

Why arguments against infanticide remain convincing - a reply to Joonas Räsänen

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ABSTRACT

In 'Pro-life arguments against infanticide and why they are not convincing' Joonas Räsänen argues that Christopher Kaczor's objections to Giubilini and Minerva's position on infanticide are not persuasive. We argue that Räsänen's criticism is largely misplaced, and that he has not engaged with Kaczor's strongest arguments against infanticide. We reply to each of Räsänen's criticisms, drawing on the full range of Kaczor's arguments, as well as adding some of our own.

INTRODUCTION

Giubilini and Minerva's well-known article 'After-birth abortion: why should the baby live?' presents a case for their view that 'killing a newborn could be ethically permissible in all the circumstances where abortion would be'¹. They label infanticide as 'after-birth abortion' to emphasise the moral equivalence between it and abortion, based on their belief that fetuses and infants have similar moral status, lacking the cognitive properties necessary to be regarded as persons with an accompanying right to life.

¹ A. Giubilini & F. Minerva. After-Birth Abortion: Why Should the Baby Live? *Journal of Medical Ethics* 2013; 39: 261-263.

An early chapter in Kaczor's most recent edition of his book 'The Ethics of Abortion'² addresses infanticide, and in it he briefly offers four objections to Giubilini and Minerva's arguments. Räsänen's paper³ consists of a detailed examination of each of Kaczor's objections, but Räsänen seems unaware that Kaczor is not mounting a comprehensive attack on Giubilini and Minerva in the few pages of this short critique. Kaczor provides additional support for his objections later in the same chapter, but Räsänen does not address the points raised. Additionally, many of the detailed arguments Kaczor subsequently develops against abortion are equally applicable against infanticide, and so his four objections taken in isolation are not representative of the true strength of his case against infanticide.

Here we reply to each of Räsänen's objections, drawing on the full range of Kaczor's arguments, as well as adding some of our own.

FIRST OBJECTION: CONTROVERSIAL PREMISES

The first objection to infanticide that Räsänen⁴ critiques is Kaczor's claim that Giubilini and Minerva argue from controversial practices to support even more controversial practices. The moral permissibility of embryonic stem cell research, abortion, and capital punishment is still debated, and so to draw the conclusion from this that 'after-birth abortion' is morally permissible is all the more controversial.

Räsänen's⁵ response to Kaczor is that first, Giubilini and Minerva do not believe that

² C. Kaczor. 2015. *Ethics of Abortion*. 2nd edn. New York, NY: Routledge

³ J. Räsänen (2016), Pro-Life Arguments Against Infanticide and Why they are Not Convincing. *Bioethics*, 30: 656–662.

⁴ Räsänen, *op. cit.* note 3, p. 656-657.

⁵ Ibid: 656-657.

embryos and fetuses do not have a right to life *because* of legalized abortion and embryonic stem cell research. These are examples of how society has implemented the view that not all human beings have a right to life. Second, these examples are merely put forth to show that simply belonging to the human species is not enough for it to be impermissible to kill a human. Third, Giubilini and Minerva are not presupposing the moral acceptability of these practices, they are showing that infanticide is not unique in regarding species membership as being insufficient to ascribe an individual a right to life. Conversely, Giubilini and Minerva argue that infanticide is permissible because embryos and fetuses are not persons, and they are not persons because they are incapable of valuing their own life. It is therefore not a serious harm to deprive them of their life.

It is true that Giubilini and Minerva seem to be listing these as examples. However, as Kaczor⁶ rightly points out, these are *controversial* examples of humans without a right to life that are still widely disputed. Giubilini and Minerva may not be using them as grounds for their views, but they are still being used to persuade. Additionally, capital punishment is an odd example because it does not necessarily imply no right to life, and still involves a person under Giubilini and Minerva's definition.

