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HARM, SHARM, AND ONE EXTREMELY CREEPY ARGUMENT: A REPLY TO MARK C. MURPHY

Kenneth Einar Himma

In a recent essay appearing in this journal, I argued that, even on the assumption that the fetus is a person from the moment of conception, a Christian can consistently hold that while abortion is always murder, it ought to be legally permitted. On the assumption that the ultimate fate of moral innocents is eternal bliss, abortion, I argued, does not result in the sort of harm that ought to be legally prohibited under certain principles of moral legitimacy. Mark C. Murphy published a response to this essay in which he disputes my argument that abortion does not, under such an assumption, result in harm. In this brief essay, I reply to his criticism.

In “No Harm, No Foul: Abortion and the Implications of Fetal Innocence,”¹ I argued against the view that the core tenets of Christianity entail a pro-life position on whether abortion should be legal. In particular, I argued that, even if we assume that the fetus is a person from the moment of conception and hence that abortion is always murder, “a Christian can coherently hold that abortion should be legally permitted” (172). In essence, I attempted to show that the following set of claims is a consistent set: (1) the core tenets of Christianity are true; (2) the fetus is a moral person from the moment of conception; and (3) abortion should not be criminalized.

The argument rested on two assumptions that, as far as I can tell, are consistent with Christianity’s core tenets. The first assumption is that Mill’s Harm Principle (or something like it) correctly defines the limits of morally legitimate lawmaking authority; and the second is that the ultimate fate of someone incapable of culpability is heaven. Since fetuses are incapable of culpability, aborted fetuses do not have to face a life in which there is a substantial risk of going to hell. While a self-interested being would regard the loss of an earthly life as harm, a Pascalian-like calculation shows that the expected value to the fetus of being aborted is a positive infinite value while the expected value to the fetus of not being aborted is a negative infinite value. Accordingly, I concluded that abortion does not harm the fetus and hence, under the Harm Principle, abortion should be legally permitted.

In an interesting and nuanced response, Mark C. Murphy argues I am incorrect in thinking that abortion does not harm the fetus.² He argues, quite plausibly, that the infinite benefit of eternal life is not the *causal result* of the abortion. Since it is instead the causal result of God’s graciousness, it

misdescribes the situation to claim that abortion doesn't harm the fetus. Murphy illustrates the point as follows:

If, for example, a traveler is beaten and left for dead by robbers, is rescued by a Samaritan, and by this transformative experience comes to have a much better life than he or she would otherwise have had, it is nevertheless incorrect to say that the robbers *did not harm*, or even *benefited*, the traveler. The robbers merely harmed the traveler; the Samaritan benefited the traveler (241).

By analogy, then, God benefits the aborted fetus, whereas abortion harms it.

There is, however, a crucial difference between the two examples. There was no guarantee that the Samaritan would act such as to benefit the traveler; no matter how resolute the Samaritan's commitment to helping people might be, it is always possible for a free human agent to fail to satisfy her own commitments. Thus, even if we *knew* that (1) the Samaritan would appear at the crime scene and that (2) the traveler would have a transformative response to being rescued, we have no reason to think it is *inevitable*, in any meaningful sense, that the Samaritan will rescue the traveler. Though it might be very unlikely that the Samaritan would refrain from doing so, it is nonetheless possible.

This is not true of God's decisions and commitments. If God has resolved to confer eternal bliss upon moral innocents who die, eternal bliss is the *inevitable* fate of persons who die before becoming capable of culpability. On the assumption that God has made such a decision, no person who dies incapable of culpability will experience any other fate. Indeed, there is no logically possible world in which a perfect God has made such a decision and acted contrary to that decision in any single instance.

Normally, the assessment of whether an act is, on balance, harmful or not takes into account, at the very least, all the consequences that are causally inevitable. Although a preventive mastectomy has consequences that would otherwise be characterized as harms, the procedure is not properly characterized as harmful – when performed in someone with an abnormally high risk of developing breast cancer – because it inevitably results in the benefit of precluding breast cancer. Since, on balance, the caused benefits to the patient significantly outweigh the caused harms (which may include a period of clinically significant depression), the procedure is, as a conceptual matter, properly characterized as beneficial – and not as harmful.

It would, of course, be misleading to characterize any person's ultimate fate as having been caused by the behaviors of any other agent, and this distinguishes the preventive mastectomy case from the case in which God confers eternal life upon moral innocents. But it is not clear this is a significant difference as far as our conceptual practices are concerned. If the fact that preventive mastectomy precludes the development of breast cancer in a patient is what explains why we characterize it as not harmful, then any act that precludes a person's experiencing any other ultimate fate than heaven is also plausibly characterized as not harmful.

