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ANSWERING THE ARGUMENTS FOR ABORTION RIGHTS (PART ONE): The Appeal to Pity

by Francis J. Beckwith

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Abortion has become the most divisive political and social issue in late twentieth century America. When the Supreme Court ruled that the state of Missouri was within its constitutional rights to enact abortion restrictions (*Webster v. Reproductive Health Services*, 1989), it moved the debate from the realm of the federal judiciary into the lap of the legislative process. It is now possible for other states to enact similar and even more restrictive legislation. This, of course, makes a candidate's stance on abortion rights much more important in the electoral process, since his or her view on abortion can now make a practical difference in terms of what laws will be enacted if he or she is elected. And, since our judiciary has become more conservative, it is apparent that the abortion rights movement has the most to lose if the issue returns to the courts. Thus the arguments for abortion rights are being put forth in the political arena with greater vigor and hotter rhetoric than ever before.

It is also apparent that pro-life spokespersons and political candidates have, for the most part, responded inadequately. They have either toned down their pro-life position, caved in to the opposition, or permitted the pro-choice movement to control the terminology and framework of the debate.¹

It is my hope that this four-part series will help to reverse this trend by providing a rigorous intellectual defense of the pro-life position — helpful to policy makers, political consultants, pro-life leadership, and ordinary Americans.

In this first article, after briefly explaining what it means to be pro-life and discussing why abortion on demand is legal in America, I will present and critique those arguments best classified as appeals to pity. The second article will deal with more appeals to pity, appeals to tolerance, and arguments from *ad hominem* ("attacking the person"). In articles three and four I will present the pro-life case for the full humanness of the unborn from the moment of conception. Article four will conclude with answers to some common questions about the pro-life position.

Of course, not every defender of abortion rights holds to all or any of the arguments that will appear in this four-part series. Some of the more sophisticated defenders of abortion rights eschew much of the popular rhetoric and defend their position on other grounds. But since most people will come into contact with these arguments in both the popular media and pro-choice literature, it is necessary that they be carefully analyzed.

WHAT IS PRO-LIFE?

The pro-life position is subject to somewhat varying formulations. The most widely accepted and representative of these can be defined in the following way: The unborn entity is fully human from the moment of conception. Abortion (narrowly defined) results in the intentional death of the unborn entity. Therefore, abortion entails the intentional killing of a human being. This killing is in most cases

unjustified, since the unborn human being has a full right to life. If, however, there is a high probability that a woman's pregnancy will result in her death (as in the case of a tubal pregnancy, for example), then abortion is justified. For it is a greater good that one human should live (the mother) rather than two die (the mother and her child). Or, to put it another way, in such cases the intent is not to kill the unborn (though that is an unfortunate effect) but to save the life of the mother. With the exception of such cases, abortion is an act in which an innocent human being is intentionally killed; therefore, abortion should be made illegal, as are all other such acts of killing. This is the pro-life position I will be defending in this series.

Some people claim to be both pro-life and pro-choice. This is a ploy taken by politicians, such as Nevada Senator Richard Bryan and New York Governor Mario Cuomo, who appear absolutely petrified to take a stand on the abortion issue. They usually say, "I'm personally against abortion, but I don't object to a woman who wants to have one if she believes it is the right thing to do."

The problem with this statement is that it doesn't tell us the reason why the politician claims to be personally against abortion. Since most people who are against abortion are so because they believe that the unborn are fully human and have all the rights that go along with such a status, we would expect that if the politician were personally against abortion it would be for the same reason. But this would make the politician's personal opposition and public permission of abortion somewhat perplexing, since the assumed reason why he would be personally against abortion is the same reason why he should be against publicly permitting it, namely, that an entity which is fully human has a right to life.

After all, what would we think of the depth of an individual's convictions if he claimed that he was personally against the genocide of a particular ethnic group (e.g., the Jews), but he added that if others thought this race was not human, they were certainly welcome to participate in the genocide if they so chose? What I'm getting at is simply that the nature of some "personal" opinions warrants public actions, even if these opinions turn out to be wrong, while other opinions (e.g., one's personal preference for German chocolate cake) do not. Thus, it makes little moral sense to claim that one is both pro-life and pro-choice.

WHY ABORTION ON DEMAND IS LEGAL IN AMERICA

It is important that the reader understand the current legal status of abortion in America. There seems to be a widespread perception that the Supreme Court decision *Roe v. Wade* (1973) only permits abortions up to 24 weeks, and after that time only to save the life of the mother. This false perception — fueled in large part by groups supporting abortion rights — is uncritically accepted by the media. The fact is that the current law does not restrict a woman from getting an abortion for practically any reason she deems fit during the entire nine months of pregnancy. In order to understand why this is the case, a brief history lesson is in order.

In *Roe*, Justice Harry Blackmun divided pregnancy into three trimesters. He ruled that aside from normal procedural guidelines (e.g., an abortion must be safely performed by a licensed physician), a state has no right to restrict abortion in the first six months of pregnancy. Thus a woman could have an abortion during the first two trimesters for any reason she deemed fit, whether it be an unplanned pregnancy, gender selection, convenience, or rape. In the last trimester the state has a right, although not an obligation, to restrict abortions to only those cases in which the mother's health is jeopardized. In sum, *Roe v. Wade* does not prevent a state from allowing unrestricted abortion for the entire nine months of pregnancy if it so chooses.

Like many other states, the state of Nevada has chosen to restrict abortion in the last trimester by only permitting abortions if "there is a substantial risk that the continuance of the pregnancy would endanger the life of the patient or would gravely impair the physical or mental health of the patient."² But this restriction is a restriction in name only. For the Supreme Court so broadly defined "health" in *Roe's* companion decision, *Doe v. Bolton* (1973), that for all intents and purposes the current law in every state except Missouri and Pennsylvania (where the restrictions allowed by *Webster* have been enacted into law) allows for abortion on demand.

In Bolton the court ruled that “health” must be taken in its broadest possible medical context, and must be defined “in light of all factors — physical, emotional, psychological, familial, and the woman’s age — relevant to the well being of the patient. All these factors relate to health.”³ Since all pregnancies have consequences for a woman’s emotional and family situation, the court’s health provision has the practical effect of legalizing abortion up until the time of birth — if a woman can convince her physician that she needs the abortion to preserve her “emotional health.” This is why the Senate Judiciary Committee, after much critical evaluation of the current law in light of the court’s opinions, concluded that “no significant legal barriers of any kind whatsoever exist today in the United States for a woman to obtain an abortion for any reason during any stage of her pregnancy.”⁴ A number of legal scholars have come to the same conclusion, offering comments and observations such as the following:

In actual effect, *Roe v. Wade* judicially created abortion on demand in the United States.⁵

The concept of “health,” as defined by the Supreme Court in *Doe v. Bolton*, includes all medical, psychological, social, familial, and economic factors which might potentially inspire a decision to procure an abortion. As such, “health” abortion is indistinguishable from elective abortion. Thus, until a more narrow definition of “health” is obtained, it may not be possible to limit effectively the number of abortions performed.⁶

After viability the mother’s life or health (which presumably is to be defined very broadly indeed, so as to include what many might regard as the mother’s convenience...) must, as a matter of constitutional law, take precedence over...the fetus’s life...⁷ (emphasis in original).