Räsänen's second point seems to implicitly concede that the examples comprise an argument after all, as he claims they demonstrate that belonging to the human species 'is not sufficient reason to claim that it is impermissible to kill one (or it)'⁷. More importantly, he replaces 'right to life' with 'killing', and Kaczor notes that even if we regarded the examples as morally permissible, they do not imply a denial of the right to life, only that in some circumstances it may be permissible to kill another human being. Many, if not most people, would be willing to concede this point. For example, they might allow that killing in

⁶ Kaczor, *op. cit.* note 1, p. 18.

⁷ Räsänen, *op. cit.* note 3, p. 657.

self-defense is permissible.

Räsänen's third point continues with this confusion between the right to life and killing. He states that 'infanticide cannot be condemned simply because it is an act where one kills a member of the human species'⁸. This is correct, but as we've noted, killing a human being does not necessarily imply a denial of a right to life. However, Räsänen also states that people who believe the three examples are morally permissible usually accept that species membership does not confer a right to life. Perhaps they do, but this is hardly surprising, and does nothing to demonstrate that this is so. After all, many of those who do *not* believe the examples are morally permissible *do* believe species membership can confer a right to life.

Finally, Räsänen reiterates that Giubilini and Minerva's controversial examples are not meant as grounds for their primary position: to be a person means you have to be able to value your own life. This itself *is* a controversial view, and Giubilini and Minerva provide very little justification for it, despite the critical implications for some human beings. Although Räsänen provides a valid criticism of Kaczor's first objection, he fails to engage with Kaczor's arguments against this claim, despite a considerable portion of Kaczor's book being dedicated to critiquing this and similar definitions of personhood.

SECOND OBJECTION: INFANTICIDE, BODY-SELF DUALISM AND THE SUBSTANCE VIEW

Kaczor argues that Minerva and Giubilini's case for infanticide rests on a false view of personal identity called body-self dualism, which he argues leads to some absurd conclusions. These include being committed to the metaphysical belief that your human

⁸ Ibid: 657.

organism preceded your existence because *you* came to be some time later, following the onset of some psychological property or properties. This is because on body-self dualism *you* ‘...are your aims, desires, awareness and your body is not you’⁹. Instead, Kaczor, as we do, argues in favour of the substance view (SV). Räsänen¹⁰ presents several objections to the SV that we will argue can be countered.

Firstly, Räsänen argues that the SV contradicts the ‘widely held belief’ that abortion is worse the longer pregnancy continues, stating that ‘according to SV, abortion is equally as wrong just one day after conception as it is just one day before birth’¹¹. The SV does imply that the intentional killing of all innocent human life is inherently wrong. However, it does not entail that there are no moral differences between early and late abortions. Kaczor¹² explores this objection making reference to Peach¹³, who outlines five differences that can explain why *ceteris paribus*, late-term abortions can generally be considered worse than earlier ones without denying that all human beings share equal moral value. These include the fact that later-term abortions are more likely to involve fetal pain, which arguably cannot be the case in at-least first-trimester abortions¹⁴. The addition of pain to the act of killing therefore provides an additional reason to consider a late-term abortion to be worse than an earlier one, without needing to concede that the intuition is based on differences in the fundamental moral status of the prenatal human.

The intuition that late-term abortions are worse than earlier ones may also be due to increased maternal-fetal attachment. Maternal-fetal attachment (MFA) describes the

⁹ Kaczor, *op. cit.* note 1, p. 18

¹⁰ Räsänen, *op. cit.* note 3, p. 657-659.

¹¹ *Ibid*: 658.

¹² Kaczor, *op. cit.* note 1, p. 96.

¹³ A. Peach. Late-vs Early-term Abortion: A Thomistic Analysis. *The Thomist* 2007; 71(1): 113-141.

¹⁴ C. V. Bellieni. Pain Assessment in Human Fetus and Infants. *The American Association of Pharmaceutical Scientists Journal* 2012; 14(3): 456-461.

relationship between a mother and her developing fetus¹⁵. The increase in gestational age is strongly correlated with an increase in MFA¹⁶ which helps to explain why miscarriages later in pregnancy are seen as being more traumatic than earlier ones. Because the MFA between a mother and her child increases throughout pregnancy it may be considered morally worse to intentionally end a relationship with a greater degree of attachment than it would have been to do so earlier. Kaczor¹⁷ gives the example of the more serious loss associated with ending a marriage after four decades compared with ending it after four weeks.

