

Explaining the Psychological Appeal of Viability

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My aim is to explain, or perhaps it is better to say “explain away,” the appeal of the principle of viability that played such a prominent role in the *Roe v. Wade* Supreme Court decision and the ensuing debate. My contention is that many defenders of the principle are not deeply committed to it. I am not implying that they act in bad faith, and knowingly defend a principle they do not believe because they want abortion to be legal, but that they are not fully aware of why the principle of viability appeals to them. My suspicion is that it is the *timing* at which the fetus *currently* becomes viable, and not the actual philosophical merits of the viability principle, that makes the principle so attractive. The basis for my claim is that certain thought experiments—in particular, two that change the timing of the onset of viability—regularly elicit from abortion proponents the admission that the viability principle is without much philosophical merit. Since the adherence to viability is not grounded in moral principles that pro-choice proponents feel strongly about, this suggests that other factors motivate its superficial appeal. So after familiarizing readers with the thought experiments, I will offer some brief psychological speculations about why the current timing of the onset of viability makes this principle an attractive cutoff point to many people for distinguishing morally justifiable from unjustifiable abortions.

Three Thought Experiments

What I call the “stagnation thought experiment” often convinces abortion proponents that none of the familiar cutoff points for permissible abortion—the loss of the capacity to twin, quickening, humanoid shape, viability, development of the brain and central nervous systems, sentience, and even birth—is of much, if any, *intrinsic* value or moral significance. This thought experiment involves imagining that the

fetus stagnates, that is, stays alive but does not develop further.¹ In other words, the stagnation means that the human being loses his potential and stays physically and mentally the same for the rest of his life. Stagnating the fetus at different stages of development reveals that the morally significant cutoff point for abortion proponents depends on the fetus's potential to develop further and acquire other traits, like self-consciousness, rationality, and moral agency, which normal children and adults possess and which are obviously of considerable intrinsic value. If the fetus stagnates at the time he reaches viability and could live for years outside the womb in an expensive high-tech incubator, most abortion proponents would admit that there is not much reason to spend thousands of dollars to keep the fetus alive if he would never surpass a pet dog or a backyard squirrel in cognitive and affective capacities.² They might be reluctant to treat such stagnated human beings with the same degree of disregard that they would the squirrel, but this is not because of the intrinsic value of the fetus, but merely because of respect for the feelings of the parents or fear of the slippery slope. The abortion proponent typically responds that to insist a stagnated fetus has more *intrinsic* value than the neighborhood animals renders one guilty of speciesism.

This suggests that a reason why abortion proponents value and protect the normal, viable fetus is that the fetus possesses the *potential* to develop further. But this is not the whole story, because it does not explain why, of all the fetal stages in which potentiality is present, viability is chosen. If the point of viability cannot be justified, however, then abortion proponents can only defend third-trimester fetuses on the basis of their potential to develop cognitive abilities. But that potential is there from fertilization, so consistency seems to demand that fetuses be protected from the first day of their existence. Actually, consistency can also be obtained if abortion proponents decide not to protect human life from termination at any time during pregnancy, or even afterward, until they have sufficient intrinsic value to distinguish them from animals with lesser minds. Peter Singer and Michael Tooley notoriously take the latter approach.³

Some abortion proponents might try to avoid this conclusion, the logic of which entails either prohibiting abortion at any stage where there is potential for mental development, or abandoning the significance of potential and accepting abortion at any time during pregnancy and even infanticide. These abortion proponents might

¹ I use "fetus" as the name for the entity in the woman's womb from fertilization to birth. So it covers the period that others might describe as the gestation of the zygote, blastocyst, morula, and embryo.

² For such a typical response, see Jeff McMahan's discussion of congenitally retarded human beings who lack the potential to develop, in his *The Ethics of Killing: Problems at the Margins of Life* (Oxford: Oxford University Press, 2002), 203–232.

³ Peter Singer, *Rethinking Life and Death* (New York: St. Martin's Griffin Press, 1994), 115–131, 211–215; Peter Singer, *Practical Ethics*, 2nd ed. (Cambridge: Cambridge University Press, 1993), 169–174; and M. Tooley, "Abortion and Infanticide," *Philosophy and Public Affairs* 2 (1972): 37–65.

instead insist that it is the *combination of potentiality and viability* that makes abortion wrong after the second trimester and permissible before. They maintain that the stagnation thought experiment fails to show that they are not committed to viability as a morally significant cutoff point, that it reveals only that they are committed to protect fetuses who are viable and not stagnated, that is, who can live independently of the mother's body *and* have the potential to develop further into normal children and adults.

