

Abortion and Rape



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Catiline's Letters

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by Catiline

Most discussions of abortion and rape focus on the legitimacy of terminating a pregnancy that *originated* in rape.¹ My concern is a different one; I propose to argue that *restrictions* on abortion count as the moral equivalent of rape, whether the pregnancy in question resulted from rape or not.

Many arguments against abortion go something like this:

1. Abortion involves killing an innocent person.
2. It's always wrong to kill an innocent person.
3. Therefore abortion is wrong.

I think both premises of this argument are false. My main concern is with the second premise, but let me say something about the first as well.

Why a Fetus Is Not a Person

It seems to me that our criterion for when a person's life begins should be consistent with our criterion for when a person's life ends. The standard criterion for the latter is the cessation of electroencephalographic activity, or EEG, in the brain — which makes sense, since EEG is the baseline activity that

renders higher mental functions possible; it continues, albeit at a reduced rate, even in comatose patients. Without EEG, there may be a human body there, but nobody's home.



Looking at the other end of life, a fetal brain does not display any EEG activity prior to the 25th week.² There may be other kinds of brain activity, but such activity is the kind of low-level self-maintenance activity that is insufficient to support consciousness. Hence prior to the 25th week, the fetus is not a person, and aborting it does not involve killing anybody.

According to the Centers for Disease Control, 65.9% of abortions are performed within the first eight weeks, and 91.9% are performed within the first 13 weeks, while 1.2% are performed after the 21st week.³ The overwhelming majority of abortions, then, do not involve killing any person. Hence

¹ Of course a number of conservative politicians have recently claimed that it's impossible, or nearly impossible, for rape to result in pregnancy; see: tinyurl.com/znzm8p5 ; tinyurl.com/js094ru ; and tinyurl.com/nua7m9v . This claim would be awfully convenient for opponents of abortion if only it had any basis in biological fact, which it doesn't.

² See: tinyurl.com/q8w8rr .

³ See: tinyurl.com/jn8dazs

premise 1 of the standard anti-abortion argument is false.

Why Abortion Would Be Permissible Even If the Fetus Were a Person

Premise 2 is false as well: it's *not* always wrong to kill an innocent person. For one has a right to use deadly force in self-defense against an aggressor; and this right does not depend on the aggressor's being morally responsible for the aggression. After all, if someone has somehow hypnotized me against my will into trying to kill you – or if someone has cleverly tricked me into believing that you are a threat to me, or that you are a mindless robot, or that my gun isn't loaded, or any other falsehood that makes shooting at you seem okay to me – the fact that I am innocent does not make it wrong for you to defend yourself, even if you have to use lethal force to do it.

But it's not just threats of death that make lethal defense permissible. We generally think it's okay to use lethal force in self-defense against someone who is trying to rape you or torture you. And an unwanted fetus is relevantly similar to a rapist; it uses a woman's body, and in particular her reproductive organs, in a highly intrusive way, against her will.

An unwanted fetus is also relevantly similar to a torturer. After all, the process of giving birth is extremely painful; ordinarily someone who inflicted that kind of pain on another person without their consent would be treated as a criminal.

It may be objected that a fetus cannot be analogous to a rapist or a torturer because the fetus is *innocent*. But we've already seen that innocence on the part of an aggressor does not nullify the right of self-defense. If someone hypnotizes me into trying to rape or torture you, my lack of responsibility for my actions does not obligate you to submit meekly to my aggression.

A different objection may be that by voluntarily having sex (assuming it was

indeed voluntary), the woman has consented to the possibility of a pregnancy and so cannot claim that she is being subjected to the fetus against her will; in effect, she has contractually obligated herself to her potential offspring. But there are three problems with this line of argument.

First, doing something that risks bringing about undesired result X does not constitute consent to X. After all, by driving a car you increase your chances of being in an accident, but that doesn't mean that you consent to the accident, or that you shouldn't hold another driver accountable if she hits you.

Second, if voluntary intercourse created a contractual obligation, *to whom* is this obligation supposed to be owed? Presumably, to the fetus that results. But even pretending for the sake of argument that a fetus is a person, any fetus that results from a sexual act must obviously not exist *prior* to that act. But how can one enter into a contractual relationship with someone who doesn't exist yet?

And third, even if there were such a contract, some rights – like the right to bodily integrity – are *inalienable* and so cannot be surrendered via contract. In the words of Benjamin Tucker, “no man can make himself so much a slave as to forfeit the right to issue his own emancipation proclamation.” Just as I cannot legitimately sell myself into slavery, so I cannot waive my right not to be raped or tortured.

But if an unwanted fetus is relevantly analogous to a rapist or a torturer (albeit an innocent one), then anyone who attempts to force a woman to carry an unwanted pregnancy to term is acting as an accessory to rape and torture. To pass, or enforce, laws restricting a woman's right to abortion, then, is the moral equivalent of rape and torture.

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