Nevertheless, the presence or absence of a degree of attachment does not justify killing another human being. Therefore, there are plausible reasons to conclude that the intuition that a late-term abortion is worse than an earlier one is predicated on extrinsic differences that can be embraced by proponents of the SV, without compromising the equal moral status of all humans throughout their developmental journeys.

Using a similar line of argument supported by 'usual belief' Räsänen¹⁸ claims that the SV also contradicts the belief that rape provides moral justification for abortion. However, this claim is not obvious since this 'usual belief' is not shared by everyone, especially by most pro-life advocates. The SV implies that the means of someone's conception has no bearing on their status as a human person and thus rape does not in itself provide moral justification for killing a prenatal human, or any human for that matter. Furthermore, Räsänen seems to be contending that arguments that challenge widely held moral intuitions ought to be

¹⁵ A. Salisbury. Law K. LaGasse L. Lester B. Maternal-fetal attachment. *Journal of the American Medical Association* 2003; 289(13): 1701.

¹⁶ E. Tsartsara. M.P. Johnson. The impact of miscarriage on women's pregnancy-specific anxiety and feelings of prenatal maternal-fetal attachment during the course of a subsequent pregnancy: an exploratory follow-up study. *Journal of Psychosomatic Obstetrics and Gynaecology* 2006; 27(3): 173-182.

¹⁷ Kaczor, *op. cit.* note 1, p. 98.

¹⁸ Räsänen, *op. cit.* note 3, p. 658.

rejected; consistency would commit him to reject any view that provides moral justification for infanticide, because of the more widely held belief that killing infants is considered morally abhorrent. All Räsänen has demonstrated is that there is moral disagreement on this point; we do not consider that an objection to the SV or justification for infanticide.

According to Räsänen¹⁹ the SV also implies that we ought to celebrate 'conception days' instead of birthdays because we came to be at conception, which he argues is as absurd as Kaczor's claim that body-self dualism implies that you or I were never born. There are several good reasons that this claim is not a challenge to the SV. Celebrating birthdays is a cultural and social convention and in some traditional East Asian cultures newborns are credited with being 1-year-old²⁰. Would Räsänen consider this support for the SV? Birthdays rather than conception days are chosen for pragmatic reasons; conception is hard to measure accurately, whereas birth is tangible and easy to record; a birthday also signifies survival of the inherent risks associated with pregnancy and birth and is unrelated to the ontological nature of the pre/post-natal human. Rather than being 'ludicrous', stating that 'I was never born' remains a legitimate reductio of body-self dualism.

Räsänen then appeals to a modified formulation of the embryo rescue argument (ERA) employed to demonstrate that the SV leads to odd conclusions. Given the choice between saving a 10-year-old boy and 10 frozen human embryos from dying, the proponent of the SV, he says, is *committed* to saving the 10 frozen human embryos and letting the 10-year-old die. This he argues is 'at least as odd a conclusion as accepting infanticide'²¹.

¹⁹ Ibid: 658.

²⁰ M. Tegethoff. G. Meinlschmidt. How Life Before Birth Affects Human Health and What We Can Do About It. *European Psychologist* 2015; 20(2): 85-89.

²¹ Räsänen, *op. cit.* note 3, p. 658.

It does not seem a strong argument to claim that an opposing view entails a position as odd as your own. In any case, we reject his assertion that the SV commits us to saving the 10 frozen human embryos instead of the 10-year-old, even though we agree with Räsänen that under the SV that it is better to save 10 human persons than one. The SV does entail that all human persons have equal intrinsic value, which is the value something has for its own sake. Nevertheless, there may be other prudent or pragmatic reasons that would warrant choosing to save either in the ERA. For instance, if a doctor at the burning clinic is the mother of the 10-year-old or the embryos, it does not seem at all immoral, or unreasonable for the mother to save her own progeny²². Similarly an expert in reproductive technology working at the burning clinic strongly suspects that the embryos have little chance of surviving once removed from the clinic and so opts to save the 10-year-old.

