

# Philosophical, scientific and pragmatic critical approach of post-birth abortion

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## Abstract

Infanticide was named post-birth abortion in an article published in 2012. Despite raising many reactions in the academia and in the media, there is still the need to do a wide and specific dialectical critique, considering its scientific, philosophical and pragmatic aspects, inserting it into the concrete reality. Through this critique, it can be concluded that the article has serious scientific, philosophical and pragmatic limitations, disregarding the complexity of reality and the broad scope of the “person” concept. The claims of the article are poorly substantiated, and its conclusions are based on artificial and fragile assumptions.

**Key words:** Abortion. Bioethics. Logic.

## Resumo

### Abordagem crítica filosófica, científica e pragmática ao abortamento pós-nascimento

O infanticídio foi denominado abortamento pós-nascimento em artigo publicado em 2012. Embora tenha despertado numerosas reações no meio acadêmico e na mídia, ainda resta a necessidade de tecer uma crítica dialética ampla e específica do mesmo, considerando seus aspectos científicos, filosóficos e pragmáticos, além de inseri-lo na realidade concreta. Por meio de tal crítica, pode-se concluir que o artigo apresenta importantes limitações científicas, filosóficas e pragmáticas, desconsiderando a complexidade da realidade e a abrangência do conceito de pessoa. As afirmações do artigo são pouco fundamentadas e suas conclusões se baseiam em pressupostos artificiais e frágeis.

**Palavras-chave:** Aborto. Bioética. Lógica.

## Resumen

### Abordaje crítico filosófico, científico y pragmático del aborto post-nacimiento

El infanticidio fue llamado aborto post-nacimiento en un artículo publicado en 2012. Aunque levantara numerosas reacciones en el ámbito académico y en los medios de comunicación, aún existe la necesidad de tejer una amplia y específica crítica dialéctica de lo mismo, teniendo en cuenta su carácter científico, filosófico y pragmático, y su integración en la realidad concreta. A través de esta crítica, se puede concluir que el artículo tiene limitaciones científicas, filosóficas y pragmáticas serias, sin llevar en cuenta la complejidad de la realidad y el alcance del concepto de persona. Las afirmaciones del artículo son mal fundamentadas, y sus conclusiones se basan en suposiciones artificiales y frágiles.

**Palabras-clave:** Aborto. Bioética. Lógica.

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## The defense of infanticide

This paper elaborates a review to an article published in 2012 in the *Journal of Medical Ethics*, which is based on three assumptions and concludes that infanticide or murder of children is morally justifiable when abortion is also justifiable, including situations in which children are completely normal. We strongly suggest that the entire reading of criticized article is taken before moving forward <sup>1</sup>.

The listed assumptions are: 1- *Both fetuses and newborns do not have the same moral status than present persons*; 2- *The fact that both are potential persons is morally irrelevant*; 3- *Adoption is not always in the interest of the present persons* <sup>2</sup>. In order to define “person” the following concept was used: *an individual who is able to assign to their own existence at least some basic value in such a way that being deprived of this existence becomes a loss for them* <sup>3</sup>.

From the perception of what is considered the absence of communicable goals for fetuses and newborns, the authors conclude that their future is subjective projections: *Abortion is widely accepted even for reasons that have nothing to do with the health of the fetus. Now, one can hardly say that a newborn has goals, since the future we envision for them (the newborn) is merely a projection of our minds in their lives in potential* <sup>2</sup>.

They reduce the moral status of the fetus and newborn to a largely subjective and proactive issue while aiming at a more distant future: (...) *we are talking about particular individuals who may or may not become private persons depending on our choice, and not on those who will certainly exist in the future, and whose identity will not depend on our choice now* <sup>4</sup>.

## Philosophical review

### Definition of “person” and the potentiality

Trying definitions of “person” which do not contemplate the historical and social aspect of living creatures, their future potential and present acts is at least a serious setback. In times when the thought seeks to escape from simplifications and admits the inevitable complexity of reality, as can be seen in the works of Edgar Morin <sup>5</sup> and Xavier Zubiri <sup>6-8</sup>, among others, the authors of this article wish to practice an overly simplistic abstraction when they exactly define a cardinal and concerning concept to civilization such as the “person” one.

