see what might count as a morally significant difference between fetuses and infants that would give us reason to believe that fetuses are owned by their biological parents.” Although I agree with the statement, this

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proposition is not adequately defended. Here are a few considerations relevant for defending the view that Stratman seems to assert: there is no morally significant differences between a human being in utero immediately before birth and an infant immediately afterwards. Some prematurely born newborns, say those born at 24 weeks, are less physically developed than some full-term fetuses (say those at 40 weeks immediately before birth). The fetus/newborn distinction does not track less developed physically/more developed physically. In as much as psychological development is linked to physical development, the prenatal human being at 40 weeks is more psychologically developed than the prematurely born human being at 24 weeks.

There are, of course, some differences that between a newborn infant and a prenatal human being. For example, the volume of blood pumped from the heart does nearly doubles after birth. But it is not clear what the *moral* significance of this change is. Suppose, the blood volume did not change or was cut in half? What if any ethical difference would this make for the moral status of the newborn? What is unclear is how the *ethical* concept of personhood is related to the *physical* properties of hormonal function, metabolism, or temperature regulation that change in the human being after being born.

One obvious difference between human beings before birth and human beings after birth is breathing. Only after birth, does the human being begin to breathe air. But this difference is true for all mammals and not just human beings. But in the case of all other mammals, we do not it seems mark a significant difference in moral status for the animal based on whether it can breathe. So, there seems to be no reason for according breathing air as the distinctive characteristic that gives an individual the right to live. Moreover, at least some newborns do not begin breathing until fluid is removed from their lungs. It is hard to believe that these newborns do not have a right to live on this account.

Another difference between newborns and about-to-be-borns is sleep. Newborns sleep a lot but prenatal human being sleep even more. But this characteristic is totally unrelated to moral status. An adult after surgery might sleep for more than 24 hours, which is more than a human being in utero or ex utero sleeps, but this amount of sleep is irrelevant for the moral status of the adult after surgery. Indeed, I argue there is no morally significant difference in moral status for a human being immediately prior to birth and a human being immediately after birth.¹ So, I think Stratman is correct that there is no morally significant difference between all prenatal human beings and all newborns.

I question what Stratman says in this passage, “And if there is no morally relevant difference between a fetus and a cryopreserved embryo, then biological parents might have a right to destroy the fetus that they helped to create. Of course, one could always bite the bullet and accept that the genetic donors do not own the cryopreserved embryos. This response is counterintuitive, but a live option.” There is another option not considered by Stratman. Is there, in fact, a no morally relevant difference between a fetus and a cryopreserved embryo? I would argue that human beings go through the embryonic stage of development, the fetal stage of development, and the newborn stage of development, and continue through various developmental stages of human life until death. The same individual human being is present through all stages of growth and remains present until death. I also believe that all human beings have basic human

¹ See Christopher Kaczor, *The Ethics of Abortion: Women's Rights, Human Life, and the Question of Justice*. (New York: Routledge, second edition, 2015) 41–58; and Christopher Kaczor, *Disputes in Bioethics: Abortion, Euthanasia, and Other Controversies* (Notre Dame: University of Notre Dame Press, 2020) 71–92.

rights. It follows that the human embryo, the human fetus, and the human newborn alike all have basic human rights, including the right not to be killed. As I argue elsewhere, there is no good reason to say that some human beings (like me) have basic human rights and other human beings (those not like me, the embryo, the fetus, the newborn) do not have basic human rights. So, there is no moral difference in basic status between an embryo, a fetus, a newborn, and an older child, and this is a reason it is wrong to kill any of them.

As noted, Stratman wrote, “biological parents might have a right to destroy the fetus that they helped to create.” But this too is problematic in ways unexplored by Stratman. An individual human being is a parent if that individual is a mother or father. To be a father or mother means that you have a son or daughter. But fathers and mothers of dependent vulnerable children have serious obligations to help and not harm those children. A deadbeat dad who fails to provide child support is doing something seriously wrong in neglecting to provide due care for his dependent son or daughter. The rights that parents legitimately exercise over their children arise from the prior and foundational responsibility to care for their children. I can only care properly for my children if I have the authority to guide and control them. Parental rights are grounded in and limited by parental responsibilities. For this reason, parental rights can and should be terminated if a parent is either not providing due care for under age, vulnerable children, or even worse intentionally and seriously harming children. If this understanding of parental rights and responsibilities is correct, there cannot be a parental right to harm a son or daughter, including a right to kill a son or daughter.

Finally, Stratman writes, “surrogacy, gamete donation, and adoption, according to these authors, are immoral because they necessarily involve the biological parents failing to fulfill their obligations. It seems rather strange that an immoral action would entail some extra right possessed by the biological parents.” But immoral actions do sometimes give rise to extra rights possessed by a biological parent. I would argue that adultery is wrong, but if an adulterous couple conceives and she gives birth, both of them as the biological parents would have parental responsibilities to care for that child or at least through adoption to place the child in a family to receive care by adoptive parents. Since both the mother and the father have parental responsibilities, both the mother and the father also have parental rights, extra rights they would not have possessed had they not committed the immoral act of adultery. So an immoral action like adultery can give rise to some extra right possessed by the biological parents. The same thing could be true for surrogacy or gamete donation.

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