I doubt this represents a view most abortion proponents, on reflection, will defend. My contention again is that abortion proponents, deep down, are not committed to the principle of viability even when its onset is combined with the fetus's potential. This can be shown by their typical reactions to two other thought experiments, which involve changing the timing of the onset of viability while leaving potentiality unaffected. If we imagine that fetuses do not become viable until the last week of pregnancy, it is unlikely that the typical abortion proponent would admit that abortions performed earlier in the ninth month would be acceptable. But if viability were a morally significant principle, and the timing of its onset were a necessary condition for abortion to become impermissible, then the abortion should not be wrong if the fetus has not reached this stage.⁴

One can also consider moving the onset of viability to the other end of the pregnancy. Imagine that medical technology develops to a point where fetuses can become viable just one week after fertilization but in some cases are not deliverable until much later. That is, assume that some pregnant women will remain too frail for almost eight months to deliver without being harmed, although their premature babies' health would not be threatened by such early deliveries. I doubt that many abortion proponents allegedly committed to viability as a cutoff point would insist that women cannot abort after the first week of pregnancy, but must carry the viable child for nine months until it is safe to induce labor. In such a scenario, most women would not even know they were pregnant until it became too late for them to have a permissible abortion. We can see from these two hypothetical scenarios that even combining viability with potentiality does not produce a pair of principles to which the average abortion proponent is committed.

The three thought experiments reveal the fetus's possession of viability not to be of much, if any, intrinsic moral significance. But it should not be thought that the last two experiments show that viability is suspect because of the possibility that technological advances might change the date of its onset. This is a common misunderstanding of the problem with viability. There is not anything wrong with allowing technology to determine the time at which a morally significant trait is instantiated. This is evident

⁴There are pro-choice proponents—Judith J. Thomson is the best known—who maintain that it is just to have an abortion at any time during a pregnancy. They are, fortunately, the minority. See Thomson's "A Defense of Abortion," *Philosophy and Public Affairs* 1.1 (Autumn 1971): 47–66. See also my critique in "Abortions and Distortions: An Analysis of Morally Irrelevant Factors in Thomson's Violinist Thought Experiment," *Social Theory and Practice* 27.1 (2001): 129–148.

if we imagine that mental development comparable to that of normal adults emerges in one-month-old fetuses or even in unfertilized eggs. Readers should imagine such fetuses or eggs capable of thoughts and feelings like their own. These small creatures have hopes for their future, they want to fall in love, have children, find meaningful work; they contemplate the origins of the universe and the existence of God; they worry about the environment and international affairs. Most abortion proponents would find it nearly impossible to abort such a one-month-old thinking and feeling fetus. (Following this line of logic, abortion proponents would think that to allow such highly intelligent unfertilized eggs to perish would also be terribly wrong.)

This shows that changes in the onset of properties that are genuinely intrinsically valuable can justifiably alter people's beliefs about when an entity's life deserves protection. So viability is not suspect because its timing can change with technological developments; rather, changes in attitudes to different possible onsets of viability suggest it is not truly a morally significant threshold. If viability were really believed by abortion proponents to be a morally legitimate cutoff point, it would be so treated regardless of the timing of its onset. But since typical abortion proponents would be reluctant to push back the cutoff point for abortion in hypothetical cases in which fetuses are viable but undeliverable just one week after fertilization, or to allow abortions early in the ninth month of a pregnancy, reveals they are not fully committed to the moral significance of viability.

The Real Psychological Appeal of Viability

If the thought experiments reveal that abortion proponents do not believe viability is morally significant and that they have only a superficial adherence to it, then what was its appeal to them in the first place? Before I offer an answer, I want to reiterate that I am not suggesting abortion proponents act in bad faith or endorse a principle that they know to be false. Rather, I am engaged in speculation about why a principle with very little philosophical merit could have seemed initially so attractive and become so popular. I believe it has to do with the timing of the onset of viability, given the technology of the age.

Because of present-day medical technology, viability occurs approximately six months after fertilization. There has not been much change since Justice Harry Blackmun stated in his 1973 *Roe v. Wade* decision that, "Physicians and their scientific colleagues ... have tended to focus ... upon the interim point at which the fetus becomes 'viable', that is potentially able to live outside the mother's womb, albeit with artificial aid. Viability may occur ... even at 24 weeks."⁵ My hypothesis is that this makes possible the timing compromise the typical pro-choice proponent wants.

