

ON THE WRONGFULNESS OF ABORTION

SOBRE LA INJUSTICIA DEL ABORTO

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Abstract: Abortion is seen as an immoral and unjust act by many. Nonetheless these views are under pressure to conform to the learned opinion on abortion. A variety of prestigious in the field of applied ethics support abortion in one way or another. And it is a dogma of modern liberalism that even if one is personally opposed to abortion, one must accept the neutral solution of its public permissibility. The present article defends the thesis that abortion is immoral and unjust against these contentions. With regards to the moral status of abortion, it argues that the prohibition of abortion is off a piece with the prohibition of killing generally, which is characterized by protecting all human beings equally. With regards to the compatibility of abortion permissibility with liberalism, the article argues that such a compromise is not neutral, but heavily rigged in favor of the interests and world-views of abortion proponents.

Key words: *Bioethics, Rights, Liberalism, Human Rights, Public Reason*

Resumen: El aborto es visto como un acto inmoral e injusto por una gran variedad de personas. Sin embargo, existe una presión considerable de que estas opiniones cambien y se alineen a la ortodoxia. Una variedad de pensadores prestigiosos en el campo de la ética aplicada defienden el aborto de una u otra forma. Y es un dogma del liberalismo moderno que aun cuando personalmente estemos en contra del aborto, debemos aceptar la solución neutral de su permisión pública. El presente artículo argumenta la tesis de que el aborto es inmoral e injusto frente a este tipo de objeciones. Respecto del estatus moral del aborto, se sostiene que la prohibición del aborto es una parte integral de la prohibición genérica del homicidio que se caracteriza por proteger a todos los seres humanos

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de forma igualitaria. Respecto de la compatibilidad de la permisión del aborto con el liberalismo, el presente artículo argumenta que la permisibilidad no es un arreglo neutral sino uno altamente parcializado a favor de la visión de mundo de quienes favorecen el aborto.

Palabras clave: *Bioética, derechos, liberalismo, derechos humanos, razón pública*

Summary. *I. Introduction. II. What is wrong with abortion. II.1. Why is it wrong to kill? II.2. Is the fetus a human being (in the relevant sense)? III. Counterarguments. IV. Abortion and Liberal politics. V. Is opposition to abortion religious? Does it matter? VI. Abortion and a human rights. VII. Conclusions. References.*

I. INTRODUCTION

Abortion is the intentional termination of pregnancy on part of the mother. This termination may directly aim to achieve the death of the fetus, or it may simply accept it as natural consequence of the separation of the fetus from the mother's womb.

Abortion is an act that is unreflectively deemed unethical and unjust by a large sector of the population of the world. Amongst them, various religious denominations steadfastly oppose abortion. Yet it is seemingly hard for people to explain why abortion is an evil. And it is seemingly easy for abortion proponents to explain why abortion is a legitimate medical procedure. All modern ethical theories have defended abortion to a considerable degree. A list of prominent abortion defenders is also a rough list of the most prestigious thinkers in applied ethics¹.

On top of this, opposition to abortion is deemed to be politically incorrect. It is generally thought that opposition to abortion is at best a private matter. So even if a person would manage to retain his or her objections to the practice on the face of the academic consensus, this would have to be understood as an eccentric opinion or taste, necessarily

¹ For consequentialism see Singer (1993), for deontology see Thomson (1976), for virtue ethics see Hursthouse (1991), for particularism see Little (1999). These references can be easily multiplied. Naturally, there are also bioethicists that oppose abortion such as Coope (2006), Marquis (1989), Kazor (2011), Pruss (2011). A quick glance at citations counts at *google scholar* suggests that the formers are much more influential than the latter. Thomson's defense of abortion has been cited 1687 times, while all the abortion detractors, taken together, reach around 100 cites (citation counts were taken on April 2017).

relegated to the private sphere. Unlike bioethicists, political philosophers are less forthcoming about their views on abortion as this topic is not of immediate interest to them. Even so, a list of the prominent political theorists who are happy to relegate abortion to the private sphere is quite impressive².

I do not share this opinion. I consider abortion to be homicide and sometimes murder. I believe this unreflectively, possibly due to the macabre and often grisly nature of what abortion entails. If pressed to give reasons for my belief, I would say that I oppose abortion because it involves the killing of an innocent human being. But why would that be so bad, when this particular human being is marginal and inconvenient, and when so much freedom and preference satisfaction can be derived from its elimination?

