

# Divergent Views on Abortion and the Period of Ensoulement

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الملخص: امرأة مسلمة حامل في الأسبوع 16 تم إعلامها بأن فحص الموجات فوق الصوتية للجنين بين وجود السننة المشقوقة، والنتائج المخبرية أكدت هذا التشخيص. وأن الطفل سيعاني من عدة مضاعفات وفي الأغلب سيحتاج لعناية طبية مدى الحياة. بموافقة الزوج تم إقرار إنهاء الحمل. هذا القرار أثار جدلاً بين علماء الدين في المجتمع، شرارة الجدل كانت بين من هم موافقين على الإجهاض لأسباب طبية وبين معارضين له لأي سبب. هذه الورقة تقدم عرض لحجج وبراهين فلسفية وطبية عن المعارضين للإجهاض والمناصرين له وكذلك نظرة الإسلام تجاه استقلال المرأة على جهازها التناسلي، حرمة الجنين، الإجهاض العلاجي و وقت نفخ الروح.

مفتاح الكلمات: معارضة الإجهاض، حق الحياة، الاستقلال، قدسية الحياة، الجنين، المضغفة، علاقة العقل-الجسم، ما وراء الطبيعة، عمان.

**ABSTRACT:** A Muslim woman in her sixteenth week of pregnancy was informed that her ultrasound scan showed *spina bifida*, and laboratory results confirmed the diagnosis. The child would have various complications and, most probably, would need medical care for life. With the consent of her husband she decided to terminate the pregnancy. Her decision sparked controversy among Muslim clerics in her community, sparking debate between those who would allow abortion for medical reasons and those who oppose abortion for any reason. This paper will review the philosophical and theological arguments of the pro-life and pro-choice groups as well as the Islamic perspective concerning a woman's autonomy over her reproductive system, the sanctity of the fetus and the embryo, therapeutic abortion, and ensoulment.

**Keywords:** Anti-abortion; Right to life; Autonomy; Sanctity of life; Fetus; Embryo; Mind-Body Relations, Metaphysical; Oman.

**A**BORTION REMAINS ONE OF THE MOST hotly debated social and moral issues today. Both the pro-life and pro-choice groups present powerful arguments for and against abortion. The pro-life group emphasises the argument of preserving human life from conception at any cost, to the point of giving absolute priority to the life of the unborn fetus over the life of the mother. The pro-choice group emphasises the argument that a woman should have the right to control her body to the point of absolutising her right over the natural phenomenon of the development of a new being. According to Peter Singer, the issue of abortion is currently one of the most bitterly disputed of all ethical issues. The debate has been long-running, and neither side has had much success in altering the opinions of its opponents.<sup>1</sup>

This paper explores how the advent of parental screening and genetic testing have shifted the focus of the abortion debate from a woman's reproductive freedom and her autonomous right to choose, to the concept of human dignity, personhood, and the fetus's right to life.

## Philosophical Arguments on Abortion from the Western Perspective

Some of the philosophers on the abortion debate propose the following syllogism. First premise: It is wrong to take the life of an innocent human being intentionally. Second premise: The unborn is an innocent human being. Conclusion: It is wrong to take the life of the unborn human being intentionally.

Don Marquis and Philippa Foot are amongst the philosophers who argue that abortion, except in rare cases, is seriously immoral.<sup>2,3</sup> First, they consider the fetus as a potential moral person who has the right to life like anyone else, and is entitled to protection against homicide. They argue that a fetus' right to life outweighs the mother's right to decide to terminate the pregnancy.

Second, the fetus and the mother are not the only persons involved in the abortion conflict. There is also the father who has contributed as much genetically to its existence as the mother. Then there are the family members and the community who have substantial influence and bearing on the question of the moral permissibility of abortion. Most Western critics for or against abortion disregard the importance and the supremacy of society and the extended family which, in some communities, can be more important than that of an individual. If the principle of utilitarianism is applied, where the moral worth of an action is determined solely by its usefulness in maximising utility and minimising negative utility, then abortion will not be warranted except in rare cases of serious congenital abnormalities or when carrying the pregnancy to term would endanger the life of the mother.

The abortion-rights campaigners take a liberal stand. They argue that the mother has the right to decide what will happen to her body. She has the right to control the use of her body. This is an expression of her autonomy, and she is at liberty either to bear the pregnancy to term if she chooses, or to have it aborted. These arguments have been supported by Judith Thomson who argues that a fetus is not yet a person and, even if the fetus were to be considered a person, it does not necessarily deprive a woman of her right to abortion.<sup>4</sup> She presented a number of thought experiments to argue her case. One of these is the implausible yet thought-provoking story of a world famous violinist with a fatal kidney ailment who has been attached, without her consent and for a term of nine months, to a kidnapped woman, as the woman happened to be the only one with the blood type that could save the life of the violinist. Thomson asks if it would be incumbent upon the woman to stay in bed with the violinist for nine months in order to save him, likening this to a woman's situation during pregnancy.