This demonstrates that other intrinsic goods, instrumental goods, and agent-relative reasons can also inform ethical decision making. Regardless, the example is disanalogous to infanticide because the embryo rescue case is a dilemma where one is choosing whom to save. Whereas with infanticide one is choosing *who* it is permissible to kill. Choosing either option in the embryo rescue case therefore does not entail that one would be justified in killing whomever one chose not to save. Neither choice undermines the SV that all humans have equal intrinsic value, and so Räsänen is mistaken to claim that proponents of the SV are committed to *only* saving the embryos in the ERA.

We have responded to each of Räsänen's arguments against the SV, and concluded that they cannot be sustained. We also note that Räsänen does not respond to Kaczor's criticism that body-self dualism leads to absurd conclusions, preferring to attack the SV. We conclude that Kaczor's second objection to Giubilini and Minerva's defense of infanticide remains

²² R. George, C. Tollefsen. 2008. *Embryo: A Defense of Human Life*. New York: NY: Doubleday Books: 140.

legitimate.

OBJECTION 3: EQUAL MORAL WORTH AND THE DEVELOPMENTAL PROCESS

Kaczor's third objection to Giubilini and Minerva's arguments is that our moral value cannot be based on degreed characteristics. If it were, then people with more of that characteristic would have more moral value and people with less of that characteristic would have less of that value. Giubilini and Minerva's arguments for infanticide are based on degreed characteristics so they cannot account for why human beings have equal value.

Räsänen's²³ response to Kaczor's objection is that we can consider personhood to be a threshold concept. Even if it is based on a degreed property, once the human crosses the right threshold and has the right amount of that property, it can be considered a person. Räsänen gives an analogy to illustrate this: anyone taking an entrance exam to study at the university must pass a certain threshold in order to get into the college. It doesn't matter if one barely passes or if one excels in the test and so any student who passes the right threshold will get in to the college.

Kaczor²⁴ has considered this argument, raised by Donald Marquis. Firstly, an academic threshold is not arbitrary - it is based on the level of attainment required for further study. Similarly, a rational basis is required to decide which characteristic is required to confer moral worth, and what degree is necessary for personhood²⁵. Giubilini, Minerva and Räsänen do not provide one, and Kaczor examines commonly suggested characteristics and explains why each is unsuitable. Räsänen considers the exam analogy sufficient to

²³ Räsänen, *op. cit.* note 3, p. 659-660.

²⁴ Kaczor, *op. cit.* note 1, p.103

²⁵ *Ibid*: 103.

demonstrate his point. Deciding the criterion for passing an exam, however, is not a moral decision, and is vastly different to requiring humans to reach a threshold to be entitled to a right to life. A better justification than a poor analogy is required for such a serious moral decision.

Secondly, Kaczor notes that if a characteristic is used to measure moral worth, then even if a threshold is used for personhood, the implication is that human beings with a greater degree of the characteristic are of greater moral worth. It means that morally, we are not equals, even if we are all persons and choose to grant rights to persons.

Räsänen²⁶ then anticipates another objection, which is the difficulty of determining when a human being has reached the personhood threshold. It is enough to know that the fetus and infant are not even close to that threshold, and others such as normal healthy adults are clearly beyond the threshold. He is correct in that if a threshold such as self-awareness is chosen, we can use very conservative limits to ensure that only infants who are definitely not self-aware are not granted a right to life.