This note aims to address concerns such as these and to rationalize the intuition that abortion is wrongful. Rationalization in this context means embedding the objection to abortion in a theoretical account that gives it coherence and reflective depth. There may be wisdom in visceral reactions, but visceral reactions are a dime a dozen, and without a way to distinguish between those that are valid and those that are not, pure visceral conviction is bound to falter or to lead astray. The choice of the word rationalization has been deliberate, because it is precise. The word rationalization has pejorative connotations. Persons are accused of rationalization when it is thought that their arguments are mere masks for something they believe on irrational grounds: causes instead of reasons. “You only believe that because of X”. These accusations involve a genetic fallacy. We are corporeal beings in constant causal commerce with the world. It is no wonder then that all our beliefs are predicated on causes. Yet the causes that make me believe something are irrelevant to the validity of such a belief as long as that belief can be reconstructed in a way that makes it justified. Rather than being something shameful and disingenuous, rationalization is what is precisely what is called for³.

The argument develops as follows: section 2 presents the argument against abortion. Section 3 defends these argument against a few famous counterarguments. Section 4 addresses the political dimension of abortion. It denies that the fact disagreement on the topic of abortion implies

² Ackerman, 1980, pp. 127-128; Dworkin, 1993; Nagel & Sandel 2006; Nino, 1991; Selznick, 1994, p. 415. It should be noted that these references go across the liberal/communitarian fault line.

³ The fact that these intuitions and reactions need to be rationalized does not mean that they are entirely dispensable.

abortion permissiveness as a fair political settlement. Afterwards sections 5 and 6 address a variety of secondary issues. Section 5 addresses concerns that opposition of abortion is laced with religiosity. Section 6 draws out the implications of the argument for the topic of human rights. Section 7 presents brief conclusions.

II. WHAT IS WRONG WITH ABORTION

Pre-theoretically we can say that what is wrong with abortion is that it entails the killing of an innocent human being. This is the belief that needs to be rationalized. We need insight as to (1) why it is wrong to kill an innocent human being, and (2) as to whether this prohibition is extended to unborn human beings given their limited powers and abilities⁴.

II.1. Why is it wrong to kill?

With regards to the first question: It is rather difficult to explain why killing is bad. Many of the features that seemingly explain the badness of killing can be removed, and killing nevertheless remains bad. For example, Jeremy Bentham claimed that the badness of killing arises from the social alarm and fear that killing causes. Yet killing done secretly is not any less bad than killings that cause social alarm⁵. Peter Singer has claimed that killing is bad because it frustrates self-conscious plans (Singer 2011, pp. 82-83). This explanation is likewise inadequate. Killings are not better or worse in proportion to the amounts of plans or the intensity of desires of those being killed⁶.

⁴ We should not be too distracted by the mention we have made of innocence, its role in our argument is merely negative. The mention of innocence suggests that a different analysis may be required if we are to discuss the permissibility of killing a human being in self-defense.

⁵ Bentham (2013) claimed the evil of homicide arose from the fear it caused on others. Since babies are not prone to fear, they could be killed whenever this was found to be convenient. He claimed:

«In pursuit of profit by depredation, suppose an act of homicide committed by a highwayman on a traveler on a certain road, all those who foresee a need of travelling on that same road are filled with apprehension for their own lives».

But infants are not prone to such fears and therefore killing them involves no mischief. Bentham thought that as a means to address the problem of unwanted pregnancies and overpopulation infanticide was «[the] gentlest of all remedies».

⁶ Here I disagree with Marquis (1989). Marquis centers his objection to abortion on the loss of valuable goods for the fetus. This line of thinking has difficulties with the equality

Contra Bentham and Singer, a proper explanation of why killing is bad would have to account for two features of the wrongness of killing: its resistance to secrecy and its connection with equality. Killings made in secret are at a basic level no better than killings done in public, and the killing those with muted desires and hazy life plans are no better than the killings of those with intense desires and well-crafted life plans. In connection with this second point, it should be added that the killing of the intelligent and athletic no worse than killings of less well-endowed human beings.