It is safe to say, therefore, that in the first six months of pregnancy a woman can have an abortion for no reason, but in the last three months she can have it for any reason. This is abortion on demand.

Those who defend abortion rights do not deny this disturbing fact but often dismiss it by claiming that only one percent of all abortions are done in the last trimester. There are several problems with this statistical dismissal. First, the fact that third-trimester abortions are permitted for nearly any reason and that unborn children are left unprotected is significant in itself regardless of whether a small percentage of total abortions has taken place during this time. Second, since there are about 1.5 million abortions per year in the U.S., it follows that 15,000 (or one percent) of them are done in the third trimester. This means that 1,250 of them are performed every month (about 40 a day). This is no insignificant number.

ARGUMENTS THAT APPEAL TO PITY

When one fallaciously argues by appealing to pity, one is arguing that certain actions should be permitted or tolerated out of pity for those performing them (or those on whose behalf they are done), when in fact the basis for showing them pity is not a legitimate basis for the action. For example, a woman who argues that she should not receive a parking ticket because her child was crying and she took her child to a candy store to cheer her up is fallaciously appealing to pity.⁸ The following abortion rights arguments are textbook examples of such appeals to pity.

Argument from the Dangers of Illegal Abortions

Anyone who keeps up with the many pro-choice demonstrations in the United States cannot help but see on pro-choice placards and buttons a drawing of the infamous coat hanger. This symbol of the pro-choice movement represents the many women who were harmed or killed because they either performed illegal abortions on themselves (i.e., the surgery was performed with a “coat hanger”) or went to unscrupulous physicians (or “back-alley butchers”). Hence, as the argument goes, if abortion is made illegal, then women will once again be harmed. Needless to say, this argument serves a powerful rhetorical purpose. Although the thought of finding a deceased young woman with a bloody coat hanger dangling between her legs is — to say the least — unpleasant, powerful and emotionally charged rhetoric does not a good argument make.

The chief reason this argument fails is because it commits the fallacy of begging the question. In fact, as we shall see, this fallacy seems to lurk behind a good percentage of the popular arguments for the pro-choice position. One begs the question when one assumes what one is trying to prove. Another way of putting it is to say that the arguer is reasoning in a circle. For example, if one concludes that the Boston Celtics are the best team because no team is as good, one is not giving any reasons for this belief other than the conclusion one is trying to prove, since to claim that a team is the best team is exactly the same as saying that no team is as good.

The question-begging nature of the coat-hanger argument is not difficult to discern: only by assuming that the unborn are not fully human does the argument work. If the unborn are not fully human, then the pro-choice advocate has a legitimate concern, just as one would have in overturning a law forbidding appendicitis operations if countless people were needlessly dying of both appendicitis and illegal operations. But if the unborn are fully human, this pro-choice argument is tantamount to saying that because people die or are harmed while killing other people, the state should make it safe for them to do so.

Even some pro-choice advocates, who argue for their position in other ways, admit that the coat hanger/back-alley argument is fallacious. For example, pro-choice philosopher Mary Anne Warren clearly recognizes that her position on abortion cannot rest on this argument without it first being demonstrated that the unborn entity is not fully human. She writes that “the fact that restricting access to abortion has tragic side effects does not, in itself, show that the restrictions are unjustified, since murder is wrong regardless of the consequences of prohibiting it...”⁹

Although it is doubtful whether statistics can establish a particular moral position, it should be pointed out that there has been considerable debate over both the actual number of illegal abortions and the number of women who died as a result of them prior to legalization.¹⁰ Prior to Roe, pro-choicers were fond of saying that nearly a million women every year obtained illegal abortions performed with rusty coat hangers in back-alleys that resulted in thousands of fatalities. Given the gravity of the issue at hand, it would go beyond the duty of kindness to call such claims an exaggeration, because several well-attested facts establish that the pro-choice movement was simply lying.

First, Dr. Bernard Nathanson — who was one of the original leaders of the American pro-abortion movement and co-founder of N.A.R.A.L. (National Abortion Rights Action League), and who has since become pro-life — admits that he and others in the abortion rights movement intentionally fabricated the number of women who allegedly died as a result of illegal abortions.

How many deaths were we talking about when abortion was illegal? In N.A.R.A.L. we generally emphasized the drama of the individual case, not the mass statistics, but when we spoke of the latter it was always “5,000 to 10,000 deaths a year.” I confess that I knew the figures were totally false, and I suppose the others did too if they stopped to think of it. But in the “morality” of the revolution, it was a useful figure, widely accepted, so why go out of our way to correct it with honest statistics. The overriding concern was to get the laws eliminated, and anything within reason which had to be done was permissible.¹¹

Second, Dr. Nathanson’s observation is borne out in the best official statistical studies available. According to the U.S. Bureau of Vital Statistics, there were a mere 39 women who died from illegal abortions in 1972, the year before Roe v. Wade.¹² Dr. Andre Hellegers, the late Professor of Obstetrics and Gynecology at Georgetown University Hospital, pointed out that there has been a steady decrease of abortion-related deaths since 1942. That year there were 1,231 deaths. Due to improved medical care and the use of penicillin, this number fell to 133 by 1968.¹³ The year before the first state-legalized abortion, 1966, there were about 120 abortion-related deaths.¹⁴

This is not to minimize the undeniable fact that such deaths were significant losses to the families and loved ones of those who died. But one must be willing to admit the equally undeniable fact that if the unborn are fully human, these abortion-related maternal deaths pale in comparison to the 1.5 million

preborn humans who die (on the average) every year. And even if we grant that there were more abortion-related deaths than the low number confirmed, there is no doubt that the 5,000 to 10,000 deaths cited by the abortion rights movement is a gross exaggeration.¹⁵

Third, it is simply false to claim that there were nearly a million illegal abortions per year prior to legalization. There is no reliable statistical support for this claim.¹⁶ In addition, a highly sophisticated recent study has concluded that “a reasonable estimate for the actual number of criminal abortions per year in the prelegalization era [prior to 1967] would be from a low of 39,000 (1950) to a high of 210,000 (1961) and a mean of 98,000 per year.”¹⁷

Fourth, it is misleading to say that pre-Roe illegal abortions were performed by “back-alley butchers” with rusty coat hangers. While president of Planned Parenthood, Dr. Mary Calderone pointed out in a 1960 American Journal of Health article that Dr. Kinsey showed in 1958 that 84% to 87% of all illegal abortions were performed by licensed physicians in good standing. Dr. Calderone herself concluded that “90% of all illegal abortions are presently done by physicians.”¹⁸ It seems that the vast majority of the alleged “back-alley butchers” eventually became the “reproductive health providers” of our present day.

Argument from Economic Inequity

Pro-choice advocates often argue that prior to abortion being legalized, pregnant women who did not go to unscrupulous physicians or “back-alley butchers” traveled to foreign nations where abortions were legal. This was an option open only to rich women who could afford such an expense. Hence, *Roe v. Wade* has made the current situation fairer for poor women. Therefore, if abortion is prohibited it will not prevent rich women from having safe and legal abortions elsewhere.¹⁹

This argument is fallacious: it assumes that legal abortion is a moral good which poor women will be denied if abortion is made illegal. But since the morality of abortion is the point under question, the pro-choice proponent assumes what he or she is trying to prove and therefore begs the question.

