

# “After-birth abortion” aka infanticide: the controversy reemerges

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Suppose you delivered a baby with the rare condition *osteogenesis imperfecta*, a defect in collagen formation that makes bones brittle and easy to fracture. In one particular case, the condition commonly known as brittle bone disease was so severe that at simply through the birth process, the infant suffered 50 fractures. The prognosis for the future was very poor: the baby would probably grow up blind, deaf, unable to communicate, and with severely diminished mental functions. What would your recommendation to the parents in this case be? This was what happened in England in 1961, and the doctors believed that the newborn child Nicky Chapman’s quality of life would be so poor that her life would not be worth living. They suggested that she be put into a home and sent away to die. Did they give the correct advice? Some people today would go even further: they would suggest that it would be more compassionate to end the life of neonates born like this so that they do not suffer, or that their parents are not burdened, or that the society cannot afford the expenses of caring for these children.

This was exactly what was proposed recently in Oxford University’s *Journal of Medical Ethics* article called “After-birth abortion: Why should the baby live?” The two Italian authors argue that in places where abortion is allowed, killing new-born babies even though they are healthy can be ethical<sup>1</sup>. This caused quite a stir in the media, and there were a lot of names-calling as a result<sup>2</sup>. Polemics aside, this article seeks to analyze the ethical problems related to this proposal.

Infanticide is not a new idea. Ancient Greeks and Romans are documented as having practiced it. Plato recommended in the *Republic* to kill babies born with imperfections or certain diseases so as not to burden the state. The Judeo-Christian tradition, however, viewed every human person as valuable and prohibited this practice. However, in recent years, with therapeutic abortion widely accepted in many developed countries, the illegitimacy of infanticide is being put into doubt once again.

Among the most famous proponents of infanticide is the Australian born bioethicist Peter Singer, Chair of Ethics at Princeton. He defines a “person” as someone identified by active “rational attributes” and “sentience”. Abortion is allowed since «fetuses have not preferences before they can feel pain». Similarly the newborn cannot be a person: «Now it must be admitted that these arguments apply to the newborn baby as much as to the fetus. A week-old baby is not a rational and self-conscious being; and there are many nonhuman animals whose rationality, self-consciousness, awareness, capacity to feel, and so on, exceed that of a human baby a week, a month, or even a year old»<sup>3</sup>. Thus, he reaches the shocking conclusion that infanticide should sometimes be allowed: «In modern era of liberal abortion laws, most of those not opposed to abortion have drawn a sharp line at birth. If, as I have argued, that line does not mark a sudden change in the status of the foetus, then there appear to be only two possibilities: oppose abortion or allow infanticide... In our book *Should the Baby Live*, we suggested that a period of 28 days after birth might be allowed

before an infant is accepted as having the same right to life as others. This is clearly well before the infant could have a sense of its own existence over time, and would allow a couple to decide that it is better not to continue with a life that has begun very badly<sup>4</sup>.

While Singer has contemplated this in the case of severely disabled infants whose life would cause suffering both to themselves and to their parents, and in the past suggested twenty-eight days after birth as the cut-off, he now finds this limit as «impracticably precise» and when push comes to shove, concedes that, «a three-year-old is a gray case»<sup>5</sup>.

### *The Dutch protocol on infanticide*

While this may seem shocking at first, infanticide is already practiced in some parts of the world. In the Netherlands a shocking revelation was made public several years ago when some physicians published the cause of death of children born with severe *spina bifida* from 1997–2002. The Netherlands boasts the most permissive laws on euthanasia in the world. Voluntary euthanasia was legalized in 2001, with the condition that the patient «suffers hopelessly and unbearably» without reasonable prospect of resolution. Those between the ages of 12 and 16 must obtain parental approval.