⁵ There has been very little change in the onset of viability because "until the air sacs are mature enough to permit gases to pass into and out of the bloodstream, which is extremely unlikely until at least 23 weeks' gestation (from last menstrual period), a fetus cannot be sustained even with a respirator, which can force air into the lungs but cannot pass gas from the lungs into the bloodstream." Amicus brief of the American Medical Association et al., *Webster v. Reproductive Health Services*, 492 U.S. 490 (1989). Accord-

This allows the “moderate” abortion proponent to bestow a grace period on the pregnant woman, when she can to make such a serious decision, without seeming to completely devalue the fetus as an abortion-on-demand policy would.⁶ Most abortion proponents are opposed to late-term abortion because it seems too much like infanticide. The fetus is so similar in appearance and age to an infant, and because abortion proponents normally want to protect infants, it is psychologically difficult for them not to extend the same protection to advanced fetuses.

While the appearance and the age of the fetus are not morally significant features, I think they are psychologically efficacious and account for why many abortion proponents treat late-term fetuses like infants and offer them the same protection. It is easy to see why appearance and age are not morally significant. Hypothetically, alien creatures that do not look like us but have our affective and cognitive abilities should be awarded similar protections. And age is merely a place holder for other developments. But the stagnation thought experiment shows that pro-choice proponents cannot find at any time during a pregnancy an *actualized* property that is intrinsically valuable and deserves moral protection according to the tenets of their own world view. Those of us who believe the fetus’s value lies in its being made in the image and likeness of God, and that it is designed by God to be a person, will not find our judgments about the fetus’s moral status to be affected by age, appearance, or stagnation thought experiments. But abortion proponents typically do not hold such views.

Most abortion proponents want to ascribe to the fetus *some* value and offer it *some* protection. They may not always work out what principle makes this so, but it is the intuition of most. I suspect that the potentiality of the fetus is doing “all the genuine (i.e., defensible) moral work” in the abortion proponents’ position, but proponents cannot acknowledge this, because the potentiality is there from day one—except in the rare case of severe congenital retardation. Since most abortion proponents do not insist that the fetus is devoid of value, they want to balance its value with their concern for the woman’s autonomy and control of her body. What they desire is a grace period of sorts, when women have considerable time to reflect on such momentous, life-altering decisions. Hence the appeal of viability. Or, more

ing to a 2005 *British Medical Journal* report, there is a 7 percent chance of survival at twenty-two weeks, 15 percent at twenty-three weeks, 27 percent at twenty-four weeks, 49 percent at twenty-five weeks, and 65 percent at twenty-seven weeks. The statistics are reported in tables accompanying Elizabeth S. Draper, Bradley Manktelow, and David J. Field, “Prediction of Survival for Preterm Births,” letter, *BMJ* (September 26, 2003), at <http://bmj.bmjournals.com/cgi/content/full/319/7217/1093/DC1>.

⁶The slight change in the timing of the onset of fetal viability since *Roe v. Wade* does not affect my thesis that viability is attractive because of its timing rather than its intrinsic significance. And it is worth noting that the fetuses born before twenty-four weeks are likely to have mental and physical handicaps according to research published in N. Marlow et al., “Neurologic and Developmental Disability at Six Years of Age after Extremely Preterm Birth,” *New England Journal of Medicine* 352.1 (January 6, 2005): 9–19.

accurately, hence the appeal of the current *timing* of the onset of viability. Whatever the merits of the grace period—and I do not think they override the value of the fetus's life—they are not logically or conceptually connected to the principle of viability.⁷ Therefore, the appeal of viability is not the philosophical principle of the fetus's independence from the mother, but that the timing of its onset provides the proper balance, in the eyes of the abortion proponent, between the value of the fetus and the autonomy of the pregnant woman.

⁷To convince abortion proponents that the grace period is not weighty enough to justify abortion, they should be asked to imagine themselves geographically and socially isolated with a newborn they did not have a chance to abort and do not currently have an opportunity to put up for adoption. That is, they did not have a grace period in which to choose not to be a parent, with all the physical burdens parenthood entails. If such a grace period is really morally important, then infanticide, or the neglect that would amount to almost the same, would be morally acceptable in such circumstances. But if infanticide is wrong even in the isolated scenario, and since the stagnation thought experiment shows that an infant does not have any more intrinsic value than a fetus, then aborting normal fetuses is also wrong, and as evil as infanticide.