Thomson's paper, *A Defense of Abortion*, has stirred reactions and criticisms from many different philosophers and bioethicists from both sides of the abortion debate. John Finnis and Patrice Lee are among a number of philosophers who rebutted Thomson's thought experiment as flawed and her hypothetical cases justifying abortion as lacking parallelism to abortion.<sup>5,6</sup> First, her opponents argued that the principle of respect of autonomy in the case of a pregnant woman intending to terminate her pregnancy for no medical reasons is in conflict with the principles of justice and non-maleficence. According to the principle of justice, the fetus is denied the right to life. It has the same fundamental right as that of a human being after birth. The principle of respect of autonomy also contradicts the principle of non-maleficence by harming the fetus. Hence, in this case, the principles of justice and non-maleficence take precedence over the principle of respect of autonomy. Second, they argued that the hypothetical case of a violinist in justifying abortion is not truly analogous to most situations in which a woman finds herself pregnant. This is, at best, analogous to cases of rape only. Therefore, Thomson's hypothetical case of a woman who woke up in the morning to find herself connected to the violinist through no fault of hers and without her consent fits with a rape case, but not with induced abortion for social non-medical reasons. On the other hand, Thomson's proponents praised her imaginative examples and controversial conclusions in defense of induced abortion. They concede that her thought experiments and arguments in support of abortion have made her paper the most widely reprinted essay in all of contemporary philosophy.<sup>7</sup>

Peter Singer, a controversial, secular, philosopher of preference utilitarianism, argues that any debate about abortion should be based on a utilitarian calculation which weighs the preferences of a woman against the preferences of the fetus.<sup>8</sup> He argues that a fetus, at least up to around eighteen weeks, has no capacity to suffer or feel satisfaction; hence, it is not possible for such a fetus to hold any preferences at all. Based on this premise of a utilitarian calculation, there is nothing to weigh against a woman's preference to have an abortion. Singer concludes that abortion is morally permissible.

## ANTENATAL SCREENING AND ABORTION DUE TO FETAL ABNORMALITIES

The advent of prenatal screening and genetic testing has made it possible to predict the risk of genetic diseases or disabilities in the developing fetus. These technological advances have created an ethical and theological dilemma for a number of women who initially, willingly, and excitedly decided to become pregnant. They then later on decided to terminate their late-stage pregnancies after detecting unforeseen fatal anomalies during a routine antenatal screening. These women argue that it is their autonomous right to bear a healthy child instead of a deformed child. They are the ones who will carry the burden of raising a handicapped child if they decide not to abort. Hence, the focus of the abortion debate now shifts from a woman's reproductive freedom and her autonomous right to choose, to the concept of human dignity, personhood, and the right to life.

## THE CONCEPT OF HUMAN DIGNITY

Daryl Pullman, a prominent Canadian professor of medical ethics, examines female infanticide (which has become an increasingly common practice in obstetric centres globally) in light of the concept of human dignity.<sup>9</sup> He argues that human beings have an innate and inviolable basic dignity which must be respected and protected. He argues that people have rights because they have dignity. Any human being and even other non-persons/non-agents, including human gametes, embryos, fetuses, and those who are in a state of severe, advanced dementia enjoy a *prima facie* claim of moral consideration simply by virtue of their biological connection to the rest of the human species. Pullman argues that with this concept of human dignity, the fetus should enjoy this same legal protection as a newborn baby or adult human being and that infanticide is morally impermissible.

## POTENTIAL PERSONHOOD AND THE RIGHT TO LIFE

One of the most famous and most derided arguments against the morality of abortion is the argument which says that the fetus has the potential to become a person. This argument maintains that abortion is morally wrong as it is wrong to kill the fetus. If left alone, it has the potential to become a

person with rights. The argument of Don Marquis, a noted American philosopher, hinges on the premise of the 'future-of-value' as crucial for the right of the fetus not to be killed. Marquis argues that the immorality of killing children and adults is that killing them will deprive them of their future-of-value, which includes all things that are good in life that they would have experienced had they not been killed.<sup>10</sup> The same premise holds for the fetus, which has enough future-of-value to deserve not to be killed.