For Kant killings are bad because they involve a betrayal of our nature as rational beings. What this means is obscure to the extent that it is unclear what rationality is and why it demands our allegiance. If rationality is no more than the drafting of satisfactory life plans, we have not moved far beyond the views of Peter Singer. In fact, it is common to think that Kant's theory, when fully thought through, has utilitarian implications.

This regressive step from Kant back to Bentham may be avoided by reflecting that from Kant's point of view the badness of killing is not primarily a badness of result as it occurs in the victim, but a wrongness of what is done as it arises in the agent. Reason is first and foremost the ability to order human life in a way that is compatible with the lives of others and the killer betrays this faculty in a severe and irreversible manner⁷.

constraint mentioned earlier. Taking this approach to its logical conclusion, Marquis would have to concede that killing a fetus in Sub-Saharan Africa is all things considered less bad than killing a fetus in Western Europe due to the differences in life-expectancy and well-being that exist between these regions.

⁷ It is not the purpose of this essay to defend the Kantian account of rationality and of the lexically superior value of the good will against all contenders, particularly consequentialist and desire-satisfaction theories of rationality. It is enough, for the purposes of this argument, to show, in this section, that it does a good job in providing an explanation for our deep-seated beliefs on the wrongfulness of killing. That being said, there are many conceptual truths that support Kant's account. To the extent that world is under our control, because human beings are agents, cooperation is a priori better than predation. Whatever bad consequences may arise out of cooperation, these can be addressed by further cooperation. By contrast, whatever good consequences may arise from bad behavior, these are offset by the loss of cooperation and the incidence of predation. Hence, securing the basis for the cooperation of agents is lexically prior to any other demand. For any world X, which includes a mix of cooperation and predation, there is a more cooperative world Y where the overall wellbeing is higher. Cooperation is secured by ensuring that everyone has the good will, that is, a cooperative disposition. Attacks on the good will, whatever their contingent benefits may be, threaten to impede human progress. Moreover, for agents' consequences or desires can never be the last word because consequences and desires are malleable.

Michael Tooley has an article whose title includes the question «why should the baby live?» (2013) Helga Khuse and Peter Singer have a similarly titled book (1985). There is something disturbing about this very question. We do not ask each other to come up with reasons as to why our lives are valuable, more valuable than the contingent benefits the questioner might get from offing us. The ethics of life is not the ethics of comparative value. The right to life is not a reflection of our great value, but rather a refusal to appraise each other as valuables or trash.

The focus on the agency of the killer helps us ground the two intuitions we noted in the outset. That the objection to killing is resistant to secrecy and egalitarian. Secrecy might mitigate the consequences of killing, but it does nothing to alter the nature of what is being done, in fact, it can make things worse if secrecy is grounded in deceit and falsity which also involve betrayals of our rational nature. The egalitarian nature of the objection to killing arises from the fact that although the instrumental, moral or aesthetic value of the person killed is bound to vary, yet as a rule something much worse takes place at the level of the agent, the abandonment of that which is beyond price.

II.2. Is the fetus a human being (in the relevant sense)?

Equipped with this answer, we can now shift to the second question. The emphasis on reason as grounds to explain the prohibition on killing threatens to leave some humans outside the range of the prohibition of killing on account of them not being rational. Peter Singer has famously claimed that a human being in the moral sense (a “person”) is something different from a human being in a biological sense (Singer, 2011, p. 74)⁸. The former exhibits some rational powers that the latter lacks. And Allen Wood (1998) has argued at length that Kantian respect for humanity can only be understood as respect for reason. Consequently, human beings that do not exhibit reason are either excluded from the circle of equal respect, or receive a mitigated degree of respect, where their non-actualized rational nature is ground for some consideration, but should not allow them to trump the claims of actual rational nature.

But why would that be the case? Wood accepts that fetuses possess in a minimal degree a rational nature and that this counts for something. At

⁸ Similar conclusions are espoused by Tooley who wants to think of personhood as a «purely moral concept» (Tooley 1972, p. 82). What this means is nonetheless unclear. I am inclined to think that it is precisely because personhood is a normative concept that fetuses are persons. Rationality *belongs* to them, it is *proper* to them, and this holds true whatever accidents happen in the empirical world.

very least they are rational beings. Wood's framing assumes that the claims of fetuses and adults are in conflict. Yet to identify such a conflict it is not enough to show that contingent adult desires stand in the way of the survival of the fetus. A rightful ordering of relations between rational beings is not based on rational beings with stronger desires trumping others. Rather it is based on the possibility of identifying a cooperative schema where they all enjoy ordered equal freedom. And desires should be made to fit the parameters of this schema and not the other way around. Save cases where the unborn child threatens the life of its mother, there are no grounds to think that fetuses are insurmountable obstacles to the enjoyment of ordered equal freedom. A fetus might be inconvenient, but this does not show that there is no arrangement of space and desires in which its mother and the fetus can have their own rightful place.