One can think of a number of examples to better understand this point. To cite one, we would consider it outrageous if someone argued that the hiring of hit men to kill one’s enemies should be legalized, since — after all — the poor do not have easy economic access to such “professionals.”

In the abortion debate the question of whether abortion entails the death of a being who is fully human must be answered before the question of fairness is even asked. That is to say, since equal opportunity to eliminate an innocent human being is rarely if ever a moral good, the question of whether it is fair that certain rich people will have privileged access to abortion if it becomes illegal must be answered after we answer the question of whether abortion in fact is not the killing of an innocent human life. For it is not true that the vices of the wealthy are virtues simply because the poor are denied them.

Argument from Population, Poverty, and Financial Burden

Some pro-choice advocates make much of both the use of abortion as a means of population control and the financial and emotional burden a child may put on a family. It is argued that in such situations abortion is justified. Along the same lines, a number of pro-choice advocates argue that if abortion is forbidden, then the poor will keep producing more children to draw more welfare. Hence, in addition to pity, there is an economic incentive invoked in this appeal.

Beyond pointing out that the so-called “population explosion” is an economic and not a people problem,²⁰ there are several fundamental moral problems with this argument. First, it does not really support the pro-choice position that abortion is a fundamental right the pregnant woman can exercise for any reason she deems fit during the entire nine months of pregnancy (see above). If this argument is successful it only establishes the right to an abortion in the cases of overpopulation, poverty, and financial burden, and not “for any reason the pregnant woman deems fit.”

Second, like the other arguments we have examined, this one also begs the question. That is, only if the pro-choice advocate assumes that the unborn poor are not fully human does his or her policy carry any weight. For if the unborn poor are fully human, the pro-choice advocate's plan to eliminate overpopulation and poverty by permitting the extermination of the unborn poor is inconsistent with his or her own ethic of personal rights. Thus, the question of aborting the unborn poor, like the points brought up earlier, hinges on the status of the unborn.

Furthermore, if the unborn are fully human, then this is also a good argument for infanticide and the killing of all humans we find to be financially burdensome or emotionally taxing. Therefore, only by assuming that the unborn are not fully human does the pro-choice advocate avoid such horrendous implications. Thus, in order for this argument to work, the pro-choice advocate must beg the question.

This is not to say that the human race may not reach a time in its history at which overpopulation becomes a problem so severe that it must significantly curtail its birthrate. At such a time it would be wise to try to persuade people either to willingly use contraceptive devices or to practice sexual discipline. If such a tactic does not work, then forced sterilization may be a viable — albeit desperate — option, since it does not entail the death of the unborn. In any event, if the unborn are fully human, abortion is not a solution to population problems even in the most dire of circumstances. Hence, the real question is whether or not the unborn are fully human.

Underlying this type of pro-choice argument is a fundamental confusion between the concept of "finding a solution" and the concept of "eliminating a problem." For example, one can eliminate the problem of poverty by executing all poor people, but this would not really solve the problem, since it would directly conflict with a basic moral truth that human beings should not be gratuitously exterminated for the sake of easing economic tension. This "solution" would undermine the very moral sentiments that ground our compassion for poor people — namely, that they are humans of great worth and should be treated with dignity regardless of their predicament. Similarly, one can eliminate the problem of having a headache by cutting off one's head, but this is certainly not a real solution. Therefore, the argument of the pro-choice advocate is superfluous unless he or she can first show that the unborn are not fully human and hence do not deserve to be the recipients of our basic moral sentiments. Baylor University philosopher and bioethicist Baruch Brody comments:

In an age where we doubt the justice of capital punishment even for very dangerous criminals, killing a fetus who has not done any harm, to avoid a future problem it may pose, seems totally unjust. There are indeed many social problems that could be erased simply by destroying those persons who constitute or cause them, but that is a solution repugnant to the values of society itself. In short, then, if the fetus is a human being, the appeal to its being unwanted justifies no abortions.²¹

This is not to minimize the fact that there are tragic circumstances with which our society is all too familiar, such as the poor woman with four small children who has become pregnant by her alcoholic husband. But once again we must ask whether or not the unborn entity is fully human, for hardship does not justify homicide. In such cases, those in the religious and charitable communities should help lend financial and emotional support to the family. And it may be wise — if it is a case of extreme hardship — for the woman to put her baby up for adoption, so that she may give to others the gift of parenthood.

Argument from the Deformed and Mongoloid Child

Since it is now possible to detect through amniocentesis and other tests whether the unborn entity will turn out to be physically or mentally handicapped,²² some pro-choice advocates argue that abortion should remain a choice for women who do not want to take care of such a child. Another reason cited for advocating the aborting of the defective unborn is that it is better for such children never to be born rather than to live a life burdened with a serious mental or physical handicap. There are several problems with this argument.

First, this argument, like many of the appeals to “hard cases,” does not really support the pro-choice position — the position that abortion is a fundamental right the pregnant woman can exercise for any reason she deems fit during the entire nine months of pregnancy (see above). In other words, if this argument is successful in showing that abortion is justified in the case of a woman pregnant with a deformed or Mongoloid fetus, it only establishes the right to an abortion in such cases, not “for any reason the pregnant woman deems fit.”

Second, like many of the pro-choice arguments, this argument begs the question by assuming that the unborn entity is not fully human. For if the unborn are fully human, then to promote the aborting of the handicapped unborn is no different morally than promoting the execution of handicapped people who are already born. But such a practice is morally reprehensible. Are not adults with deformities human? Then so too are smaller people who have the same deformities. In fact, pro-choice advocates Peter Singer and Helga Kuhse, who argue for their position in other ways, admit that “pro-life groups are right about one thing: the location of the baby inside or outside the womb cannot make such a crucial moral difference...The solution, however, is not to accept the pro-life view that the fetus is a human being with the same moral status as yours or mine. The solution is the very opposite: to abandon the idea that all human life is of equal worth.”²³ Although I do not agree with this conclusion, and will argue against it in this series, Singer and Kuhse make an important observation: the question is not whether a handicapped individual is born or unborn, but whether handicapped human life should be protected equally with healthy human life.

Third, it is amazingly presumptuous for mere human beings to say that certain other human beings are better off not existing. Those who make such judgments concerning the handicapped seem to assume that handicapped persons cannot live meaningful and even happy lives. However, this assumption is false. Former Surgeon General C. Everett Koop, who worked for years with severely deformed infants as a pediatric surgeon at Philadelphia’s Children’s Hospital, commented that “it has been my constant experience that disability and unhappiness do not necessarily go together.”²⁴ He continues:

Some of the most unhappy children whom I have known have all of their physical and mental faculties, and on the other hand some of the happiest youngsters have borne burdens which I myself would find very difficult to bear. Our obligation in such circumstances is to find alternatives for the problems our patients face. I don’t consider death an acceptable alternative. With our technology and creativity, we are merely at the beginning of what we can do educationally and in the field of leisure activities for such youngsters. And who knows what happiness is for another person?²⁵

This is not to deny that there are tragedies in life and that having a handicapped child is often a difficult burden to undertake. But I think it is important to realize that if the unborn entity is fully human, homicide cannot be justified simply because it relieves one of a terrible burden. Though it may be hard to accept, I believe the following principle is fundamental to correct moral reasoning: it is better to suffer evil rather than to inflict it.²⁶ If this moral precept were not true, all so-called moral dilemmas would be easily soluble by simply appealing to one’s own relief from suffering. But in such a world the antidote would be worse than the poison, for people would then have a right to inflict suffering on another if it relieved them of their own. This would be morally intolerable.