Patrick Lee, arguing from the premise of Aristotelian metaphysics of substances and essences, contends that the right to life is an essential property of a human being, and this intrinsically valuable property begins at conception. Fetuses and adult humans are in different phases of an identical substance.<sup>6</sup> He argues that the development phases from zygote to adult human being are only quantitative, and not a change of substance. The moral status of the fetus is a consequence of its essential property or properties. It is wrong to kill an unborn human being because she or he is identical to an entity which it would be wrong to kill at some time later in her or his development.

Philosophers like Singer, Mary Anne Warren, Thomson, and many others consider the argument of 'potentiality' to be invalid and weak.<sup>4,8,11</sup> They argue that if the fetus has the potential to become a person, then it is not yet a person and we need not treat it like one. An acorn has the potential to become a large oak tree, but acorns are not oak trees. As the Australian philosopher Stanley Benn puts it, "A potential president of the United States is not on that account commander-in-chief of the U.S. Army and Navy."<sup>12</sup>

The argument that the fetus has the right to life is a reality in life. First, in Islam as well as in the world's communities and governments, people recognise that infants have human rights that must be respected. In fact, the infants' rights are held in trust until such a time that they are capable of exercising them themselves. Second, there is already legal precedent for the recognition of personhood in those who yet have to develop the ability to perform personal acts. Eric T. Olson, an American philosopher who specialises in metaphysics and philosophy of the mind, argues that personhood begins at the moment that an ovum is fertilised by the sperm in the uterus to form a zygote, leading

to the formation of a blastocyst. Olson holds that the continuous existence of a human biological organism from the blastocyst stage is necessary and sufficient for personhood.<sup>13</sup>

## Philosophical Arguments on Abortion from the Islamic Perspective

The case of the Muslim woman who terminated her pregnancy raises four issues: 1) a woman's autonomy over her reproductive system in Islam; 2) the sanctity of the fetus and the embryo; 3) therapeutic abortion; 4) the ensoulment period.

### THE ISSUE OF WOMEN'S AUTONOMY OVER HER REPRODUCTIVE SYSTEM

Islam holds high the principal of respect of autonomy. The rule of autonomy entails a competent major who can decide for him/herself what is best for him/her. If an adult competent patient has no desire to eat, it is improper to provide him/her with food. The Prophet said, "Do not force your sick to eat or drink."<sup>14</sup> Abu-Bakr Siddiq, the first caliph of Islam, and Muadh ibn Jabal were among the eminent companions of the Prophet who exercised their Principle of Respect of Autonomy by refusing therapy at their last illness as they felt it would be futile to receive treatment. An adult patient is free to choose loyalties or a system of religious belief. The Qur'an is explicit in this issue: "No compulsion in religion. Truth stands out clear from error."<sup>15</sup> It is clear that an ailing person who is mentally competent should have full control over consent to his/her medical treatment. However, the concept that individuals have unlimited autonomy with respect to their reproductive systems, as long as they do not breach the autonomy of others, is unacceptable in Islam. In the case of abortion for social reasons, Islamic *sharia* gives priority to the principle of justice over the principle of autonomy. The fetus and the embryo have the right to life and the same fundamental right as that of a human being after birth. The principle of respect of autonomy in this case also contradicts the principle of non-maleficence by harming the fetus. Hence, in the scenario of the abortion for other than medical reasons case, the principles of justice and non-maleficence take precedence over the principle of respect of autonomy, and abortion is considered

illegal.

### SANCTITY OF THE FETUS AND THE EMBRYO

Fetal rights in Islam start from the moment of conception. If the pregnant mother is attacked and the fetus is injured or aborted, then the assailant will have to pay *al ghurrah*, or full *diya* (blood money) depending upon the age of the fetus. The *al ghurrah* blood money is levied as a compensation for destroying the fetus in the womb before ensoulment. The value of *al ghurrah* is 1/10<sup>th</sup> of the full *diya* blood money of homicide. Once the spirit is breathed in after 120 days, the fetus acquires perception and volition, (i.e. becomes a person), and is entitled to the same rights as a living being. In another scenario, a pregnant woman commits homicide, and the court has ruled for the death penalty. The court order cannot be executed until after she gives birth and provisions have been made for the newborn baby to be suckled by a wet nurse. In a third scenario where the pregnant mother dies and there are indications that the fetus is alive in the womb, then it is mandatory according to the Shafi'i school to dissect the woman to remove the fetus. With modern technology, this dissection would be in the form of a Caesarean operation, and would uphold the fetus's right to life. Further, the fetus has also full rights of inheritance. If the husband dies while his wife is pregnant, the disposal of his estate cannot be inherited by testators until the pregnancy is brought to term and the baby's share is allocated. This demonstrates the *sharia's* consideration for the fetus's right of inheritance. Finally, in the case of miscarriage or abortion, the fetus is given full burial rights including prayers for the dead. But if the fetus is less than 4 months old, it is granted all the burial rights of the dead person, except that prayers for the dead are not offered.