There is an issue, though, with using such a characteristic. There is little empirical evidence of self-awareness before 18 months of age, especially not to the degree required by Giubilini and Minerva. Children commonly do not pass the mirror self recognition (MSR) test until between 18-24 months of age²⁷ which means a conservative limit for infanticide could easily be set at 12 months of age, even for healthy infants. Although the MSR test has come under scrutiny in recent years it remains extremely unlikely that any child under 18 months of age can demonstrate the degree of self-awareness to value their own existence; or understands

²⁶ Räsänen, *op. cit.* note 3, p. 660.

²⁷ A. Morin. Self-recognition, theory-of-mind, and self-awareness: What side are you on? *Laterality: Asymmetries of Body, Brain and Cognition* 2010; 16(3):367-383. p. 369.

that they have a continuous existence over time. For most people, permitting infanticide at 12 months of age is disturbing.

As with Kaczor's previous objections, Räsänen does not engage with the full range of Kaczor's arguments, confining himself to responding to the very brief discussion addressing Giubilini and Minerva's views early in Kaczor's book. He does not mount a persuasive critique of Kaczor's position on using degreed characteristics for personhood.

OBJECTION 4: CAN A FETUS OR INFANT BE HARMED?

Giubilini and Minerva hold that a subject can only have a right to X if 'she is harmed by a decision to deprive her of X'²⁸. Moreover, an individual can only be harmed if she is in the condition to value the different situation that would have resulted if she had not been harmed. In this context they are referring, of course, to the right to life. Kaczor points out that a consequence of this view is that if someone is painlessly murdered, they are also not in the condition to value the different situation (being dead), and so the victim is not harmed by depriving them of their right to life²⁹.

Räsänen counters by explaining that Giubilini and Minerva's definition of harm requires that an individual must be 'in a condition to value different situations before that harm occurs, not after'³⁰. Giubilini and Minerva do not explicitly state this, but they do say that if 'an individual is capable of making any aims (like actual human and non-human persons), she is harmed if she is prevented from accomplishing her aims by being killed'³¹, so it is a reasonable

²⁸ Giubilini & Minerva, *op. cit.* note 2. p. 262.

²⁹ Kaczor, *op. cit.* note 1, p. 20.

³⁰ Räsänen, *op. cit.* note 3, p. 660.

³¹ Giubilini & Minerva, *op. cit.* note 2. p. 262.

interpretation. It follows that because an infant or fetus is not able to value situations, it cannot be harmed by depriving it of its right to life.

Räsänen is correct that Kaczor's scenario is not applicable to this understanding of harm, but fails to realise that in subsequent chapters Kaczor presents much more substantial objections. Räsänen³² asks what the moral difference is between what he calls *have-been-conscious substances* and *pre- or never-been-conscious substances*, and concludes that the former, if killed, has had their desire to live frustrated. Essentially, he is arguing that the capacity for conscious desires confers moral status and consequently rights. Räsänen then restricts this definition of harm to allow that brain-dead humans do not suffer harm if killed. He suggests an additional requirement to that of being able to value situations prior to harm: 'if there is a possibility that in the future she could be in the condition to value different situation over another if not harmed'³³. Permanently brain-dead humans do not have this possibility and so cannot suffer harm. Kaczor notes that as well as being ad hoc, this second requirement implicitly states that potentiality for future consciousness is morally decisive³⁴. This is contradictory, because Räsänen's first condition denies the future potentiality of the human infant or fetus as a factor in determining if harm has been done.

There is an additional problem with this requirement. Räsänen states that 'someone could try to contest this view by giving an example where someone seems to be harmed although only the second criterion is met'³⁵. He provides the example of someone given a sum of money at birth who never receives the money, and concludes that failing to benefit is not necessarily harming them. Räsänen does not appear to consider the situation where a fetus is harmed by actions such as maternal consumption of alcohol during pregnancy. This can

³² Räsänen, *op. cit.* note 3, p. 661.

³³ *Ibid.*: 661.

³⁴ Kaczor, *op. cit.* note 1, p. 32.

