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The Interest View: Advancing The ‘Unborn’ Debate

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Life before Birth: The Moral and Legal Status of Embryos and Fetuses
by Bonnie Steinbock
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Continued polarization of opinion about the identity of human beings simmers beneath the surface of American culture. Policy decisions are heavily influenced by politicians responding to constituent voices through polls, office contacts, and “winds.” Unfortunately, bumper-sticker slogans and sound-bite communication styles are too easily accepted as representing the content of complex issues, and comprehensive debates are not popular or common.

Beyond the abortion question, the status of the unborn is critical in the dilemmas related to technological explorations and interventions. Appraisal of the moral permissibility (and advisability) of using modern techniques for prenatal diagnosis of major disabilities, for major operations on fetuses, for artificial insemination and in vitro fertilization, and for fetal and embryo research is highly problematic. Complicating such appraisals are the widely divergent moral scales of philosophers and theologians, with different premises, grounds, and guidelines held even among those standing together in broad theoretical agreement.

Much work has been done in the study and analysis of specific questions and individual cases; Bonnie Steinbock, a professor of philosophy at the University at Albany, State University of New York, has written a comprehensive assessment in Life before Birth. Her exploration begins with a general theory, “the interest view,” related to Joel Feinberg’s “interest principle.”

The interest view. To avoid “cooking the evidence,” Steinbock presents a theory of moral status as a consistent thesis within which the standing of the newborn can be understood. The question is posed: “Whose interests are we required to take into consideration from the moral point of view?” She asserts that the possession of interests is required, focusing on what is important to the being itself rather than on the secondary value of the being to others. To have interests, a being must have conscious awareness, or sentience; it must matter to a being what happens to it—this “mattering” gives moral status. Using scientific information to approximately mark conscious states, embryos cannot have interests. Sentience for fetuses begins sometime between the late second trimester and the mid-third trimester.

The legal view. The courts have not acted consistently in actions based on legal definitions of the unborn. As a means to resolve many discrepancies, Steinbock presents the interest view: The nonsentient fetus has no interests; the surviving child obviously does and is entitled to be compensated for wrongful injuries; allowing surviving children to recover for injuries prior to birth does not imply that preconscious fetuses have interests, rights, or moral or legal status. Recovery for wrongful death of a fetus should be aimed at compensating intended parents for the loss of an expected child.

The author reviews extensively civil and criminal law affecting fetuses, arguing that there should be civil liability for injuring or killing a fetus. The issue of criminal liability is more difficult, with clear public policy implications. She uses the Levey case to analyze the use of vehicular homicide statutes to protect fetuses; in that case the driver charged with killing the fetus was also the expectant mother. The case raised the issue of prosecution for homicide, defining a fetus as a person, such a definition could allow innumerable criminal charges against pregnant women, including improper nutrition, excessive weight gain, drug abuse, failure to get appropriate prenatal care, and so forth.

Wrongful-life suits present special problems and generally have been rejected by the courts (only three states recognize them). Steinbock thinks that until access to health
care is universal, litigation may be the only way for some infants to get needed services.

Maternal/fetal conflict. Some behavior believed to be protective of fetal health may conflict with expectant mothers’ choices or needs. Compounding the analysis is the limited knowledge of actual dangers to fetuses caused by behavior, drugs, or other influences. Damage can occur before a pregnancy is discovered. However, the evidence about injury caused by external influences suffices to claim that there are moral obligations to the developing fetus.

Although some abuses are so egregious that newborns may be removed from their parents, such actions, often punitive, should be carefully limited and strongly justified; state interference itself is potentially abusive. Incarceration of pregnant addicts is also problematic. Steinbock takes a pragmatic view: Incarceration does not assure a drug-free environment, and prenatal care in jail is often poor. She reminds us that a public policy that funds drug treatment programs is more rational (and more effective) than one that puts pregnant offenders in jail.

Apart from violation of the rule of informed consent, damage to the patient/professional relationship, with variable protection provided to the fetus, judicial interference presumes medical expertise. Great caution is needed in the formulation of policies that encourage state intervention in medical decision making. In fairness, involvement of courts is often sought by hospital administrators and/or physicians who choose that process in the interest of institutional and self-protection from lawsuits rather than in the interest of patients.

Research and reproductive technology. As the interest view is applied, it logically follows that fetal research is morally permissible until sentience; therapeutic research requires only the basic elements of informed consent. Steinbock carefully distinguishes between moral standing and moral value: Moral status can be denied, yet the preconscious fetus may be valued symbolically. One well-publicized dilemma is the use of aborted fetal tissue for therapeutic experiments, such as for treatment of patients with Parkinson’s disease.

The helpful descriptions of diagnostic techniques and basic reviews of physiology and development provide an important factual background for the moral debates; this is one of the many strengths of the book. Steinbock makes a number of objections to fetal research, with research on living fetuses after abortion being the most problematic. She suggests that invasive research be limited to the first trimester and have the possibility of significant human benefit.

In vitro fertilization and its variants are important ways of bypassing common causes of infertility; they also enable embryo research that promises important societal returns. An excellent example of the technological imperative, these procedures have been quickly accepted by medical professionals and the public without much attention to ethical problems raised by the Catholic church, feminists, and those concerned with distributive justice in health care. Ethically, the interest view of in vitro embryos is unambiguous: It cannot have interests, it cannot be harmed. The major areas of concern stemming from these technologies are earlier detection of genetic diseases with uncertain public effects, creation of embryos for research purposes, and the problems of disposition of surplus (frozen) embryos.

Resolution or acceptable social compromise still depends on the author’s position that “conceptual clarity about the nature and status of extracorporeal embryos” (like that of other unboms) remains essential. To that end, Life before Birth makes an excellent contribution. The use of the interest view works well to provide a coherent framework for analysis, meticulous research is evident, and applications for individual cases as well as policy implications are present throughout. This thoughtful work should be highly constructive in the “unborn” debates and decisions that lie ahead.

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