### THERAPEUTIC ABORTION

Many jurists, including the Muslim World League Fiqh Council, allow abortion prior to 120 days of pregnancy if the fetus is grossly malformed, the ailment cannot be treated, and both parents have agreed to the procedure.<sup>16,17</sup> Abortion after ensoulment is strictly forbidden by all authorities, but the vast majority do make an exception to preserve the mother's life. If a choice has to be made to save either the fetus or the mother, but not both,

then the mother's life would take precedence. She is seen as the root and the fetus as an offshoot.<sup>18</sup> In the case of rape, a number of jurists would also allow abortion during the first 40 days computed from fertilisation.<sup>19,20</sup>

#### THE ENSOULMENT PERIOD

Ensoulment refers to the moment the human being gains a soul. The teachings of Judaism, Christianity, and Islam affirm that what makes one a person with full moral rights is the possession of the soul, and they apply the moment of ensoulment as the cut-off point in determining legislation on abortion. There are two theories regarding the period of ensoulment: immediate or delayed ensoulment. According to the immediate ensoulment theory, the soul begins to exist at conception, when the sperm fuses with the ovum. Professor Jones produced a wealth of historical scholarship to prove that the belief in delayed ensoulment among mediaeval Western Christians was founded on mistranslation of scriptures and on an outmoded embryology.<sup>21</sup> The delayed ensoulment theory dates back to the time of Aristotle, who argued that ensoulment for males is 40 days and 90 days for females.<sup>22</sup> Thomas Aquinas was among the Christian philosophers who affirmed delayed ensoulment.<sup>21</sup> The view of allowing abortion prior to the ensoulment period was practised in the USA in the 19<sup>th</sup> century, when abortion was generally regarded as morally acceptable during the first trimester of pregnancy on the grounds that the fetus had not yet acquired a soul.<sup>23</sup>

The Qur'an and the tradition of the Prophet Muhammad declared the ensoulment period to be about 120 days (4 lunar months plus 10 days) computed from the moment of conception, which is equivalent to 19 weeks and one day, or 134 days from a woman's last menstrual period.<sup>17,24–26</sup> Prior to this period, the human embryo has sanctity which gradually increases with its development. It is considered as a person after ensoulment. Ibn Qayyim Al-Jawziyyah, an eminent Muslim jurist, has this to say regarding different stages of the embryo in the uterus: "The embryo and the fetus before ensoulment has the life of growth and nourishment like that of the plant. Its movement and perception is not voluntary. But once the spirit is breathed unto the fetus, the movement and perception becomes voluntary, thus acquiring

perception and volition i.e. becomes a person."<sup>27</sup> Therefore, abortion with no medical reasons is a crime in Islam, and "the degree of crime", affirmed Imam Ghazali, "increases from phase to phase. The first stage is when the sperm in the uterus mixes with the woman's fluid (ova) and becomes ready to receive life. Destroying it (i.e. the zygote) is a crime. The crime becomes more serious when aborting the *alaqa* or *mudh'gha* (clot).<sup>3,4</sup> The degree of crime becomes even more serious when aborting the fetus after ensoulment or before its birth (as it is considered homicide)".<sup>28</sup>

## Conclusion

A moral answer concerning the abortion issue is not simple. A response to the abortion issue should be a dynamic and rich dialogue between different classes of our society, one in which political terms are avoided. It has become a chronic tendency for proponents and opponents of abortion to show their own philosophical arguments in the best possible light, while at the same time describing their opponents in the worst possible light. For example, those who oppose abortion would refer to those who hold the alternative view as pro-death and call themselves pro-life, while those who support abortion say their opponents are anti-choice and refer to themselves as pro-choice. Secondly, most of the philosophers and ethicists on both sides of the debate fail to acknowledge that the abortion debate is of religious or philosophical nature. Our ideas about life, ensoulment, personhood, and the value of the human being are shaped by various religious and philosophical influences. It is unfortunate to see some secular humanists viewing religions as superstitions, repressive, or close-minded.

In conclusion, there is bad news and good news as far as the abortion debate is concerned. The bad news is that the controversies and conflicts are far from over. However, the good news is that, irrespective of all hurdles, as affirmed by Peter Singer, both sides can reach a level of understanding and respect of one another's opinions if both sides—both pro-life and pro-choice—show good will and work together for a common good and take a rational and moral stand, avoiding labels and rhetoric.

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