The person, for example, keeps current aspects – including what is and what was recorded by their past history – and potential – including everything that may be. In their current aspects, the fetus and child have in essence the ability to develop the typical faculties and relations of an adult human being. From the social perspective, both are related and currently generate valuation and expectations before adults. From the civilizational perspective, the protection of their lives currently promotes important values to society.

From the potential aspects it could be said that the person keeps potentials in essence (or updated), contingent (possible after voluntary decisions when analyzing the human condition) or denied (impossible after voluntary decisions). A fetus has already the potential in essence become child; however, the voluntary decision to take their life would lead to the denial of the obvious potential manifestation. A fetus to be raised by a woman who is not pregnant yet only has the contingent potential of becoming child. Such distinctions will be useful to analyze how authors manipulate the valuation of what is current or potential.

Abstracting the concept of person in the update network and potentializations that involves them, not to mention the issues of social and moral valuation and civilizational impact of such a measure is not appropriate.

The authors elaborate a reductionist concept and move forward in an argument that creates wordplay far from reality. Why alternative and more complex concepts of “person” elaborated by other authors were not mentioned? Richer concepts and closer to reality concretely lived by humans, including aspects such as: the presence of a body, elements of personality, character, behavior, private and public life, past, present and transcendental dimension <sup>9</sup>.

Eric Cassel says: *Unlike other objects of science, people cannot be reduced to their components in order to understand better what they are, and people are natural entities (...) distinctions among mind, body and environmental context are also artificial* <sup>10</sup>. He also remembers that the “personhood” involves personal and social cultural contexts, including relationships with themselves, with family, society and political institutions. It is much broader and less abstract than that observed in the definition.

When the reductionist definition of person needed to form the syllogism was questioned, all logical argument falls apart because it is deprived of its fundamental premise.

**Asymmetry in valuing potentiality in specific situations**

The authors consider morally irrelevant the “potential” of the fetus, or of the baby, becoming a “person” against the current desire of other “current” people to kill them.

But in the same article yet, the baby’s death is justified based on the “potential” to generate great psychic and material difficulties for the family. Subsequently, it is still defended the need to protect the planet and “future” humans (given as something right), while the need to defend the current humans (not classified as persons according to the article) is jettisoned.

The valuation of potential contingent – present in a hypothetical future humanity – and the devaluation of potential in essence, such as those of the living fetus – present in action –, suggest an arbitrary reversal of values.

Action and potentiality are aspects of the same being inserted into the time-space; this reality can be considered self-evident, because it cannot be expressed in action that does not have power. Removing one of the two points to classify the being in a reduced form is an unjustifiable abstraction since, at least, Aristotle times. Moreover, there is no identifiable ontological leap that supports such amputation or simplification of classifying a human being. The fetus is a human being’s fetus, as well as the elderly is a human being in advanced age stage. The fetus is not human because they are still fetus, and the point at which they would start to be a person is likely of many disagreements.

Considering portions of human beings as non-persons can also be considered a fearsome arbitrariness that has already shown its fruits in past decades. And even though the concept of person used in the original article is valid in a hypothetical situation, there is still the need for a deep reflection on what is considered a portion of humanity – even if it is not taken as a “person” – as devoid of moral value to such point that their extermination is justifiable.

Even that the value of the child, the fetus or embryo is not recognized as equal to the value of a person, there is still an obligation to reflect on what consequences such a loss of moral status and dignity can bring to the minds of an entire civilization in which human beings are no longer means according to Christian or Kantian view. Michael Sandel prudently points out the risk to *banish valuation of life as a gift and leave us with nothing to defend or contemplate beyond our own will* <sup>11</sup>.

Another problem arises in the exaggerated subjectivism of the article, which claims that the future of newborn is a mere projection of our minds. The fact is that the concrete human being lives in a tension between the environment and their individuality. There are elements derived from what parents design about their children, there are elements derived from their genetic makeup that resist parental projections and plans, and there are elements that derive from life circumstances and context. In the words of Ortega y Gasset, *man is man and his circumstances* <sup>12</sup>.