If the objection against killing was predicated on measuring the loss of value, then it would make sense to compare the value of the rationality of the fetus with the value of the desire satisfaction that would arise from having the fetus removed. But it was argued in the preceding section that the objection against killing is not predicated on the value of what is being extinguished, as this would make no sense of the equality constraint. Rather, we argued, the objection to killing is best located in the contradiction of reason as it arises in the killer. On this understanding, it is not necessary to show that the fetus is fully rational within the womb. It is sufficient to recognize the trivial point that we were once fetuses and we benefited from the forbearance and care of our parents. Having thus benefited, we act wrongly in denying such benefits to others. In claiming that fetuses can be eliminated because they are "not rational" we fail to extend to others the courtesy that we enjoyed ourselves.

This is why Michael Tooley's claim that potentiality is insignificant is false and misleading. Tooley argues

«Suppose at some future time a chemical were to be discovered which when injected into the brain of a kitten would cause the kitten to develop into a cat possessing a brain of the sort possessed by humans, and consequently into a cat having all the psychological capabilities characteristic of adult humans. Such cats would be able to think, to use language, and so on. (...) The fact that one could initiate a causal process that would transform a kitten into an entity that would eventually possess properties such that anything possessing them ipso facto has a serious right to life does not mean that the kitten has a serious right to life» (Tooley, 1972, 60-61).

We were not once cats that benefited from a transformation. We were once fetuses. Of course we can also reject Tooley's intuition and

claim that kittens on the process of becoming talking cats are not to be killed. Why not? Outlandish cases are cheap and you get what you pay for⁹.

Here again it is necessary to reflect on the kind of unanimity that is sought in the various formulae of the categorical imperative. Given the categorical and transcendental character of morality, it would be unsustainable to argue that the kingdom of ends is nothing more than the consensual self-government of actual human agents. The form of reasoning involved in morality demands us to transcend our empirical situation, and this involves grasping the human world a-temporally as a scheme of free cooperation extending over time. Under this understanding, the fact that fetuses to be aborted are rational only in a minimal sense is no ground to construe them as less than human. They have a human destiny that belongs to them and which cannot be rightfully denied. Naturally, a lot of our a-temporal obligations relating to future generations are imperfect in nature. We ought to leave our children a clean environment, but in this regard there is no precision as to what must be done by whom. Yet with regards to abortion circumstances ensure that obligations are perfect¹⁰.

III. COUNTERARGUMENTS

Even if it is granted that abortion involves killing an innocent human being, and that this is “bad” (many abortion proponents have granted this for the sake of argument), it is still possible to claim that abortion should be “all things considered” permissible. The most influential defenses of abortion have taken this form. Judith Thomson’s violinist argument (1971), and the idea espoused by philosophers such as Allen Wood (2008) and Ronald Dworkin (1993, 2011) that objections to abortion belong under the sphere of personal ethics and therefore cannot be prohibited by law both have this structure. This section aims to show that these counterarguments fail. Abortion remains wrongful.

⁹ Tooley’s thought experiment can also be defused by making a distinction between active and passive potentialities. An active potentiality belongs to the entity itself, a fetus has the potential to talk inherently. By contrast, Tooley’s talking cats only have it if they are acted upon by others. See Kaczor, 2011, p. 24.

¹⁰ To my mind, Kant rejects a “first come, first serve” scheme of ordering. In his brilliant but problematic *Metaphysics of Morals* Kant argues that while a provisional claim to property may arise unilaterally, definitive property rights arise from the united choice of all that possess something in common operating *a priori*. This last qualification implies discounting purely empirical contingencies as to who was born first. See Kant (6:261, 6:624).