Murphy believes there is another important difference between the two cases. Whereas the explanation of why preventive mastectomy precludes

breast cancer does not include reference to some intervening act of a free agent, the explanation of why the ultimate fate of moral innocents is eternal bliss does; it is clearly God's voluntary graciousness that explains this arrangement. As Murphy puts the point, "[the view] that the causal chain from act to effect is broken by the intervention of a free agent is the standard view, *both in common sense's attribution of responsibility and in the law's*" (241; emphasis added).

It seems to me that this analysis conflates two questions: (1) the *conceptual* question of whether an act *A* is properly characterized as harmful; and (2) the *normative* question of whether the agent should be blamed or punished for *A*. As a logical matter, it is clear that these are two different issues. Conceptual issues are generally resolved by a logical analysis of the conventional linguistic practices of the relevant community without recourse to normative moral or legal principles. Normative issues simply cannot be resolved without recourse to substantive normative moral or legal principles.

Although agents are usually held accountable³ for harmful acts and not held accountable for beneficial acts, this is not always true. To see that the conceptual and normative assessments sometimes come apart, consider a case in which a physician performs a preventive mastectomy on a patient at very high risk for a particularly malignant form of breast cancer without her consent. Even on the far-fetched assumption that the patient does not feel aggrieved by the act, the doctor is still morally responsible for having performed an act that is morally wrong – even though it is properly characterized as beneficial.

As far as our conceptual and moral practices are concerned, it is uncontroversial only that the intervening act of a free agent insulates the performer of some preceding act from moral responsibility for the consequences; it is not uncontroversial that the intervening act of a free agent necessarily figures into whether a preceding act should be characterized as harmful/beneficial. Here it is important to recall that I did not argue that, under the assumptions that the ultimate fate of moral innocents is eternal bliss and that the fetus is a moral person from the moment of conception, that someone who has or performs an abortion should get moral credit for the ultimate fate of the aborted fetus. On the contrary, I explicitly acknowledged that if the fetus is a moral person from the moment of conception, abortion is a serious moral wrong: "No matter how much benefit may accrue to the fetus and how benign the mother's motive in having an abortion, abortion remains a sin against God" (182) – one that provides "a *conclusive* moral motive not to have an abortion" (182; emphasis added).

Strictly speaking, however, the argument does not depend on whether I am correct about our conceptual practices or not. I could simply respond by defining a new concept and reformulating the Harm Principle to include that concept in the following way. First, define *sharm* as follows: act *a* is *sharmful* to another person *P* if and only if *a* harms *P* and *a* does not make logically inevitable some benefit that would, from the standpoint of *P*'s self-interest, infinitely outweigh the harm to *P* from *a*. Second, define the Sharm Principle as follows: the state may legitimately criminalize only those acts that are sharmful to others. Under the Sharm Principle and the

other assumptions I make in my essay, it seems to follow that abortion should be legally permitted.

Anticipating this move, Murphy argues that a Christian could not accept (or advocate) this position without presumptuousness. If, for example, Teacher can prevent Bully from beating up 6-year-old Victim but decides against doing so on the grounds that she knows that Victim's uncle will deposit \$1,000 into Victim's account every time Victim is beaten and that Victim in the long run will regard the benefit as outweighing the harm, Teacher would nonetheless be wrong to do so:

[Teacher] would in that case be deeply *presumptuous*, relying on the Victim's uncle to compensate for the harm suffered by Victim.... In relying on God to compensate for the harm done to innocent unborn children, refusing to protect them from harm when they could be protected from harm, we are *presumptuous* with respect to God's willingness to bestow abundant blessings upon us. And that is something no reasonable Christian could advocate (242).

While Murphy is correct in characterizing the teacher as presumptuous, I think there is a morally significant difference between the two cases. The reason Teacher's behavior is presumptuous is that she has taken it upon herself to subject the Victim to a serious risk on the basis of her own beliefs about Victim's uncle; no matter how well Teacher may think she knows Victim's uncle and no matter how justified her beliefs may be, it is always possible that Victim's uncle changes his mind. But, on the assumption that a perfect God has decided to confer eternal life upon moral innocents, the person advocating that the law allow abortions is not subjecting fetuses to any analogous risks: as I indicated above, if this assumption is true, then there is no logically possible world in which some moral innocent experiences any other ultimate fate. The person who relies on God's perfection exhibits no presumptuousness with respect to God's willingness to bestow abundant blessings upon us – any more than someone who tells non-believers that a fully Christian life will result in eternal bliss exhibits such presumptuousness.