Moreover, it should not be forgotten that a handicapped child can give both society and the family into which it has been born an opportunity to exercise true compassion, love, charity, and kindness. It is an assault upon our common humanity to deny our capacity to attain virtue in the presence of suffering.

Fourth, for obvious reasons many handicapped people are vehemently opposed to this argument. In fact, there is not a single organization of handicapped people that is on record in favor of abortion of those who may be handicapped. Surgeon General Koop cites the following letter, which appeared in the London Daily Telegraph (8 Dec. 1962) at a time when European newspapers were seriously discussing the use of abortion as an effective means by which to avoid the birth of children who became defective in utero due to their mother’s use of Thalidomide (a tranquilizer used by European women in the 1950s and 1960s but never approved by the FDA for sale in the U.S.):

Trowbridge
Kent
Dec. 8, 1962

Sirs:

We were disabled from causes other than Thalidomide, the first of us having two useless arms and hands; the second, two useless legs; and the third, the use of neither arms nor legs. We were fortunate...in having been allowed to live and we want to say with strong conviction how thankful we are that none took it upon themselves to destroy us as useless cripples.

Here at the Debarue school of spastics, one of the schools of the National Spastic Society, we have found worthwhile and happy lives and we face our future with confidence. Despite our disability, life still has much to offer and we are more than anxious, if only metaphorically, to reach out toward the future.

This, we hope will give comfort and hope to the parents of the Thalidomide babies, and at the same time serve to condemn those who would contemplate the destruction of even a limbless baby.

Yours faithfully,

Elaine Duckett,
Glynn Verdon,
Caryl Hodges.²⁷

Fifth, if there were a negative correlation between happiness and handicap, it would seem natural to find more suicides among the handicapped than the general public. But the opposite is the case. Professor Krason points out that "no study...has found that handicapped persons are more likely than non-handicapped persons to want to be killed or to commit suicide." Citing a study of the late Dr. Hellegers, Krason writes that "of 200 consecutive suicides at the Baltimore Morgue...none had been committed by people with congenital anomalies."²⁸

A society whose ethic asserts that certain preborn human beings forfeit their right to life simply because they have a certain physical deformity or mental handicap is a society that will inevitably see those who have already been born with the same features as having lives "not worth living."

The chilling logic of this conclusion was played out in a real-life situation in 1982. That year, Infant Doe, an Indiana newborn who was born with Down's syndrome and correctable spina bifida, was permitted to die at the request of her parents who asked the attending physician to withhold food and water from the infant. This parental decision was upheld by an Indiana court. Since her spina bifida was correctable by surgery, if Infant Doe had not been "retarded," there is no doubt that the parents would have requested the necessary surgery. So it was not the spina bifida that killed Infant Doe, but parents who neglected her simply because she had Down's syndrome. While commenting on this case, columnist George Will writes about his own son, Jonathan, a Down's syndrome citizen:

When a commentator has a direct personal interest in an issue, it behooves him to say so. Some of my best friends are Down's syndrome citizens. (Citizens are what Down's syndrome children are if they avoid being homicide victims in hospitals.)

Jonathan Will, 10, fourth-grader and Orioles fan (and the best Wiffle-ball hitter in southern Maryland), has Down's syndrome. He does not "suffer from" (as newspapers are wont to say) Down's syndrome. He suffers from nothing, except anxiety about the Orioles' lousy start. He is doing nicely, thank you. But he is bound to have quite enough problems dealing with society — receiving rights, let alone empathy. He can do without people like Infant Doe's parents, and courts like Indiana's asserting by their actions the principle that people like him are less than fully human. On the evidence, Down's syndrome citizens have little to learn about being human from people responsible for the death of Infant Doe.²⁹

Finally, abortion is sometimes justified by pro-choicers by appealing to certain extreme cases in which the entities in the womb are so genetically abnormal as to be arguably nonhuman.

For example, the teratoma is simply a tumor with some human genetic material that has gone awry. Sometimes it may contain hair, teeth, skin, or even fingers, but it is not an unborn human entity and does not have the inherent capacity to develop under any conditions into a human infant. The teratoma is part of the woman's bodily tissue and is not a separate human individual.³⁰

More difficult is the case of the anencephalic baby. According to the American Medical Association Encyclopedia of Medicine, anencephaly is the "absence at birth of the brain, cranial vault (top of the skull), and spinal cord. Most affected infants are stillborn or survive only a few hours." Anencephaly occurs "due to a failure in development of the neural tube, the nerve tissue in the embryo that eventually develops into the spinal cord and brain." A woman can know early in pregnancy that she is carrying an anencephalic baby "by measurement of alphafetoprotein, by ultrasound scanning, and by amniocentesis..."³¹

We may or may not be dealing with human beings in the case of anencephalic babies. Citing the work of Professor Germain Grisez, Krason argues that "there are two ways we may view the 'anencephalic monster,' depending on when the abnormality originates." One way, "when the abnormality or the genetic certainty of it is present from conception, is to view the organism as human in its conception, but incapable of developing beyond a few hours, a few days, or a few weeks." He argues "that in such cases, especially if the specifically human genetic pattern is greatly transformed, we may not consider the conceptus a human individual."³²

Relying on Grisez, Krason writes that when the abnormality develops some time after conception we could view the anencephalic as we would an individual who has had his head blown off by a shotgun. "Such a person is human and remains such until he dies." Since "the anencephalic originated as a human and developed normally up to the point when the neural tube failed to close...he thus can be viewed as a human being, albeit a damaged one, whose abnormality will cause his death shortly after birth, like the gunshot-wounded person will die a short while after his wound."³³ A damaged human is not a nonhuman.

It should be remembered, however, that the anencephalic is a "hard case," and cannot be used to justify the vast majority of abortions that involve the killing of healthy unborns for any reason the pregnant woman deems fit. Furthermore, the argument from the apparent nonhumanness of the anencephalic implicitly admits what is the main contention of the pro-life position, namely, that unborn human beings should not be killed.