Thomson's argument is an appeal to intuition arising from an elaborate and outlandish thought experiment. She writes:

«You wake up in the morning and find yourself back to back in bed with an unconscious violinist. A famous unconscious violinist. He has been found to have a fatal kidney ailment, and the Society of Music Lovers has canvassed all the available medical records and found that you alone have the right blood type to help. They have therefore kidnapped you, and last night the violinist's circulatory system was plugged into yours, so that your kidneys can be used to extract poisons from his blood as well as your own. The director of the hospital now tells you, "Look, we're sorry the Society of Music Lovers did this to you—we would never have permitted it if we had known. But still, they did it, and the violinist is now plugged into you. To unplug you would be to kill him. But never mind, it's only for nine months. By then he will have recovered from his ailment, and can safely be unplugged from you." Is it morally incumbent on you to accede to this situation? No doubt it would be very nice of you if you did, a great kindness. But do you have to accede to it? What if it were not nine months, but nine years? Or longer still? What if the director of the hospital says, "Tough luck, I agree, but you've now got to stay in bed, with the violinist plugged into you, for the rest of your life. Because remember this. All persons have a right to life, and violinists are persons. Granted you have a right to decide what happens in and to your body, but a person's right to life outweighs your right to decide what happens in and to your body. So you cannot ever be unplugged from him." I imagine you would regard this as outrageous» (Thomson, 1971, p, 49).

There is much to say against the use of outlandish thought experiments such as these, but let's leave that aside¹¹. Thomson's argument revolves around the duty to aid. Even if the fetus is a person, he has no right to aid when the aid he needs is very demanding. Thomson has been quite insistent on this point¹². Against Thomson, two things must be said.

¹¹ The problem with these thought experiments is that force us to check our sensibility at the door as if that were irrelevant. It seems clear to me that the rules we are to live by cannot be drafted without consideration of what is meaningfully revealed to our sensibility.

¹² In the same article (1971, 55). She writes

«I am sick unto death, and the only thing that will save my life is the touch of Henry Fonda's cool hand on my fevered brow, then all the same, I have no right to be given the touch of Henry Fonda's cool hand on my fevered brow. It would be frightfully nice of him to fly in from the West Coast to provide it. It would be less nice, though no doubt well meant, if my friends flew out to the West Coast and carried Henry Fonda back with them. But I have no right at all against anybody that he should do this for me».

The outlandishness of the example makes it distracting rather than illuminating. Were it normal that cool hands could cure deadly diseases this would be publicly provided and funded by taxes.

First, it is very unclear that we have no duties of aid of the sort rejected by Thomson. Thomson seems to think that rights are basic and opaque. That we have nothing more than intuition to guide us as to what rights exist. This is surely a very questionable limit for inquiry. There is a long line of thinking that sees rights as deriving from a process of social construction. Any reasonable social contract is going to involve a provision for situations in which, for no fault our own, we become downtrodden and must rely on others. To think otherwise is to ignore the human vulnerability that makes us want to establish a social order in the first place.

It is clear that duties of aid are often imperfect duties. That means that to become duties proper they need to go through a process of specification where the law assigns a particular person to bear the duty in a particular scenario. But sometimes this process is not necessary. If I walk by a drowning stranger, circumstances have made the imperfect duty perfect. It befalls on me to save the drowning man. This is why Thomson's (1971, p. 59) argument of people seeds is misleading. She writes

«Suppose it were like this: people-seeds drift about in the air like pollen, and if you open your windows, one may drift in and take root in your carpets or upholstery. You don't want children, so you fix up your windows with fine mesh screens, the very best you can buy. As it happens, however, and on very, very rare occasions does happen, one of the screens is defective; and a seed drifts in and takes root. Does the person-plant who now develops have a right to the use of your house? Surely not—despite the fact that you voluntarily opened your windows, you knowingly kept carpets and upholstered furniture, and you knew that screens were sometimes defective. Someone may argue that you are responsible for its rooting, that it does have a right to your house, because after all you could have lived out your life with bare floors and furniture, or with sealed windows and doors. But this won't do—for by the same token anyone can avoid pregnancy due to rape by having a hysterectomy, or anyway by never leaving home without a (reliable!) army».

In this outlandish example she is attributing to pregnancy some of the characteristics associated with imperfect obligations. Surely the failure of the protective screens happens frequently and randomly despite one's best efforts. And no one should have the burden of bringing up 300 people seeds. People seeds are a social problem. Still, the appropriate response is not to kill them or to throw them away, but to make a provision for the government to come and gather the people seed and keep them safe somewhere. People seeds are analogous to refugees, not to pregnancy.