Nevertheless, I share Murphy's evident discomfort with the argument and acknowledged as much in the paper. Since I continue to experience discomfort with the argument, I hope the reader will indulge me if I repeat some of what I said there:

The reader may be heartened to know that, while I find this line of reasoning quite interesting, I am also made extremely uncomfortable by it. Though it is hard for me to pinpoint exactly what is bothering me about the argument (since I find all of the premises extremely plausible), my emotional response leads me away from it as a front-line defense of abortion rights (189).

In any event, Murphy's response convinces me that my discussion did not clearly distinguish between two very different claims: (1) a Christian can *reasonably* adopt such a position; and (2) a Christian can *coherently* adopt such a position. While (2) expresses only a point about the logical consistency of a pro-choice view with the central tenets of Christianity, (1)

expresses a point about the ethical acceptability of advocating such a view. In particular, (1) asserts that a Christian can advocate such a view without violating any of her ethical commitments.

The creepy feeling the argument evokes in me is undoubtedly an ethical reaction; any argument that purports to show that the state should allow some form of murder ought to produce a deep and recurring shudder. While this reaction prevents me from advocating a pro-choice position on the strength of the argument, it is not a reliable indicator that something is wrong with it. If (1) the Sharm Principle correctly describes the limits of what may be legitimately criminalized and (2) the ultimate fate of moral innocents is eternal bliss, then it follows that it would be illegitimate to criminalize abortion – even on the assumption that abortion is always murder. The creepy feel of all this tells us nothing about whether the premises and conclusions of the argument are logically consistent with the core of Christianity.

I am not sure that this unfortunate quality is even a reliable indicator that one cannot advocate such a position without violating Christian ethics. If the assumptions above are correct and consistent with the core tenets of Christianity (construed to include the fundamentals of Christian ethics), then the conclusion is also consistent with those tenets. And if the conclusion is consistent with the fundamentals of Christian ethics, then a Christian can advocate that position without violating any ethical commitments.

It is important to remember that the issue is whether the state should put its police power behind a law that criminalizes abortion – and not whether abortion is immoral. The issue of legitimacy is concerned with the conditions under which one group of morally autonomous people is justified in *coercively* restricting the freedom of another group of morally autonomous people. To my knowledge, no mainstream theorist, Christian or otherwise, holds that all and only immoral behaviors should be criminalized; this would imply, absurdly, that all broken promises should be criminalized. Accordingly, all mainstream theorists are committed to the view that some immoral behaviors ought not to be criminalized; and part of what a theory of legitimacy is designed to do is to distinguish those immoralities that are justifiably criminalized from those that are not. To deny that a behavior should be criminalized, then, is not to deny that it is immoral – or even to deny that it is horrible from the standpoint of morality.

Indeed, someone who passionately advocates that abortion should not be criminalized on the strength of the argument I make could also passionately advocate – without incoherence or inconsistency – that no woman should ever have an abortion. Under the assumption that the fetus is a person from the moment of conception, the intentional termination of a pregnancy is, from the standpoint of morality, indistinguishable from intentionally shooting an innocent adult; such an act is among the worst that any human being can commit and commits a grievous wrong against its victim. Further, under these assumptions, abortion is also a grievous sin against God. For these reasons, someone who grounds a pro-choice position on this argument could also passionately advocate against persons exercising their legal right to abortion.

Still, I want to point out that there is one good reason for not grounding

a pro-choice position in such considerations: the assumption about the ultimate fate of moral innocents is not obviously true. While I find it hard to imagine that any other fate is consistent with God's moral perfection, I recognize that this does not amount to an argument. The possibility that this claim might be false, I think, is a very good reason *not* to advocate a pro-choice position on the strength of the argument I made. But, as far as I can tell, the argument nonetheless shows that the core tenets of Christianity do not logically entail any particular position on whether abortion should be criminalized and hence that it is *logically* open to Christians to take a liberal position on this issue (something that is undoubtedly true of other controversial issues). And this point is important enough, on my view, to justify drafting one extremely creepy argument.

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NOTES

1. Kenneth Einar Himma, "No Harm, No Foul: Abortion and the Implications of Fetal Innocence," *Faith and Philosophy*, vol. 19, no. 2 (April 2002), 172-194.
2. Mark C. Murphy, "Pro-Choice and Presumption: A Reply to Kenneth Einar Himma," *Faith and Philosophy*, vol. 20, no. 2 (April 2003), 240-242.
3. By "held accountable" in this context, I mean "blamed or punished."