

Kate Greasley and Christopher Kaczor
Abortion Rights: For and Against
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Reviewed by Michelle Oberman and Julia Hejduk, 2019

Michelle Oberman is the Katharine and George Alexander Professor of Law at Santa Clara University and an internationally recognized scholar on the legal and ethical issues surrounding adolescence, pregnancy, and motherhood. Her current research focuses on reproductive health and abortion regulation in countries with widely divergent abortion laws. Her work in El Salvador, along with other countries and a range of US jurisdictions, informs her 2018 book, *Her Body, Our Laws: On the Front Lines of the Abortion War from El Salvador to Oklahoma*, about what will and won't happen if abortion becomes illegal in the US. Additionally, she has written extensively on the law's treatment of maternal filicide and rape.

Julia D. Hejduk is the Reverend Jacob Beverly Stiteler Professor of Classics and Associate Dean of the Honors College at Baylor University, where she has taught for sixteen years, after a decade at the University of Texas at Arlington. Her scholarly expertise is in the Latin poetry of the late Roman Republic and early Empire, an era of civil discord in many ways like our own. She has written numerous articles and several books, most recently an edited volume, *Happy Golden Anniversary, Harvard School!* (Classical World 111.1, 2017), and *The God of Rome: Jupiter in Augustan Poetry* (Oxford University Press, forthcoming).

Quote: "The book is remarkable as much for its clarity of analysis as for the model it offers of respectful engagement across differences on this most divisive of topics."

Kate Greasley and Christopher Kaczor, arguing from opposite sides of the abortion spectrum, have written a robust, carefully reasoned volume that illustrates how moral philosophers think and talk about abortion. The book is remarkable as much for its clarity of analysis as for the model it offers of respectful engagement across differences on this most divisive of topics. Greasley believes a fetus is not a person until birth, so abortion is morally and legally permissible; Kaczor believes a person comes into existence at the moment of conception, so abortion should be illegal unless it is necessary to save the mother's life (in which case the death of the fetus is a secondary effect, not the primary intention). The book consists of a long opening statement by each author, followed by a "reply" and then a "reply to the reply" from each. The present reviewers, a pro-choice law professor (Oberman) and a pro-life classics professor (Hejduk), have been in private and public conversation about abortion since January 2018 (Markkula Center 2018), and we both found the book extremely useful to think with.

Both authors frequently employ a common strategy: 1) propose a thought experiment involving a real or fantastic scenario; 2) ask readers what their moral intuition tells them; 3) show how our gut responses constitute a *reductio* of their opponent's views about personhood. These thought experiments are posited as illuminating, but ultimately, the transgenic chimpanzees and speech-serum-enhanced kittens left us unenlightened. To be sure, the authors demonstrate that doing

violence to nature, as is required by these thought experiments, tends to muddle our moral intuition. But the issue of abortion is so grounded in our reality that it seems of limited utility to fantasize about a world that is radically different from the one we inhabit.

Their only thought experiment grounded in science fact rather than in science fiction, the Embryo Rescue Case, was the one that intrigued and challenged us most. This famous hypothetical posits that one is in a burning hospital ward, with time only to rescue five frozen embryos, stored for fertility treatment, or one newborn (Greasley, 27; Kaczor, 148). What should one do? Greasley argues that, because almost everyone asked will opt to save the newborn over the embryos, we may deduce that embryos are not equal in moral standing to newborns. Kaczor argues that the fact that we would save the newborn says nothing about whether embryos are human beings, equally endowed with a right to life. He urges us to see the outcome as the product of triage, driving home his point by upping the ante: ten embryos on the one hand versus a seven-year-old girl on the other. Rather than interpreting the rescue of the seven-year-old as proof that the unrescued embryos lack moral standing (Kaczor, 149), we might see it as a nod to the child's connection to family, or the investment the child and her parents have in her future.

The Embryo Rescue Case: A Conversation

This book is a debate, whose goal is to test the strength of each other's positions. We've dedicated ourselves to a different path: conversation, whose goal is to understand how the other sees the issue. What follows is a rough summary of the conversation the authors evoked in us.