Second, it is misleading to consider abortion as a case of refusing to perform an act of Good Samaritanism. There is a very clear sense in which

the woman is not a stranger to the fetus. To assume that what holds between them is a generic duty of aid is to make no sense of the responsibilities that arise within intimate relations. Moreover, in abortion the fetus is the passive recipient of actions on the part of the doctors that ensure that he is in fact killed. Poisoning and dismembering a fetus is hardly “not aiding” or “letting die”.

Finally we should say something about Thomson’s contention that she is defending the right of getting the fetus removed, not of killing it (1971, p. 66). It is glib to think that one can customize one’s responsibility in this fashion. If I throw a person off my lifeboat and he drowns I cannot say “I did not kill him, was merely exercising the power of exclusion that is inherent in my right to ownership”. In order to disabuse yourself from very serious expected consequences of an action more is needed than a mere disavowal. For example, those consequences have to fall within the sphere of responsibility of another person who adds his own decisive contribution to the chain of agency. Nothing of the sort occurs in a purely extractive abortion. If the fetus is only extracted, but not actively killed, the chain of agency still ends with the extraction and death.

It has also been argued that while abortion may be “unethical” it is not a proper topic of “moral” concern. It relates to our values in life and nobody can legitimately force us to have this or that conception of value. Wood (2008, p. 291) provides us a hammy but usefully succinct articulation of this point of view.

«The issues we are discussing here are, in Kantian terms, issues of right, not of ethics. They concern duties and claims that may be coercively enforced. It is a separate question whether the value of a fetus, and of its development to the point of birth, might constitute a reason for a woman to regard as an ethical duty her carrying it to term even at considerable cost to her own health and welfare. Probably there is such an ethical duty, at least in many cases. But those who would deny a woman even the right to make a choice whether to comply with this duty have thereby utterly forfeited their standing to argue with them about such issues. Someone who would deny you the freedom to make a choice that is rightfully yours to make has no business trying to tell you how you ought to make it. The effrontery of those who picket abortion clinics should therefore be met with stony stares of contempt by the women in whose lives they are trying to meddle».

In response, we must first emphasize that nothing that has been said in section II of this contribution suggests that the objection to abortion is merely ethical. Nowhere has it been argued that fetuses are to be protected because of their aesthetic value, or because of poetry of life or anything of the sort. All the arguments that have been raised are recognizably “moral” in nature. We have argued that the same reasons that make killing

wrongful even if it victimizes the dull and the weak, even if done in secret, extend naturally to the unborn.

Naturally the arguments that have been put forward in section II of this essay will be polemical. But it is absurd to think that they are merely ethical on grounds on account of their disputability. If making something polemic is enough to put it beyond the sphere of morals, and therefore, beyond the sphere legal enforceability, then it would be possible for a killer to argue that he sincerely believes in killing, and that since we cannot prove to him, to his satisfaction, that killing is wrong, then it becomes a private matter that relates to his way of life¹³. There is an important sense in which justification must be public, it must be accessible to those who think differently, but the demand is one of accessibility not of actual access. There is no guarantee that arguments will be accepted, and social order must not grind to a halt on this ground.

Moreover, the idea that we can distinguish morals and ethics is suspicious. Maybe it makes more sense to distinguish the inner and the outer, as Kant does in the *Metaphysics of Morals*. The prohibition on abortion only deals with the outer. It does not require people to believe one thing or the other, to feel one thing or the other, it only forbids certain actions.

And we should certainly distinguish between morals and politics. The argument of Wood and Dworkin derives its force from political scruples. The arguments we have given will not convince everyone. Yet, presumably, abortion proponents and abortion opponents must live together and refrain from violence. This suggests the need for a political compromise. As we will show in the next section of this contribution, the general permissibility of abortion, letting everyone choose whether to abort or not, is in no way a fair political bargain.