In 2005, two Dutch physicians justified their behavior in the *New England Journal of Medicine* “The Groningen Protocol for Euthanasia in Newborns”<sup>6</sup>. Under this proposal, if doctors at the hospital think that a child suffers unbearably from a terminal condition, they have the authority to end the child’s life. These authors believed that life-ending measures can be acceptable in cases when the child’s medical team and independent doctors agree the pain cannot be eased and

there is no prospect for improvement, and when the parents consent to it. The Groningen protocol sought to create the legal framework to actively end the lives of newborns suffering from incurable diseases or extreme deformities. Conditions cited in the paper are very premature births and severe cases of *spina bifida* and *epidermosis bullosa* (a rare blister-forming skin disease). These are not only newborns with no chance of survival who are left to die, but euthanasia was extended to «infants who may survive after a period of intensive treatment, but expectations regarding their future condition are very grim» and «babies with an extremely poor prognosis who do not depend on technology for physiologic stability and whose suffering is severe, sustained, and cannot be alleviated». It is alarming that four such killings have already taken place at the Groningen hospital, where lethal doses of sedatives were pumped into terminally ill babies. Although these cases were reported

to government authorities, no legal charges have been pressed against the hospital or the doctors.

When this came out in the news, there was a furor of comments, mostly condemning the practice but there were

also writings that commended the honesty of the Dutch practices. One of the most influential bioethics journals, the *Hastings Center Report*, analyzed the issue and believed that it is ethically acceptable: «Actively ending a life can sometimes be more humane than waiting for a person to die, and in the desperate cases where death does not come of its own accord to end unendurable suffering, the morally right thing to do is to summon it»<sup>7</sup>.

For those who are familiar with academic bioethics, this is not surprising. In fact, many prominent bioethicists, each with their own particularities, echo Singer’s utilitarian approach to ethics and his reclassification of person/non-person which would justify in-

### *The Groningen protocol permits the killing of newborns suffering from incurable diseases or severe deformities*

fanticide. Singer recognizes this when reflecting on his unwelcome view of infanticide in Germany<sup>8</sup>: «Among philosophers and bioethicists, the view that I was to defend is by no means extraordinary; if it has not quite reached the level of orthodoxy, it, or at least something akin to it, is widely held, and by some of the most respected scholars in the fields of both bioethics and applied ethics»<sup>9</sup>. The idea of extending the abortion rationale to infanticide is however gaining popularity, as the recent *JME* article demonstrates. A year ago, columnist and writer Virginia Ironside, speaking on a BBC religious affairs programme, affirmed, «If a baby's going to be born severely disabled or totally unwanted, surely an abortion is the act of a loving mother». She added: «If I were the mother of a suffering child—I mean a deeply suffering child—I would be the first to want to put a pillow over its face...»<sup>10</sup>.

#### *Ethical concerns with infanticide*

Many people are uncomfortable with actively killing infants, even though they are gravely sick or disabled. The problem lies in the fact that human beings cannot be measured in terms of their productivity or usefulness. Since a handicapped child would not be very useful to society or to their parents, its elimination would be cost-efficient according to this reasoning. This is the world of utilitarian ethics that Peter Singer, Virginia Ironside and the authors of “after-birth abortion” embrace. According to this logic, voluntary euthanasia should be allowed when the autonomous person consents to end his life which he considers intolerable. Not surprisingly, Singer also permits non-voluntary euthanasia of “non-persons”, namely, those who never have capacities to reason and to choose (i.e., infants) or those who have lost them due to senility, disease or incapacitation. The interests of “non-persons” are superseded by the preferences of “persons” whose greater interests are served by their death. Thus, non-voluntary eu-

thanasia is at times permitted for “unwanted” newborns, the mentally ill, mentally retarded, senile patients, the comatose, and all other disabled human beings who could not decide for themselves<sup>11</sup>.

Understandably, disabled persons are especially worried about the use of utilitarian standards to measure human worth. Diane Coleman, a disability rights activist and the founder of *Not Dead Yet* comments, «Anti-disabled bias would become especially dangerous. If it becomes even more respectable to label us “inferior” or even “less human” based on perceptions of the quality of our lives, it will become acceptable to oppress, exploit, and even kill disabled people. To some degree, this is already happening. People with disabilities are seriously discriminated against in healthcare as well as in other areas of life»<sup>12</sup>.