NOTES

1. See Fred Barnes, "Republicans Miscarry Abortion," *The American Spectator* 23 (January 1990):14-15.
2. *Nevada Revised Statute*, 442.250, subsection 3.
3. *Doe v. Bolton* 410 U.S. 179, 192 (1973).
4. Report, Committee on the Judiciary, U.S. Senate, on Senate Resolution 3, 98th Congress, 98-149, 7 June 1983, 6.
5. John Warwick Montgomery, "The Rights of Unborn Children," *Simon Greenleaf Law Review* 5 (1985-86):40.
6. Victor G. Rosenblum and Thomas J. Marzen, "Strategies for Reversing Roe v. Wade through the Courts," in *Abortion and the Constitution: Reversing Roe v. Wade through the Courts*, ed. Dennis Horan, Edward R. Grant, and Paige C. Cunningham (Washington, D.C.: Georgetown University Press, 1987), 199-200.
7. John Hart Ely, "The Wages of Crying Wolf: A comment on Roe v. Wade," *Yale Law Journal* 82 (1973):921.
8. John Nolt and Dennis Rohatyn, *Schaum's Outline of Theory and Problems of Logic* (New York: McGraw-Hill Book Co., 1988), 172.
9. Mary Anne Warren "On the Moral and Legal Status of Abortion," in *The Problem of Abortion*, 2nd ed., ed. Joel Feinberg (Belmont, CA: Wadsworth, 1984), 103.
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32. Krason, 386-87. See Germain Grisez, *Abortion: the Myths, the Realities, and the Arguments* (New York: Corpus Books, 1970), 30.
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ANSWERING THE ARGUMENTS FOR ABORTION RIGHTS (PART TWO): Arguments from Pity, Tolerance, and Ad Hominem

by Francis J. Beckwith

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In the first installment of this four-part series we examined a number of arguments for abortion rights which can be classified as appeals to pity. In this article I will present and critique more appeals to pity, along with two additional kinds of argument: appeals to tolerance and ad hominem (literally, “against the person”). Of course, not every defender of abortion rights holds to all or any of the arguments presented in this article. But the truth of the matter is that a vast majority do defend at least some of these arguments. For this reason, the following critique should prove helpful to those interested in providing reasoned answers, rather than inflammatory rhetoric, to the arguments put forth by the abortion rights movement.

ARGUMENTS FROM PITY

Argument from Rape and Incest

A woman who becomes pregnant due to an act of either rape or incest is the victim of a horribly violent and morally reprehensible crime. Although pregnancy as a result of either rape or incest is extremely rare,¹ there is no getting around the fact that pregnancy does occur in some instances. Bioethicist Andrew Varga summarizes the argument from rape and incest in the following way:

It is argued that in these tragic cases the great value of the mental health of a woman who becomes pregnant as a result of rape or incest can best be safe-guarded by abortion. It is also said that a pregnancy caused by rape or incest is the result of a grave injustice and that the victim should not be obliged to carry the fetus to viability. This would keep reminding her for nine months of the violence committed against her and would just increase her mental anguish. It is reasoned that the value of the woman’s mental health is greater than the value of the fetus. In addition, it is maintained that the fetus is an aggressor against the woman’s integrity and personal life; it is only just and morally defensible to repel an aggressor even by killing him if that is the only way to defend personal and human values. It is concluded, then, that abortion is justified in these cases.²

Despite its forceful appeal to our sympathies, there are several problems with this argument. First, it is not relevant to the case for abortion on demand, the position defended by the popular pro-choice movement. This position states that a woman has a right to have an abortion for any reason she prefers during the entire nine months of pregnancy, whether it be for gender-selection, convenience, or rape.³ To argue for abortion on demand from the hard cases of rape and incest is like trying to argue for the elimination of traffic laws from the fact that one might have to violate some of them in rare circumstances, such as when one’s spouse or child needs to be rushed to the hospital. Proving an exception does not establish a general rule.

Second, since conception does not occur immediately following intercourse, pregnancy can be eliminated in all rape cases if the rape victim receives immediate medical treatment by having all the male semen removed from her uterus.⁴

Third, the unborn entity is not an aggressor when its presence does not endanger its mother’s life (as in the case of a tubal pregnancy). It is the rapist who is the aggressor. The unborn entity is just as much an innocent victim as its mother. Hence, abortion cannot be justified on the basis that the unborn is an aggressor.

Fourth, this argument begs the question by assuming that the unborn is not fully human. For if the unborn is fully human, then we must weigh the relieving of the woman's mental suffering against the right-to-life of an innocent human being. And homicide of another is never justified to relieve one of emotional distress. Although such a judgment is indeed anguishing, we must not forget that the same innocent unborn entity that the career-oriented woman will abort in order to avoid interference with a job promotion is biologically and morally indistinguishable from the unborn entity that results from an act of rape or incest. And since abortion for career advancement cannot be justified if the unborn entity is fully human, abortion cannot be justified in the cases of rape and incest. In both cases abortion results in the death of an innocent human life. As Dr. Bernard Nathanson has written, "The unwanted pregnancy flows biologically from the sexual act, but not morally from it."⁵ Hence, this argument, like the ones we have already covered in this series, is successful only if the unborn are not fully human.

Some pro-choice advocates claim that the pro-lifer lacks compassion, since the pro-lifer's position on rape and incest forces a woman to carry her baby against her will. Nothing could be further from the truth. It is the rapist who has already forced this woman to carry a child, not the pro-lifer. The pro-life advocate merely wants to prevent another innocent human being (the unborn entity) from being the victim of a violent and morally reprehensible act (abortion), for two wrongs do not make a right. As theologian and ethicist Dr. Michael Bauman has observed: "A child does not lose its right to life simply because its father or its mother was a sexual criminal or a deviant."⁶

Furthermore, the anguish and psychic suffering caused by rape and incest has been treated quite effectively. Professor Stephen Krason points out that "psychological studies have shown that, when given the proper support, most pregnant rape victims progressively change their attitudes about their unborn child from something repulsive to someone who is innocent and uniquely worthwhile."⁷ The pro-life advocate believes that help should be given to the rape victim "to make it as easy as possible for her to give up her baby for adoption, if she desires. Dealing with the woman pregnant from rape, then, can be an opportunity for us — both as individuals and society — to develop true understanding and charity. Is it not better to try to develop these virtues than to countenance an ethic of destruction as the solution?"⁸

Argument from the Unwanted Child

It is argued by many people in the pro-choice movement that legal abortion helps eliminate unwanted children. They believe that unwanted children are indirectly responsible for a great number of family problems, such as child abuse. Hence, if a family can have the "correct" amount of children at the "proper" times, then these family problems will be greatly reduced, if not eliminated.⁹ Once again, we find several serious problems with the pro-choice argument.

First, the argument begs the question, because only by assuming that the unborn are not fully human does this argument work. For if the unborn are fully human, like the abused young children which we readily admit are fully human, then to execute the unborn is the worst sort of child abuse imaginable.

Second, it is very difficult to demonstrate that the moral and metaphysical value of a human being is dependent on whether someone wants or cares for that human being. For example, no one disputes that the homeless have value even though they are for the most part unwanted. Now, suppose the pro-choice advocate responds to this by saying, "But you are treating the unborn as if they were as human as the homeless." This is exactly my point. The question is not whether the unborn are wanted; the question is whether the unborn are fully human.

Third, an unwanted child almost never turns out to be a resented baby. This seems to be borne out statistically: (1) there is no solid evidence that a child's being unwanted during pregnancy produces child abuse; (2) according to one study, 90% of battered children were wanted pregnancies;¹⁰ and (3) some writers have argued that there is a higher frequency of abuse among adopted children — who were undoubtedly wanted by their adoptee parents — than among those who are unadopted.¹¹ In his voluminous and scholarly study on the moral, political, and constitutional aspects of the abortion issue, Professor Krason summarizes his findings concerning the argument from unwantedness by pointing out

that “the factors causing child abuse cited most frequently by the researches are not ‘unwantedness,’ but parents’ lack of social support from family, friends and community, hostility to them by society, based on a disapproved sexual and social pattern of existence, and — most commonly — their having been abused and neglected themselves when they were children.”¹²

Fourth, the unwantedness of children in general tells us a great deal about our psychological and moral make-up as a people, but very little about the value of the child involved. For it is only a self-centered, hedonistic people who do not consider it their self-evident obligation to care for the most vulnerable and defenseless members of the human race. A lack of caring is a flaw in the one who ought to care, not in the person who ought to be cared for. Hence, whether or not abortion is morally justified depends on whether the unborn are fully human, not on their wantedness.