It also causes discomfort the fact that future unborn human are being taking – i.e., contingently potential – as indeed existing in the future, by justifying their own moral status to be considered and concern for the future as current human beings have their moral status relativized. According to the authors, *We still have moral obligations regarding future generations even if those people do not exist yet. But as we take it as a certainty that such people will exist (whoever they are), we should treat them as current people of the future. This argument, however, is not applied to a newborn child or a child in particular, because we cannot take for granted that they will exist as people in the future. Whether they will or will not exist is precisely what will derive from our choice* <sup>4</sup>.

Even considering the criterion used to define “person” as valid, the human being already generated is a potential person in essence, something even closer in time and space that could be called the current person in opposition to future unborn human beings but “taken for granted”. Another point that should be noted in search of coherence is the fact that those future generations derive precisely from the current ones, even if we may not consider them as people, hence the concern for future generations should include a concern with the current generation. Considering this information as a disposable *non sequitur* seems methodologically unacceptable.

**Argumentum ad misericordiam and the helpless child**

The original article argues that fetuses and babies can be killed because they are only in potential people. From this reasoning it follows that either abortion or infanticide can be defended only on the basis of current inability to fetuses and babies defend themselves according to previous criteria stipulated by those who advocate the elimination of their lives. This is equal to say that their death is advocating helpless people’s death – or humans – through exclusionary criteria *a priori*.

Calling babies and fetuses as defenseless can be understood as *argumentum ad misericordiam*. In part this perception is correct, although the term “defenseless” is used to describe human beings unable of defending themselves according to the specific criteria used to conceptualize a human person. As for piety awakened in population, as well as even aggressive reactions, is important information and adds another perspective to addressing this issue.

Even in an academic discussion, seeking a more complete philosophical approach, the analysis cannot forgo all the characteristics of being – emotional among them –, and the philosopher or health care professional who thinks the issue and applies this thought into reality is never excluded of this<sup>13</sup>. Whereas the discussion on ethics and bioethics, it is even more urgent to recognize not only the emotional aspect involved in the debate, but also the evaluative and originator aspect of civilization in which it occurs.

This concern can be mistakenly taken as a position contrary to analytic philosophy or academic rigor, which is not entirely true. For a philosophical analysis, which is advocated in this paper is the use of analytic philosophy within a broader framework that could encompass phenomenological and ontological secondary perspectives to a radical realistic understanding<sup>14</sup>. In the analysis of the complex human phenomenon, it seems to be a more complete and adequate form.

## Scientific review

### *Differences between infanticide and abortion: abortion after birth as a euphemism or simplification of the issue*

Because of several criteria, attempts to rename infanticide as abortion are unfounded. Both situations keep considerably a greater number of dissimilarities than valid analogies. These are some commonly known obvious differences:

1. As for the place: abortion is performed in the uterus, infanticide is performed in the external environment;
2. Regarding the physiology of the offspring: the fetus and the newborn differ regarding perception, the blood circulation and oxygen exchange with the environment;
3. As to the method of disposal of life: fetal aggression occurs through the mother’s body or through it, since the attack on the newborn occurs directly;

4. As to time: the life of the fetus is interrupted before the newborn, which can cause different gradations in the psychological bonds between mother, family and offspring; eliminating the newborn is an act that occurs at a time when the mother’s body has undergone more adaptive physiological changes.

The authors base the terminology based on the similarity of the causes that would lead someone to eliminate a fetus or a baby and in the similar moral status as the concept of person adopted: *Therefore, we argue that it is permissible to use the term post-birth abortion when circumstances in which abortion is allowed to occur after birth. Despite the contradiction contained in the expression, we propose to call this practice of post-birth abortion rather than infanticide to emphasize that the moral status of the individual killed is comparable to the fetus (in which the abortion is performed in the traditional sense) rather than to a child. Therefore, we claim that killing a newborn could be ethically permissible in all circumstances in which abortion would be*<sup>15</sup>.

The physical, physiological, social and temporal differences between a fetus and a newborn child are so numerous and obvious that the expedient of ignoring them for the use of euphemism based on reductionist definition of “person” is academically controversial for incurring significant simplification of a complex issue. Even that it could not be interpreted as a euphemism, and abortion was as socially repudiated as murder or infanticide, the use of only one term for so different acts such as killing a living being after birth and make voluntary abortion within the uterus becomes unjustifiable.