In their effort to gather support for the Groningen protocol, advocates repeated the same argument used to make euthanasia legal. One of the authors of the Dutch protocol, Dr. Eduard Verhagen, argued that newborns with severe malformations are already being killed each year in Holland without being prosecuted. He felt that it is wrong to keep it in secret: «In the Netherlands we want to expose everything». In stating that mercy killing is common practice among doctors and that legalization would bring this hidden practice out into the public for better control, this strategy worked to legalize euthanasia in 2001.

Another problem with approving measures of “after-birth abortion” or infanticide is that it might lead to further erosion of care for the neonates. Since euthanasia became legal in Holland, there has been a decline of palliative medicine, where the sick and dying are kept comfortable at the last stages of their lives. If such protocols became a standard of medical practice, a similar impact might occur in neonatology, where premature babies might not be revived, even though medical advancements are continuously increasing their chances of survival. Allowing this practice to continue can set a very dangerous precedent where infanticide

may become legalized. On this ethical slippery slope, if infants could be killed for their supposedly low quality of life, one could eventually justify killing for less severe conditions. As Dutch bioethicist Henk Jochemsen wrote, «Hard cases make bad laws. As soon as a law is passed, it will expand the number of those who are considered extreme cases»<sup>13</sup>.

These ideas would also pave the way for eugenic practices. As prenatal diagnosis becomes routine, when some genetic disease or congenital deformity is discovered, more often than not abortion is the option. Infanticide can become an extension of the eugenic practice of killing deformed newborns not previously detected *in utero*<sup>14</sup>. «After-birth abortion» as proposed in the *JME* and the Dutch protocols is problematic because it is based on somebody else's assessment of a child's quality of life. Since the newborn infant cannot evaluate or define his or her suffering as unbearable, it is usually the physician who makes this assessment and the parents and relatives who give the consent to infanticide. The problem, we may ask, «Is this not more an issue of the suffering of the adults rather than the newborn in question?». The late Pope John Paul II reminded us that very often «the so-called *quality of life* is interpreted primarily or exclusively as economic efficiency, inordinate consumerism, physical beauty and pleasure»<sup>15</sup>. In contrast, it is important to stress that every person has inherent dignity that «should be recognized and respected in any condition of health, infirmity or disability». Getting back to the case of Nicky Chapman who was born with *osteogenesis imperfecta*, such infanticide protocols were in place back in 1961, she would probably be left to die or actively euthanized. Luckily, her parents did not take the doctors' advice and brought the baby home. Despite the 600 fractures in her life and a short stature of 2 feet 9 inches, she grew up, obtained an education and work. In fact, Nicky Chapman managed to become the first person with a congenital disability to be appointed to the British House of Lords<sup>16</sup>.

Nicky—or rather—Lady Chapman of Reeds actively works against legislation in the United Kingdom that could pave the way to euthanasia. As she adeptly maneuvers her electric wheelchair in the House of Lords, it is chilling to recall her doctors' long-distant diagnosis that she had «no noticeable mental functions». «That is a little bit different from what I have managed to achieve and where I am today», she commented.

#### NOTE

<sup>1</sup> See A. GIUBILINI and F. MINERVA, «After-birth abortion: why should the baby live?», in *Journal of Medical Ethics, JME Online* (February 23, 2012) in <http://jme.bmj.com/content/early/2012/02/22/medethics-2011-100411.abstract>.

<sup>2</sup> See J. SAVULESCU, «“Liberals Are Disgusting”: In Defence of the Publication of “After-Birth Abortion”» in *Journal of Medical Ethics blog*, <http://blogs.bmj.com/medical-ethics/2012/02/28/liberals-are-disgusting-in-defence-of-the-publication-of-after-birth-abortion/>.

<sup>3</sup> P. SINGER, *Practical Ethics*, Cambridge University Press, (2<sup>nd</sup> ed.) New York 1993, 123. See also «Taking life: The Embryo and the Fetus», in *Writings on an Ethical Life*, HarperColins, New York 2000, 160.