IV. ABORTION AND LIBERAL POLITICS

Naturally the preceding arguments will leave many unpersuaded. In light of such disagreement, there will be a desire to redeploy the liberal

¹³ A strand of Kantian ethics, discourse ethics, is often very naïve about its demonstrative powers. It thinks that it can show that there is a contradiction in killing, and other acts that impede discourse and that this provides a sufficient criterion for distinguishing what is to be permitted from what is to be prohibited. Yet the “contradiction” that discourse ethics manages to reveal is a very superficial one. Yes, I cannot kill and engage in discourse at the same time. But why should I prefer discourse over killing? Discourse ethics cannot convince a stubborn wrongdoer, but disagreement or polemic, sincere or stubborn, should not render us his prey.

argument along political lines. Instead of arguing that there is “really, really” a right to abortion, it will be argued that it is politically necessary to institute such a right in order to achieve a fair settlement between the claims of abortion proponents and abortion detractors. Roughly, what is claimed is something like this: “you have an intuition according to which abortion is wrong; I have an intuition according to which it is ok. We are both free and equal citizens who have to live together, so we should define a legal regime that splits the difference by being neutral between both of our points of view”. Such neutrality is achieved by making abortion a matter of choice: “If you think it is wrong, don’t do it”. On this reframing whether abortion is right or wrong ceases to be important. What matters is rather whether it is politically acceptable to allow or deny abortion.

It is true that a political settlement is needed between abortion proponents and abortion detractors, but this particular proposal is politically unacceptable. The conclusion that abortion is to be permitted does not follow from the demands of political neutrality. General permission is not neutral between the two parties, but heavily rigged in favor of the liberalizers of abortion and it may be rightly rejected as a political settlement by abortion detractors¹⁴.

In the abortion controversy permission is not neutral between the two parties because it is everything that the liberalizer wanted, and almost nothing of what the opponent of abortion wants. The liberalizer wants permission. He does not want to make abortion mandatory¹⁵, and permission means everybody gets to choose whether to X or not to X. So he is getting all that he wants. The abortion opponent certainly does not want to be forced to abort, and maybe he gets that, but that’s all that he gets. There is no way in which the result of liberalization splits the difference between the two opposing camps. What would have to be sought is a space in between permission and prohibition. And this can be intelligibly found. For example, abortion can be prohibited, not facilitated, and not punished if it were to take place. This is not what liberal countries have, for the most part, adopted.

¹⁴ The abortion consensus has been presented as neutral while it is not. Very few liberals have noticed. Brian Barry (1995, pp. 90-92) is a notable exception.

¹⁵ This characterization of abortion proponents is rather generous. Nowadays abortion proponents want to ensure that there are doctors willing to perform abortions, and that the doctors that object to carrying out the procedure should refer the woman to a willing doctor. See General Comment 22 of the Committee on Economic Social and Cultural Rights on the Right to Sexual and Reproductive Health (UN Doc E/C.12/GC/22) paragraph 43.

Moreover, splitting the difference correctly implies taking into consideration the different degrees of interest or desire of the opposing parties. Admittedly, this is hard to measure, but it is my impression that for those that oppose it, abortion is an abomination. It is one of the worst evils. I don't think that abortion has a positive significance that would outweigh the negative significance it has for its opponents. Especially given that, with a modicum of prudence, the benefits of abortion can be achieved through contraception.

Liberal politics involves a demand of mutual intelligibility. In liberal politics we should try to make arguments that the other party could accept¹⁶. The argument set forth in this paper is of that nature. It does not invoke any hidden esoteric doctrine, or imply the creation of castes¹⁷. But the liberal requirement of mutual intelligibility is misunderstood if it is taken to mean that any argument another party does not in fact accept must be seen as illiberal and therefore must be withdrawn from the political arena. This requirement is too strong. It incentivizes and rewards stubbornness. It allows the unilateral sabotaging of the claims of some citizens by the refusal to accommodate of others.

Likewise the demand of mutual intelligibility cannot be understood as a lexical demand that trumps all other considerations. In particular, considerations of conscience. If I believe that X is sacred, and X makes demands on the public life of society and I cannot persuade my opponent of X that does not mean that I should withdraw from my claim that X is sacred. Because X makes demands on the public life of society, keeping X to myself is not an option, it implies withdrawing from the claim that X is sacred. At very least, I should be allowed to exit the social contract and to find a social arrangement where I can fully live by X.

In connection to this, it warrants mention that abortion proponents are keen on putting restriction on the modes of discourse that may be used to be discuss abortion. For example, graphic images of what it means for a mother to kill her child will often be rejected as inappropriate emotional manipulation. Yet seeking neutral ground or splitting the difference cannot involve taking away one type of argument that is useful for one party and disadvantageous for another. Splitting the difference here must be something like allowing all arguments free play.