After a careful analysis, the biological (such as genetics, for example) and ontological (as essentiality, including action and power) similarities would recommend just the opposite of what was done: take greater care facing the possibility of not considering the fetus and newborn born as persons worthy of moral status, because such similar aspects between fetuses and newborns are common to those classified as persons according to the criteria of the authors themselves.

### *Aspects of psychological science and social consequences*

The Dutch psychiatrist Joost Meerloo stated that *one who dictates and formulates the phrases and words that we use, which dominates the press and radio, that one is the lord of the spirit*<sup>16</sup>. An article that proposes to replace the term used to de-

scribe an act (infanticide) for another term used to describe the act of greater social acceptance in certain countries (abortion), consciously or not, it ends up having camouflage effect of the real meaning of the object of study.

From the point of view of psychological science, it can be inferred that two seemingly contradictory effects can be derived from the one made by the authors in the article. The first one is the attenuation of a stimulus, which is known as “foot in the door”<sup>17</sup>. All understatement evokes, in part, this effect. Its action is the addition of acceptance of any proposal before there is an attenuated proposal, working as a progression of demand from those who make the proposal. Instilling a mitigating notion of concrete reality of infanticide or murder automatically creates the effect *foot in the door*.

The second effect can be described as “door in the face” and it is to propose something of much bigger rejection than it would be originally proposed. The proposal of lower acceptance causes desensitization of the listener, who tends to accept later more easily, something that they previously did not accept, but that is less radical than the first proposal that was considered absurd<sup>18</sup>. An effect of that article is to instill a greater acceptance of abortion after generating perplexity against the killing of babies.

Importantly, the authors may have used such resources inadvertently, that does not absolve them from responsibility for their ideas before society. We must also point out the question of the effect “voice of authority”, described by Stanley Milgram in his study of submission to scientific authority<sup>19</sup>. In this case, exercised by the editor, by the journal that accepted the publication (both internationally renowned) and by the authors themselves. This effect tends to influence patterns of belief of the reader – and, consequently, their morality –, even persuading academic readers. These factors, in combination, can articulate a strong element of social engineering that should not be ignored, even if it has never been intentional.

### **Few references to grand propositions and lack of opposite hypotheses**

The low number of bibliographic references to support extremely large and controversial thesis draws attention. There are eleven references, from which only one is used directly in the text as the basis for the definition of person, crucial for the article criticized. Although the favorable references derive from previous discussions of considerable volume,

an exhibition of counter-arguments better architected and discussed methodological would give more validity to the article.

A demonstration of bibliographic scarcity is the only cited reference that seems to offer a counterpoint to the authors, even indirectly and outside the central argument. In such a reference is commented that “*children with Down syndrome can be happy*”, something of common knowledge<sup>2</sup>. The authors comment that it cannot be said that they will have the same potential of a “common” child, though there are people with Down syndrome covered by inclusion policies that contribute more to society and develop their potential more than certain members of society who, though healthy at birth and vested by potential, become severely restricted by adverse social conditions.

Continuing the analysis, the authors do not even specifically argue the death of children with Down, they advocate the death of any child who would normally be aborted for any reason previously. The reference of the child with Down syndrome is not the center of the proposed argument and even suggests classification as frivolous objection<sup>20</sup>. Term ‘frivolous’ is used because it is considered that there is more central points that would deserve dialectical counter-argument by the authors, and that the objection used contributes much less substantially than would an objection to one of the central assumptions, such as the concept of person, for instance.

Another reference cited by the authors, and that could be further exploited, is a description of medical attitudes in the following excerpt: *Medical professionals also recognize the need for protocols on cases in which it seems that death is the best option for the child. In the Netherlands, for example, the Groningen Protocol (2002) allows one to actively end the life of hopeless prognosis children who experience what parents and medical experts deem to be unbearable suffering*<sup>2</sup>.

The Groningen Protocol is advocated in several articles by taking as example children born with *spina bifida*<sup>21</sup> – dramatic and rare condition in which there is herniation of meningeal and/or brainstem content at the base of the spine, and which is considered by some as the responsible for unbearable pain and disease incompatible with a good prognosis.