<sup>4</sup> P. SINGER, *Rethinking Life and Death: the Collapse of our Traditional Ethics*, St. Martin's Press, New York 1995, 210, 217. See also H. KUHSE and P. SINGER, *Should the Baby Live? The Problem of Handicapped Infants*, OUP, Oxford 1985; H. KUHSE and P. SINGER, «For sometimes letting—and helping—die», in *Law, Medicine and Health Care*, 4 (1986), 149-153.

<sup>5</sup> M. OPPENHEIMER, «Who lives? Who dies? The utility of Peter Singer», *Christian Century*, 14 (2002), 24-29.

<sup>6</sup> E. VERHAGEN, and P.J.J. SAUER, «The Groningen Protocol—Euthanasia in Severely Ill Newborns», in *New England Journal of Medicine*, 352 (2005), 959-962.

<sup>7</sup> H. LINDEMANN and M. VERKERK, «Ending the Life of a Newborn: The Groningen Protocol», *Hastings Center Report*, 1 (2008), 42-51.

<sup>8</sup> See P. SINGER, «On Being Silenced in Germany», in *Writings on an Ethical Life*, op. cit, 303-318; B. SCHONE-SEIFERT and K.P. RIPPE, «Silencing the Singer: Antibioethics in Germany», *Hastings Center Report*, 6 (1991), 20-27.

<sup>9</sup> P. SINGER, *Writings on an Ethical Life*, op. cit, 308. Singer listed in a footnote the views of ethical experts Tristram Engelhardt, Richard Frey, Jonathan Glover, John Harris, James Rachels, Michael Tooley, and Helga Kulse whom he considers akin to his on infanticide.

<sup>10</sup> Z. WILLIAMS, «Abortion and euthanasia: was Vir-

ginia Ironside right?», in *The Guardian*, (October 5, 2010), in

<http://www.guardian.co.uk/world/2010/oct/04/virginia-ironside-tv-euthanasia-abortion>. See interview video clip on

[http://www.dailymotion.com/video/xf3x8v\\_virginia-ironside-on-infanticide\\_news](http://www.dailymotion.com/video/xf3x8v_virginia-ironside-on-infanticide_news).

<sup>11</sup> See P. SINGER, «An Interview», in *Writings on an Ethical Life*, op. cit., 327-328; N. BOYCE, «Opinion Interview: Only Human», *New Scientist*, 2220 (January 8, 2000), 36.

<sup>12</sup> See W. J. SMITH, *Culture of Death: The Assault on Medical Ethics in America*, Encounter Books, San Francisco 2000, 62. See also the specific rejection of Singer's thesis in Disabled Peoples International Europe, «Disabled People Speak on the New Genetics: A position statement», (2000), in <http://www.handicap-international.fr/bibliographie->

[handicap/1Handicap/ConnaissanceHandicap/bioethics-english.pdf](http://www.handicap-international.fr/bibliographie-handicap/1Handicap/ConnaissanceHandicap/bioethics-english.pdf).

<sup>13</sup> U. T. SHELDON, «Dutch euthanasia law should apply to patients “suffering through living”, report says», in *British Medical Journal*, 330/61 (2005), 1, in <http://www.bmj.com/content/330/7482/61.1.short?tab=response-form>.

<sup>14</sup> See J. THAM, «From Euthanasia to Infanticide», in *National Catholic Register*, (April 3-9, 2005), 9.

<sup>15</sup> JOHN PAUL II, Encyclical *Evangelium Vitae: on the Value and Inviolability of Human Life*, (1995), n. 23.

<sup>16</sup> M. KITE, «Doctors said they could do no more and sent me home to die – I'm still waiting», *The Telegraph*, (Feb. 6, 2005), in <http://www.telegraph.co.uk/news/uknews/1482890/Doctors-said-they-could-do-no-more-and-sent-me-home-to-die-Im-still-waiting.html>.