ARGUMENTS FROM TOLERANCE

Many people in the abortion rights movement argue that their position is more tolerant than the pro-life position. After all, they reason, the abortion rights movement is not forcing pro-life women to have abortions, but the pro-life movement is trying to deny all women the option to make a choice. There are basically five arguments which the abortion rights advocate uses in order to articulate this position.

Argument from Pluralism

It is sometimes argued that the question of when protectable human life begins is a personal religious question that one must answer for oneself. Justice Blackmun writes in *Roe v. Wade*, “We need not resolve the difficult question of when life begins. When those trained in the respective disciplines of medicine, philosophy, and theology are unable to arrive at any consensus, the judiciary, at this point in the development of man’s knowledge, is not in a position to speculate.”¹³ Hence, the state should not take one theory of life and force those who do not agree with that theory to subscribe to it, which is the reason why Blackmun writes in *Roe*, “In view of all this, we do not agree that, by adopting one theory of life, Texas may override the rights of the pregnant woman that are at stake.”¹⁴

In his dissenting opinion in *Webster v. Reproductive Health Services* (1989), Justice Stevens goes even further than Blackmun: “The Missouri Legislature [which said that life begins at conception] may not inject its endorsement of a particular religious tradition in this debate, for ‘the Establishment Clause does not allow public bodies to foment such disagreement.’”¹⁵ Thus the pro-life proposal that pro-choice women be prohibited from having abortions on the basis that individual human life begins at conception is viewed, not only as a violation of their right to privacy, but as a violation of the separation of church and state as well. Such a separation is supposedly necessary to sustain tolerance in a pluralistic society. As pro-choice advocate Virginia Mollenkott argues, “Women who believe that abortion is murder may never justly be required to have an abortion.”¹⁶ Put in the words of a recent bumper-sticker: “Don’t like abortion, don’t have one.”

There are several problems with this argument. First, it is self-refuting and question-begging. To claim, as Justices Blackmun and Stevens do, that the Court should not propose one theory of life over another, and that the decision should be left up to each individual pregnant woman as to when protectable human life begins, is to propose a theory of life which hardly has a clear consensus in this country.¹⁷ That is, it proposes the theory that the personhood of the unborn child depends on the point of view of the mother — if she thinks it is fully human, then it is, and if she thinks it is not fully human, then it is not. This is a theory of life held by a number of religious denominations and groups, whose amicus briefs Stevens oddly enough (since he’s concerned about not injecting religious traditions into the debate) cites in a footnote in his *Webster* dissent.¹⁸ Hence, in attempting not to propose one theory of life, Blackmun and Stevens in fact assume a particular theory of life, and by doing so clearly beg the question and show that their opinions cannot abide by their own standard of not proposing one theory of life.

Second, the fact that a particular theory of life is consistent with a religious view does not mean that it is

exclusively religious or that it is in violation of the Establishment Clause of the Constitution. For example, many pro-life advocates argue for their position by emphasizing that there is nontheological support for their position,¹⁹ while many pro-choice advocates, such as Mollenkott,²⁰ argue that their position is theologically grounded in the Bible. Hence, just because a philosophically and scientifically plausible position may also be found in religious literature such as the Bible, that does not mean such a view is exclusively “religious.” If it did, then our society would have to dispense with laws forbidding such crimes as murder and robbery simply because such actions are prohibited in the Hebrew-Christian Scriptures. Furthermore, some public policies — such as civil rights legislation and elimination of nuclear testing — which are supported by many clergymen who find these policies in agreement with and supported by their doctrinal beliefs, would have to be abolished simply because they are believed by some to be supported by a particular religious theory of life. Hence, the pro-life position is a legitimate public policy option and does not violate the Establishment Clause of the Constitution.

Third, in claiming that “women who believe that abortion is murder may never justly be required to have an abortion” but they shouldn’t force their pro-life beliefs on pro-choice women, Mollenkott is asking the pro-life advocate to act as if the pro-life view of human life were incorrect. Mollenkott is also demanding that the pro-lifer accept the pro-choice view of what constitutes a just society. I believe that this is asking much too much of the pro-life movement. Philosopher George Mavrodes drives home this point in the following story:

Let us imagine a person who believes that Jews are human persons, and that the extermination of Jews is murder. Many of us will find that exercise fairly easy, because we are people of that sort ourselves. So we may as well take ourselves to be the people in question. And let us now go on to imagine that we live in a society in which the “termination” of Jews is an every-day routine procedure, a society in which public facilities are provided in every community for this operation, and one in which any citizen is free to identify and denounce Jews and to arrange for their arrest and termination. In that imaginary society, many of us will know people who have themselves participated in these procedures, many of us will drive past the termination centers daily on our way to work, we can often see the smoke rising gently in the late afternoon sky, and so on. And now imagine that someone tells us that if we happen to believe that Jews are human beings then that’s O.K., we needn’t fear any coercion, nobody requires us to participate in the termination procedure ourselves. We need not work in the gas chamber, we don’t have to denounce a Jew, and so on. We can simply mind our own business, walk quietly past the well-trimmed lawns, and (of course) pay our taxes.

Can we get some feel for what it would be like to live in that context?...And maybe we can then have some understanding of why they [the right-to-lifers] are unlikely to be satisfied by being told that they don’t have to get abortions themselves.²¹

Since Mollenkott is asking pro-life advocates to act as if their fundamental view of human life is false, pro-life advocates may legitimately view Mollenkott’s position as a subtle and patronizing form of intolerance.

Argument from Imposing Morality

There is a more popular variation of the above argument. Some abortion-rights advocates argue that it is simply wrong for anyone to “force” his or her own view of what is morally right on someone else. Consequently, they argue that pro-lifers, by attempting to forbid women from having abortions, are trying to force their morality on others. There are at least three problems with this argument.

First, it does not seem obvious that it is always wrong to impose one’s morality on others. For instance, laws against drunk driving, murder, smoking crack, robbery, and child molestation are all intended to impose a particular moral perspective on the free moral agency of others. Such laws are instituted because the acts they are intended to prevent often obstruct the free agency of other persons; for example, a person killed by a drunk driver is prevented from exercising his free agency. These laws seek to

maintain a just and orderly society by limiting some free moral agency (e.g., choices that result in drunk driving, murder, etc.) so that in the long run free moral agency is increased for a greater number (e.g., less people will be killed by drunk drivers and murderers, and hence there will be a greater number who will be able to act as free moral agents). Therefore, a law forbidding abortion would unjustly impose one's morality upon another only if the act of abortion does not limit the free agency of another. That is to say, if the unborn entity is fully human, forbidding abortions would be perfectly just, since abortion, by killing the unborn human, limits the free agency of another. Once again, unless the pro-choice advocate assumes that the unborn are not fully human, his or her argument is not successful.

