


Sher, G, (1977) Hare, abortion and the golden rule, Philosophy and public affairs, 6, pp 185–190.


We have simply assumed a right to self-ownership in human beings without proof. Such a proof would be beyond the scope of a paper of this kind. Assuming that a proof, or failing that, a presumption in favour of a right to self-ownership could be demonstrated, what follows for settling the abortion-infanticide question and the doctor’s dilemma? This is the strategy we have employed.

Mother appears to be a loaded term, therefore we have substituted the more neutral sounding term ‘host’.

Commentary

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The paper by Jeffrey and Ellen Paul is a useful and stimulating one. It is useful in that it provides a convenient survey of some of the recent literature and relates it to practical issues facing American (and presumably not only American) doctors and nurses: and stimulating, because it offers a somewhat new philosophical argument, which deserves a philosophical reply. Limitations of space permit me to do no more than indicate the general lines along which I would want to challenge it. I offer these remarks as presenting at least prima facie difficulties against his position which would need to be overcome before it could be regarded as acceptable.

One crucial area of ambiguity concerns the aim of the paper. Is it aiming simply at clearing up a practical difficulty left unresolved by the present state of American law? Or is it undertaking the much more difficult task of giving a philosophically satisfactory account of the responsibilities of the medical professions in the area of abortion? The announced aim is the first of these; and they are careful to present their conclusions as hypothetical only, contingent on the acceptance of a particular premiss about the rights of ownership. This premiss is recommended to us, apparently, on no other grounds except that it would give a rationale for solving a legal dilemma. I suspect, though, that they are much more ambitious. Why, for example, is the position of the American doctor described as a dilemma? On their own account, the legal duties of doctors in various circumstances are all clear enough; the criticism seems rather to be that Roe v. Wade in conjunction with other decisions leads to a position which is philosophically arbitrary and morally incoherent. The optimistic tone of their conclusions, and their hope that they will provide an acceptable compromise between extreme positions suggest that they are claiming not merely legal clarity but a philosophical and moral success. It is this claim which I wish to challenge.

The term ‘ownership’ as the Pauls use it is far from clear. One might, for example, accept that a person owns his own body. And if one further accepted that a fetus were part of one’s body, it might then follow that one would have a right to remove it, as one might have a right to have one’s hair cut or one’s nose shortened. Even on these assumptions, however, it would not follow that one could do just what one liked; it is not in general true that one can do what one likes with one’s property. I cannot, for example, burn down my house if to do so would endanger the lives or property of others. Of course, it is not part of the Pauls’ case that the fetus is part of the body of the mother (or, as they significantly prefer, ‘host’). Possibly, then, they wish rather to speak of a right to privacy (a concept mentioned in the judgment given in Roe v. Wade)? This would explain their speaking of the fetus as an ‘intruder’ and a ‘virtual parasite’. But of course it would be less plausible for them to have framed their case in terms of privacy, since privacy is surely too weak a notion to justify overriding any rights the fetus may have and in particular it would not follow that the mother would have the right to abort whether or not the fetus has rights, as they conclude. Once it is conceded that the fetus has rights, and that those rights might conflict with the mother’s, it cannot simply be asserted without proof that ‘the intention of the host is justifiably to remove the fetus, not to kill it’. That is just what must be proved. The Pauls will either have to invoke just the kind of version of the principle of double effect that is rightly discredited in moral theology, or they will have to appeal to the distinction between the rights of viable and those of non-viable fetuses which is one of the weakest parts of the legislation they are criticising. 1

I am also unconvinced by their other suggestion that we adopt the weaker ownership assumption to deal with the rights of aborted living infants. I am quite unconvinced that the mother has no responsibilities just because she has refused to accept any. Though I can quite appreciate the difficulty involved in deciding who should be responsible for an infant whose mother refuses to care for it, I do not see that this issue can be solved by a bland denial that any such responsibility exists. The Pauls are right to point out that to accept a stronger hypothesis about ‘assistance rights’ would not solve all the problems. No, but it would locate them properly, and would
explain why Samaritans would think it wrong to leave such infants uncared for, and why hospital authorities with scarce resources feel themselves confronted with a genuinely moral dilemma.

I am far from believing that the philosophical issues surrounding the problems of abortion have been satisfactorily solved. The Pauls seems to me to offer clarity in place of confusion; but it also seems to me that clarity is not enough.

Reference