Searching the literature, there are several works against the use of the Groningen Protocol, stating that it is far from being mentioned without some controversy. Such works, for example, invalidate the use of children with *spina bifida* as an ex-

ample to demonstrate that such infants may have prognostic and autonomy. The least that can be expected in a philosophical or scientific exposition is the dialectic exposure of good quality, in which diverse opinions are compared and weighed <sup>22</sup>, which was a missing element in article criticized. A brief analysis of the requirements to be met by the protocol reveals some relevant problems.

The first category of the Groningen Protocol is that diagnosis and prognosis must be certain. It is common knowledge in the medical and scientific community that no test can be considered completely safe in diagnosing (test sensitivity) or away from a diagnosis (test specificity). In practice, it will be irreversibly decided on life or death of someone based on an uncertainty. It is the moral dilemma which states that, if in doubt, taking an irreversible decision sets an inescapable error <sup>23</sup>.

The second category of the protocol is that the suffering imposed by the condition of the newborn should be unbearable and with no prognosis for improvement. The concept of unbearable suffering, besides being extremely subjective, cannot be used to judge a baby <sup>24</sup>. Proponents of the Groningen Protocol, however, published a series of 22 deaths in which babies were sacrificed after about five months on average <sup>25</sup>. In practice, even if it could be said that the pain was “unbearable”, it would be concluded then that the baby suffered unbearably five months on average. What really unbearable suffering is borne for five months?

About nine months after publication of the 22 deaths caused by the Groningen Protocol, still in 2005, articles were published proving that there was treatment and prognosis for children with *spina bifida*. These works categorically said that the protocol was unacceptable and that was completely against the whole notion of human dignity which justified the ideology of human rights of our civilization <sup>26-29</sup>.

The third category of the Groningen Protocol advises that the two previous categories are confirmed by independent medical doctor at least. Although such a warning does not guarantee – in fact – the exemption of interest in decision-making process, one can offer some additional security.

The fourth category requires that parents authorize informed consent. This category is fought even by some authors who claim that only the specialized health team should have a voice in those decisions based on objective criteria <sup>30</sup>, which is something that disregards patient autonomy represented by their family when they are incapable and the

need to observe the values of others as something that influences medical decision-making. Imagining the hospital staff legislating on which baby should die and who should live without even asking the parents of the child is at least something scary; it is an aberration in the context of the medical profession, which discusses terms such as patient autonomy and informed consent.

The last issue informs that the procedures should occur according to standard medical parameters. It also makes the Groningen Protocol to fall into a pragmatic problem: since when medical doctors standardize procedures to “kill”?

The casual citation of this protocol does not seem appropriate to reinforce the article criticized. Actually, it seems to be improper. At least the authors should have said that the procedure adopted by such doctors is controversial and raises serious questions and differences in medical and bioethical literature. It is clear that the original intent was just to show that some doctors already eliminate newborns by using specific protocols in certain countries, however, to address a potentially complex and controversial issue, a less superficial approach is advisable.

## Pragmatic review

### *Essential cause of medical training and formal aspects*

From a pragmatic point of view, what should be firstly questioned is the argument which implies that the doctor is someone who should be able to kill a human being. How Genival Veloso de França warns in his article on the right to life <sup>31</sup>, the model of what is to be a doctor implies someone who is prepared to fight for life, comfort and save their patient, someone who would never develop techniques of torture and murder.

On the day that administering lethal doses of drugs and enhancing instrumental techniques for the elimination of life would be a common practice of the medical doctors, the Western model of humanistic doctor will be irrevocably changed, dangerously approaching alternative models of professional keepers of depth biological knowledge who do not complied with the ethical and moral model contained in the Hippocratic tradition in all its historical aspects. A well-known example is the scientist experimenting on human beings, whether Nazi, whether more contemporary – such as those involved in the Tuskegee experiment, in the 70s, in the United States <sup>32</sup>.

***The medical doctor of “non-people”?***

Another pragmatic point of emphasis when one of the premises of the article is accepted is the professional status of certain specialties such as neonatology. If neonatologists are responsible for treating newborns at term and preterm, then would a reduction of responsibility be proper? Considering that, according to the authors and other advocates of voluntary abortion and infanticide, that neither the fetus nor the newborn are considered persons, who and from what do neonatologists treat, after all?