Although it does not seriously damage their entire position, it is interesting to note that many abortion-rights advocates do not hesitate to impose their moral perspective on others when they call for the use of other people's tax dollars (many of whom do not approve of this use of funds) to help pay for the abortions of poor women.

Argument Against a Public Policy Forbidding Abortion

There is another variation on the first argument from pluralism. Some people argue that it is not wise to make a public policy decision in one direction when there is wide diversity of opinion within society. This argument can be outlined in the following way:

- (1) There can never be a just law requiring uniformity of behavior on any issue on which there is widespread disagreement.
- (2) There is widespread disagreement on the issue of forbidding abortion on demand.
- (3) Therefore, any law that forbids people to have abortions is unjust.

One way to show that this argument is wrong is to show that premise (1) is false. There are several reasons to believe that it is. First, if premise (1) were true, then the pro-choice advocate would have to admit that the United States Supreme Court decision, *Roe v. Wade*, was an unjust decision, since the court ruled that the states which make up the United States, whose statutes prior to the ruling disagreed on the abortion issue, must behave uniformly in accordance with the Court's decision. But since the pro-choicer denies that *Roe* was an unjust decision, he or she must also concede that it is false to hold that "there can never be a just law requiring uniformity of behavior on any issue on which there is widespread disagreement."

Second, if premise (1) were true, then the abolition of slavery would have to be regarded as unjust, because there was widespread disagreement of opinion among Americans in the nineteenth century. Yet no pro-choicer would say that slavery should have remained as an institution. Third, if premise (1) were true, then much of civil rights legislation, about which there was much disagreement, would be unjust. Fourth, if premise (1) were true, then a favorite pro-choice public policy proposal would also be unjust. Many pro-choicers believe that the federal government should use the tax dollars of the American people to fund the abortions of poor women. There are large numbers of Americans, however (some of whom are pro-choice), who do not want their tax dollars used in this way. And fifth, if premise (1) were true, then laws forbidding pro-life advocates (e.g., Operation Rescue) from preventing abortions would be unjust. One cannot deny that there is widespread disagreement concerning this issue. But these are the very laws which the pro-choicer supports. Hence, his or her argument is self-refuting.

Another way to show that this argument is not successful is to challenge the second premise and show that there is not widespread disagreement on the question of whether abortion on demand should be forbidden. Recent polls have shown that a great majority of Americans, although supporting a woman's right to an abortion in the rare "hard cases" (such as rape, incest, and severe fetal deformity), do not support the pro-choice position of abortion on demand. In other words, they do not agree that abortion should remain legal during the entire nine months of pregnancy for any reason the woman deems fit.²²

Argument from the Impossibility of Legally Stopping Abortion

Maybe the defender of the above argument is making the more subtle point that because there is widespread disagreement on the abortion issue, enforcement of any laws prohibiting abortion would be difficult. In other words, abortions are going to happen anyway, so we ought to make them safe and legal. This argument also is subject to several criticisms.

First, it totally begs the question, because it assumes that the unborn are not fully human. If the unborn are fully human, this argument is tantamount to saying that, since people will murder other people anyway, we ought to make it safe and legal for them to do so. But murder is never justified, even if there are social difficulties in forbidding it.

Second, since the vast majority of Americans are law-abiding citizens, they will probably obey the law as they did prior to *Roe v. Wade*. "A reasonable estimate for the actual number of criminal abortions per year in the prelegalization era [prior to 1967] would be from a low of 39,000 (1950) to a high of 210,000 (1961) and a mean of 98,000 per year."²³ Contrasting this with the fact that there have been an average of 1.5 million abortions per year since 1973, one can only conclude that the pre-Roe anti-abortion laws were quite effective in limiting the number of abortions. Now if the pro-choice advocate claims that a law cannot stop all abortions, he or she makes a trivial claim, for this is true of all laws which forbid illegal acts. For example, even though both hiring paid assassins and purchasing child pornography are illegal, some people remain undaunted and pursue them illegally. But there is no doubt that their illegality does hinder a vast number of citizens from obtaining them. Should we then legalize child pornography and the hit-man profession because we can't stop all people from obtaining such "goods" and "services"? Such reasoning is absurd.

Argument from a Woman's Right to Control Her Own Body

An extremely popular argument asserts that because a woman has a right to control her own body, she therefore has a right to undergo an abortion for any reason she deems fit. Although it is not obvious that either the law or sound ethical reasoning supports such a strong view of personal autonomy (e.g., laws against prostitution and suicide), this pro-choice argument still logically fails even if we hypothetically grant that its strong view of personal autonomy is correct.

The unborn entity within the pregnant woman's body is not part of her body. The conceptus is a genetically distinct entity with its own unique and individual gender, blood type, bone-structure, and genetic code.²⁴ Although the unborn entity is attached to its mother, it is not part of her. To say that the unborn entity is part of its mother is to claim that the mother possesses four legs, two heads, two noses, and — with the case of a male conceptus — a penis and two testicles. Furthermore, since scientists have been able to achieve conception in a petri dish in the case of the "test-tube" baby, and this conceptus if it has white parents can be transferred to the body of a black woman and be born white, we know conclusively that the unborn is not part of the pregnant woman's body. Certainly a woman has a right to control her own body, but the unborn entity, though for a time living inside her body, is not part of her body. Hence, abortion is not justified, since no one's right to personal autonomy is so strong that it permits the arbitrary execution of others. In this respect this argument also begs the question, because it assumes that the unborn are not fully human.

ARGUMENTS AD HOMINEM

"Ad hominem" literally means to "attack the man" (or person). Therefore, "to attack ad hominem is to attack the man who presents an argument rather than the argument itself."²⁵ Instead of dealing with what a person is actually saying, one attacks the person. This is a bad form of reasoning because it ultimately does not refute the person's argument. Hence, when the abortion rights advocate judges, ridicules, insults, or slanders the pro-lifer as a person, he or she does not attack the arguments for the pro-life position.

Why Don't Pro-lifers Adopt the Babies They Don't Want Aborted?

One common ad hominem argument can be distilled into the following assertion: Unless the pro-life advocate is willing to help bring up the children he or she does not want aborted, he or she has no right to prevent a woman from having an abortion. As a principle of moral action, this seems to be a rather bizarre assertion. For one reason, it begs the question by assuming that the unborn are not fully human. Wouldn't these same pro-choicers consider the murder of a couple's children unjustified even if they were approached by the parents with the following proposition: "Unless you adopt my three children by noon tomorrow, I will put them to death."? Clearly, if these pro-choicers refused to adopt these children it would not justify their parents in killing them. Hence, it all depends on whether the unborn are fully human.

Second, think of all the unusual precepts that could be fairly derived from such a moral principle: unless I am willing to marry my neighbor's wife, I cannot prevent her husband from beating her; unless I am willing to adopt my neighbor's daughter, I cannot prevent her mother from abusing her; unless I am willing to hire ex-slaves for my business, I cannot say that the slave-owner should not own slaves. Now, I believe that the pro-life movement as a whole does have a moral obligation to help those in need, especially unwed mothers (and there are enough organizations dedicated to this task to show that the pro-lifers do practice what they preach).²⁶ But it does not logically follow from this moral obligation that abortion automatically becomes a moral good simply because individual pro-life advocates are not currently involved in such a cause.