Oberman:

Although both sides' arguments were clearly reasoned, I found them more distracting than persuasive. I could not get beyond the ways in which the embryo-rescue scenario mischaracterizes abortion. A more apt hypothetical would ask whether we ought to punish in the same way the person who deliberately turns off the life-support machine that sustained the seven-year-old's life and one who intentionally shuts off the electricity, killing all the embryos. There is little doubt that we would regard the former as a murderer. There is equally little doubt that we would not regard the latter as a mass murderer.

To my mind, the different outcome derives not so much from the lesser moral status of the embryos as from the reality that embryos matter in a particularly human way only when they are developing inside of a pregnant person's body. And the truth is that people on both sides of the abortion issue agree that embryos and fetuses developing inside of a uterus are alive and merit some degree of legal protection. When someone deliberately slips a woman an abortifacient, causing her to miscarry, no one objects to the ensuing feticide prosecution.

By situating the embryos in tubes, the embryo-rescue case distracts us from this harder question: if we regard as a criminal the third party who kills a fetus over the pregnant person's objections, how are we to regard the person who ends her own pregnancy? As the US inches ever closer to permitting states to make abortion a crime, there is perhaps no question more pressing.

Kaczor would have us duck this question by assuring the reader that, while abortion is almost always immoral, we need not punish the person who has one. Those who have abortions do not merit punishment, he asserts, because they might have been "confused" or "stressed out" and

therefore lacked the requisite mental intent for a finding of guilt (Kaczor, 158-59). Not only is such a claim patronizing, but it seems decidedly improbable in an era in which pregnant people order abortion drugs online, after searching the internet for ways to end a pregnancy. As we learn from El Salvador and other countries where abortion is banned, in the twenty-first century, abortion no longer requires a doctor (Oberman 2018). There is no one else to blame.

Furthermore, there is no need to guess at how prosecutors will reconcile a growing recognition of fetal rights with the right of people to end their own pregnancies. Even though abortion remains legal in the US, prosecutors charge women with crimes related to terminating, attempting to terminate, or otherwise harming their pregnancies all the time. There have been at least 900 such cases in the US since 1973, when abortion was legalized (Howard 2018). These prosecutions disproportionately target poor, minority women--the most marginalized members of society. Perhaps it is their relative invisibility that explains how pro-life advocates can maintain that women will not be prosecuted for illegal abortions when, in fact, they already are.

In the end, the embryo-rescue hypothetical generates more heat than light, leaving us no closer to answering the better question: If one believes killing an embryo is always or almost always wrong, how should they respond to people who deliberately end their pregnancies?

Hejduk:

I am in complete agreement that no satisfying answer has yet been presented to the pressing question you insistently raise. In a world where abortion drugs allow women to take matters into their own hands, so that there is no doctor or clinic to blame, if abortion becomes illegal, what guarantee is there that women will continue to be thought of as abortion's "second victims" and protected from prosecution? Simply to say "that won't happen" fails to do justice to the real anguish and fear of the pro-choice side.

Another problem I have with the book is that, after identifying the personhood or nonpersonhood of prenatal human beings as the only real issue, the authors never justify their criteria for what personhood entails, or why *any* person should have "rights" or "dignity." Is our belief that humans occupy a privileged position in the order of things, or even that there is an order of things, simply "speciesism," a by-product of our deterministic biological programming? If so, then "higher reasoning" is something of a misnomer. Mosquitos can actually go quite a bit higher than we can.

If, on the other hand, human dignity is real because we are created in the image of God, then it behooves us to dig deeper into what that means. Greasley glances at this question early on: "Whatever 'God-like' features one believes are reflected in human beings are presumably those that are present only in developed humans, and not in zygotes and embryos" (Greasley, 4). The features Greasley considers to be self-evidently "God-like," which she calls "the capacities constitutive of personhood," are "[r]easoning ability, communication skills, and self-consciousness" (Greasley, 63). Strangely, Kaczor never questions this premise, and in fact produces similar lists himself. In the sixth century BCE, Xenophanes remarked that Thracians depict their gods as white, Ethiopians depict their gods as black, and if cows and horses could draw, they would depict their gods as bovine and equine. What if our moral intuition is skewed

by an inescapable bias toward “paradigm persons” (Greasley, 174) who resemble ourselves, and confused--the Monty Hall problem comes to mind--by truths that are counterintuitive?