³⁵ Räsänen, *op. cit.* note 3, p. 661.

result in fetal abnormalities, leading to permanent intellectual deficits that are entirely preventable³⁶. A related example is third party involvement in harm, such as the manufacturer of the anti-nausea drug thalidomide that led to horrific fetal deformities. It seems clear that a person has been harmed, even though they could not value one situation over another at the time of the harm.

Kaczor also has much to say about conscious desires as the basis for harm. He clarifies that for those who hold Räsänen's position, these desires must be dispositional, rather than actual or potential, so that whether in sleep or a coma, we retain our dispositional desires. Again, this seems ad hoc, but is a necessary distinction as we would not want to deny a person's desire to live just because they are asleep or in a temporary coma. Kaczor raises Beckwith's scenario of two patients in temporary comas, one of whom, Bob, must relearn everything when he emerges from the coma because of brain trauma. Bob has no dispositional desires to live, and so according to Räsänen's criteria, has no right to life. Kaczor points out that the 'distinction between a human being in a temporary coma who will recover old desires, and a human being in a temporary coma who will acquire new desires is of no real importance'³⁷. This casts doubt on dispositional desires being morally decisive.

There is a further issue with a desire-based account. Unless we are to consider that a heart-broken teenager who no longer wants to live has no right to life, our criteria must be based on ideal desires, not actual desires. But Kaczor notes that this distinction is morally important, 'because it relies on a distinction between what appears to be good and what is actually good' ... 'an ideal desire is nothing other than a desire for what is actually fulfilling

³⁶ A. Ornoy. Z. Ergaz. Alcohol Abuse in Pregnant Women: Effects on the Fetus and Newborn, Mode of Action and Maternal Treatment. *International Journal of Environmental Research and Public Health* 2010; 7(2): 364-379.

³⁷ Kaczor, *op. cit.* note 1, p. 34.

and good'³⁸. But surely the harm is 'the loss of the good of life, not the interference with the desire for that good'³⁹ - and that good can be lost by an infant as well as a human being with conscious desires. This is a significant issue for Räsänen, Giubilini and Minerva's account of harm.

Kaczor concedes that it might be that the harm suffered by a fetus or infant from loss of life does not matter morally unless some actual desires are possessed. But as Kaczor puts it, 'the point is simply that emphasis on desire as the key element of having rights is misplaced'⁴⁰. He strengthens his argument by various thought experiments. Perfect beings may not possess any desires, and Buddhists strive to extinguish all desire. A 'Nirvana Now' drug that permanently eliminates all desires is conceivable. In all these cases, we would not consider that people without desires have lost their right to life. There is also the issue of differences among people's desires. Is it worse to kill people with a strong desire to live, compared to people with only a weak desire to live? Or do we not have an equal right to life? Kaczor acknowledges that a reply could be that these are actual desires, not ideal desires. But again, ideal desires are desires for the good of life, and harm is the loss of that good, not the thwarting of desires.

It should be clear, then, that although Räsänen successfully counters Kaczor's fourth objection to infanticide, this is a minor point at best. Kaczor's arguments against Giubilini and Minerva's account of harm are far more substantial, and Räsänen has not addressed them.

CONCLUSIONS

³⁸ Ibid: 61.

³⁹ Ibid: 61.

⁴⁰ Ibid: 62.

Räsänen has criticised four objections Kaczor offers to Giubilini and Minerva's defence of infanticide. We have argued that these objections, taken in isolation, do not comprise a full representation of Kaczor's case against infanticide. Although Kaczor is primarily developing a case against abortion, the majority of his arguments are also applicable to infanticide, and when combined with his four objections, present a powerful case for it being morally impermissible. Räsänen concludes by stating 'if we want to reject the permissibility of infanticide, we must find better arguments for it'⁴¹. We disagree strongly on several points. We have explained in detail how Kaczor in fact provides excellent arguments for rejecting infanticide, contrary to this claim. Additionally, permitting infanticide is a hugely controversial position that is against the status quo. The burden of proof is on proponents such as Räsänen to find better arguments in favour of it.

⁴¹ Räsänen, *op. cit.* note 3, p. 662.