¹⁶ See for example Forst (2012).

¹⁷ Needless to say, pregnancy is not a caste, and opposition to abortion protects both unborn boys and unborn girls. That is without mentioning the prevalence of sex selective abortion.

V. IS OPPOSITION TO ABORTION RELIGIOUS? DOES IT MATTER?

At this point it is important to address concerns that arise from the association of opposition to abortion and religion, the Christian religion in particular. There is the expectation that showing a connection between opposition to abortion and religion will undermine it. Maybe because it is thought that only a Christian can believe that abortion is evil, or maybe because it will reveal an undue intromission of religious thinking into the secular public sphere. None of these expectations are sound.

The arguments presented in the second section of this essay do not depend on religion in any way. In fact concerns presented here are easily understandable from a standpoint hostile to religion. For example, that God apparently condoned the killing of small children in the Old Testament (Psalm 137:9) is something that we can hold against Judeo-Christian religion. For a Christian to object that such killings were all right given the fact that the children to be dashed against the rocks were not proper persons would be obscene. And here one cannot forget how the suffering of children has moved many Christians into atheism or to the verge of atheism, something that is well narrated in *Brothers Karamazov*.

The political arguments discussed in section 4 are also independent of religion. Even if it were true that all abortion detractors were Christians, and all abortion proponents were secularists, from a political perspective committed to achieving peace by splitting the difference between warring factions there would be no reason for filtering out religious interests and desires, intense as they often are, from the formation of the social contract. On the contrary, a lasting political settlement can only be achieved if the most intense desires of all the factions are accommodated. In certain contexts a permissive neutrality on the part of the state has served this accomodatory purpose. In the topic of abortion it does not.

VI. ABORTION AND A HUMAN RIGHTS

In spite of this, abortion has been defended as a human right. It has been defended, first, as a corollary of other human rights that are amply recognized, such as the right to privacy and the right to bodily integrity (of the woman). And more recently, it has been defended as a discrete reproductive right of women. At the time of writing, the General Comment 22 of the Committee on Economic Social and Cultural Rights on the Right to Sexual and Reproductive Health (UN Doc E/C.12/GC/22) stands out as a high profile document that proclaims that abortion is a human right. This

General Comment written is supposedly an authoritative interpretation of the International Covenant on Economic, Social and Cultural Rights. The Committee on Economic Social and Cultural Rights pretends that it can extrapolate a right to abortion from Article 12 of the Covenant which innocently (but unwisely) states that «The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health». It is plain to see that in this extrapolation, there is no “interpretation” involved, but rather, arbitrary decision-making. The Committee on Economic Social and Cultural Rights presumes to be a group of experts in human rights. I find this claim strange and unsubstantiated. To my ear “human rights expert” is a jarring combination of words. It is like an expert on morality. A person can be morally wise, but wisdom is not a sort of expertise. Unsubstantiated because the normative directives emanating from the Committee have no arguments backing them up. Those who claim to be legal experts are not entitled to lead by dictatorial fiat.

Pushing abortion as a human right is grotesquely wrong. From an ethical perspective, it is simply asking for a right to what is unjust. From a political perspective, it is a dishonest and inegalitarian measure that oppresses the weakest and most vulnerable in the name of anti-oppression. The perverse character of these inversions of human rights should not escape notice. But beyond being bad in itself, this bad behavior also has very negative ulterior consequences. The inclusion of abortion in the list of human rights alienates abortion opponents from the language of human dignity. In a world where hunger and torture are still widespread, it would be desirable to have a shared political language for opposing extreme injustice. By including abortion within the list of human rights, this language is denied to abortion opponents. This insistence on seeing abortion as part of human rights essentially privatizes human rights into the doctrine of the progressive community. But the world is wider than progressivism, it will always be.

VII. CONCLUSIONS

Nobody that is committed to the thesis that abortion is unjust has any reason to stand down from this claim in light of the creeping legitimization of such a macabre practice. Opposition to abortion is in good order both at the moral and political levels. Morally, opposition to abortion is of a piece with opposition to homicide and murder generally. Politically, abortion opponent has no reason to accept a permissive compromise that is

neither liberal nor neutral, but which is rather blatantly unequal and politically unacceptable. Abortion detractors need not, and must not stand down from their claims.

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