It is also remarkable that neither philosopher touches upon the question that for centuries was considered central to philosophy: What happens after death? Kaczor posits that human “flourishing is found in goods of knowledge, kindness, compassion, personal integrity, and appreciation of beauty,” and says that “without this right [to life] we can do nothing, enjoy nothing, and achieve nothing” (Kaczor, 199, 212). But is that really all that is at stake? If what awaits us after death is annihilation, then behaviors that are counter-evolutionary and entail suffering, like celibacy and martyrdom, would be sheer idiocy. If the soul is immortal, however, and our pre-death self is to our post-death self as an acorn is to an oak tree--or an embryo to an adult--that changes the equation, and explains why Christian and non-Christian moral philosophers are practically guaranteed to reach opposite conclusions. It would have been refreshing to see some thought experiments involving their *actual* unstated premises about the nature and purpose of the human person.

In my view, the most compelling argument made by Kaczor comes not from philosophy, but from history: “*Every time* in history when we have excluded some class of human beings from basic protection by law and cast them outside the scope of our ethical concerns, we have made a catastrophically bad moral choice” (Kaczor, 132). Greasley, to her credit, rephrases Kaczor’s argument intelligently and takes it seriously:

Perhaps we might say that a human nonperson is a kind of “suspect classification,” as constitutional lawyers would term it--a category the very existence of which should alert us to the presence of some pernicious discrimination. I must admit that I used to find the argument from history fairly persuasive, at least insofar as it places the burden of argument more squarely on defenders of abortion rights. I am far less sure about that now. One reservation I have about the argument is that it is a little too easy. (Greasley, 179)

My response is that the argument seems “too easy” because the moral issue actually is easy: it should be obvious that killing innocent human beings is a grave moral wrong.

Oberman:

I look forward to our conversation about the nature and purpose of the human person! I haven’t really talked about it since college. And while I realize it will be difficult, I think we need to talk more directly than we have so far about marginality and intersectionality. It’s misleading for Kaczor to frame abortion as discrimination against an “oppressed group,” because this frame assumes discrimination is simply a binary sorting mechanism. In, out, up, down. Instead, oppression is a layered phenomenon. The embryo cannot lay claim to being the victim *de jour* without so much as a nod to the ways in which the entwined forces of patriarchy, capitalism, and racism maintain their iron grip on the reproductive autonomy of our most marginalized fellow humans: poor women of color.

Hejduk:

I think you are exactly right that it is a mistake to pit one “oppressed” group against another, as if there were an oppression competition! Your work and our conversations have helped open my eyes to the pernicious effects of “the entwined forces of patriarchy, capitalism, and racism.” Some pro-life people do fall into the trap of focusing on “saving babies” rather than facing the larger and more difficult question of how to help mothers, especially those who have been marginalized in any number of ways. While we may never agree about the personhood of prenatal human beings, we *can* agree about working together to change the conditions that lead women to feel they need an abortion.

Conclusion

Debates generally do not change anyone’s mind, since both sides are focused on scoring points and defending their own positions, and neither of us felt compelled by this book to change our position on abortion. We came away wondering whether the authors were actually any closer to understanding each other. We were sometimes frustrated with their persistent invocation of elaborate hypotheticals and their unwillingness to interrogate deeply their metaphysical assumptions about personhood. Yet their style of reasoning about abortion prompted both of us to engage with them and with each other, enriching our conversations and clarifying our understanding of why we believe what we believe. For that we are grateful, and we would recommend this book as a model of intelligent and respectful dialogue on perhaps the most polarizing moral issue of our time.

References

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