If we have medical professionals who deal directly with the human being, but do not have “people” as the object of action, would it be correct to consider the same level of moral responsibility towards the doctors who deal directly with people? What is the exact role of the neonatologist and his responsibility in this classification of human being in non-person? The practical consequences of this qualitative dichotomization of humans in people and “non-people” are so broad that it is impossible to enumerate them sufficiently. In the original article it would be also desirable to address a consequentialist approach of the proposed syllogism, even superficially.

***Quality or controversy?***

Considering the work as a controversy and based on assumptions that are not widely accepted, as the response of some readers revealed, it is a work that is likely to be widely mentioned not by its philosophical or scientific merits, but for its ability to generate disagreement and controversy. This aspect shows a negative bias in the classification of the articles on the number of citations in the specialized literature. Pragmatically, classifying a journal by number of citations of its articles can reward, in academic terms, the publication of controversial and offensive texts, instead of texts of good quality. This purely quantitative approach should be studied with a view to a possible proposal for method correction.

***Final considerations***

The article “After birth abortion: why should the baby live?” has serious philosophical and scientific limitations, besides leading to important pragmatic questions. The statement of the Journal of Medical Ethics editor – in which it was published –, that it was based on widely accepted assumptions,

is shown as wrong. The fact that such publication would be mentioned for its controversy and not only for its quality also demonstrates significant weakness in the classification of journals regarding quantitative citation of articles system, because instead of judging the quality of the article it may be judging its ability to raise controversy.

From a philosophical viewpoint, the criticized article proves to be a logical sequence based on questionable assumptions, disregarding the complex nature of reality and the possible meanings of “person”. It formulates an artificial definition, without considering properly aspects such as the social participation of the human being, potentiality and civilizational values involved. From the scientific point of view there is a shortage of appropriate literature sources before broad statements and lack of dialectical confrontation with alternative concepts to those adopted by the authors.

Some bioethical schools of thought, such as that advocated by Peter Singer, are based, in part or entirely, on the line of reasoning of the authors of the article, reinforcing such defense by displaying a logical sequence starting from specific assumptions to utilitarianism<sup>33</sup>. However, the review of this work is located precisely in the phase that could be called as the pre-logics of Giubilini’s and Minerva’s argument, i.e., in their assumptions.

When dealing with human phenomenon, the logics inevitably resorts to repeated abstractions. And at the end of the line of reasoning it becomes unable to add anything that in fact is not already contained in the premises, given their deductive characteristic. So, although the logic keeps its value in discursive elaboration, the analysis of assumptions and assumptions through ontological methods<sup>34</sup> (of the personalistic school, for example) and derived from a phenomenology adapted to Extreme Realism<sup>14</sup> keep a greater proximity to human reality to be observed and analyzed than a logical line isolated from selected premises and thus abstracted from a rationalist and utilitarian viewpoint.

The utilitarian aspect consists of one of the facets of reality and, as such, should be taken into consideration. But it is not the only aspect, and their relationships with aspects such as beauty, justice and the notion of a superior good to utilitarianism itself within a society should be evaluated in search of a complex enough thought to approach the complexity of reality. Radical and realistic, phenomenological and personalistic models may not provide easy or

simple solutions to bioethical questions. However, in the words of Maria do Céu Neves Patrão, *they can bring a lucid vision of the reality in question, i.e., a maximally broad understanding of the actual complexity of the situation and the real implications of each course of action*<sup>35</sup>.

The conclusion is that the criticized article does not provide a proper defense of infanticide and the use of the term “post-birth abortion” when it is based on the assumptions chosen by the authors is not justified.

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**Participation of the authors**

Hélio Angotti Neto – bibliographic survey, discussion of articles, preparation of presentation materials, wording of the original article and final revision of the text. Graziella Fontes Ribeiro – bibliographic survey, discussion of articles, conduction of workshop and preparation of presentation materials. Jackson Ferreira dos Santos – bibliographic survey, discussion of articles and preparation of presentation materials. Pâmela Nascimento Simoa da Silva – bibliographic survey, discussion of articles, conduction of workshops, preparation of presentation materials, aid to wording of the first version.