Aren't Pro-lifers Inconsistent if They Support Capital Punishment?

Some pro-choice (and even pro-life) advocates have pointed out that some people who believe in capital punishment are also pro-life on the abortion issue. And since capital punishment entails the killing of another human being, these pro-lifers are inconsistent. Some people assume that this inconsistency makes the pro-life position on abortion incorrect. There are several reasons why this belief cannot be justified.

First, how does this help the pro-choice position or hurt the pro-life position on abortion? Wouldn't this argument make people who are against capital punishment and for pro-choice equally inconsistent?

Second, inconsistent people can draw good conclusions. For example, an Irish terrorist may inconsistently believe that it is all right to murder Catholics and not Protestants. But this inconsistency in his thinking would not make his correct conclusion about the wrongness of murdering Protestants automatically incorrect. Hence, this argument is a red-herring and does not deal with the ethical legitimacy of the pro-life position.

Third, there are a number of pro-life advocates who do not believe that capital punishment is morally justified.²⁷ The pro-choice advocate can't say that these pro-lifers are inconsistent. Why does he (or she) not then give up the pro-choice position and embrace this pro-life position, since it should seem to him even more consistent than the anti-capital punishment pro-choice position?

Fourth, I believe that one can plausibly argue that the pro-life position on abortion is consistent with capital punishment. Pro-life advocates, for the most part, do not argue that killing is never justified, for many believe that there are legitimate instances in which killing is justified, such as in the cases of self-defense and capital punishment, both of which do not entail the killing of an innocent human life. Abortion does entail such killing. Hence, the pro-life advocate who believes in capital punishment is saying, "It is wrong to take the life of an innocent human being, but the capital offender is not innocent. Therefore, capital punishment is morally justified." Although I have not made up my own mind on the issue of capital punishment, I do not believe it is logically inconsistent with the pro-life position.

In summary, like the previous argument, this one is a blatant example of the ad hominem fallacy, since it is a direct attack upon the character of the pro-life advocate. Instead of dealing with the pro-lifer's arguments against abortion, the pro-choice advocate attacks the pro-lifer.

Men Don't Get Pregnant

This argument is so silly that I fear by acknowledging it I may be giving it undeserved credibility. But since I hear it so frequently in the media, I think it ought to be answered. I was confronted with this argument in a debate at the University of Nevada, Las Vegas (December 4, 1989). One of the debate participants, Social Work professor Dr. Esther Langston of UNLV, told the audience that she thought that it was rather strange that two men (myself and my debate partner, Mr. David Day) were arguing against abortion. After all, men don't get pregnant; abortion is a women's issue.

I responded to Professor Langston by pointing out that arguments don't have genders, people do. Since many pro-life women use the same arguments as we did in the debate, it was incumbent upon her to answer our arguments, which stand or fall apart from our genitalia. I pointed out that since she could not argue the same way if a woman were putting forth our arguments, therefore, our gender is totally irrelevant to whether the pro-life position is correct. In a subtle and clever way she dodged our arguments and attacked us — a clear case of the ad hominem fallacy.

Second, on the same rationale, Professor Langston would have to reject the Roe v. Wade decision, since it was arrived at by nine men (7-2).

Third, abortion is a human issue, not just a women's issue, for it has consequences for everybody in society. It is in part from men's salaries that tax dollars are taken to fund abortions; it is men who must help in child-rearing or pay child support if the mother chooses not to abort; and it is the man's seed which is one of the material causes (along with the female's ovum) of the unborn's being (there has been only one known virginal conception).

Fourth, the appeal to the pregnant woman's personal involvement can be used as a two-edged sword. Could not someone argue that since men don't get pregnant, and hence are less tainted by personal involvement, their opinion concerning the morality of abortion is more objective?

NOTES

1. Concerning this, Dr. Stephen Krason writes: "A number of studies have shown that pregnancy resulting from rape is very uncommon. One, looking at 2190 victims, reported pregnancy in only 0.6 percent." (*Abortion: Politics, Morality, and the Constitution* [Lanham, MD: University Press of America, 1984], 283.)
2. See Andrew Varga, *The Main Issues in Bioethics*, rev. ed. (New York: Paulist Press, 1984), 67-68. Varga himself, however, does not believe that abortion is morally justified in the cases of rape and incest.
3. On the fact that abortion on demand is legal in America, see Part One of this series in the previous (Fall 1990) *Christian Research Journal*.
4. See the results of studies of 4,800 victims of rape in the St. Paul-Minneapolis area, as cited in John F. Hillabrand, "Dealing With a Rape Case," *Heartbeat* 8 (March 1975):250.
5. Bernard Nathanson, M.D., *Aborting America* (New York: Doubleday, 1979), 238.
6. Michael Bauman, "Verbal Plunder: Combatting the Feminist Encroachment on the Language of Religion and Morality," paper presented at the 42d annual meeting of the Evangelical Theological Society, New Orleans Baptist Theological Seminary, New Orleans, Louisiana, Nov. 15-17, 1990, 16.
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8. Krason, 284.
9. See the arguments in the *Planned Parenthood Federation of America* brief (for Roe v. Wade), as cited in Krason, *Abortion*, 315-19.
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13. Justice Harry Blackmun, "The 1973 Supreme Court Decisions on State Abortion Laws: Excerpts from Opinion in Roe v. Wade," in *The Problem of Abortion*, 2d ed., ed. Joel Feinberg (Belmont, CA: Wadsworth, 1984), 195.
14. *Ibid.*, 196.
15. "Webster v. Reproductive Health Services," *United States Law Review* 57 (22 July 1989): 5044-45.

16. Virginia Ramey Mollenkott, "Reproductive Choice: Basic to Justice for Women," *Christian Scholar's Review* 17 (March 1988):291.
17. See the results of *The Boston Globe*/WBZ-TV nationwide poll recently published in the *Globe*, which concluded that "most Americans would ban the vast majority of abortions performed in this country....While 78 percent of the nation would keep abortion legal in limited circumstances, according to the poll, these circumstances account for a tiny percentage of the reasons cited by women having abortions." (Ethan Bronner, "Most in US Favor Ban on Majority of Abortions, Poll Finds," *The Boston Globe*, 31 March 1989, 1, 12.)
18. Webster, 5044, footnote 16.
19. See especially the nontheological defense of the pro-life position by former abortion-rights activist Bernard Nathanson, M.D. (Aborting America).
20. See Mollenkott.
21. George Mavrodes, "Abortion and Imagination: Reflections on Mollenkott's 'Reproductive Choice,'" *Christian Scholar's Review* 18 (Dec. 1988):168-69.
22. Bronner, 1, 12.
23. Barbara J. Syska, Thomas W. Hilgers, M.D., and Dennis O'Hare, "An Objective Model for Estimating Criminal Abortions and Its Implications for Public Policy," in *New Perspectives on Human Abortion*, eds. Thomas Hilgers, M.D., Dennis J. Horan, and David Mall (Frederick, MD: University Publications of America, 1981), 178. For a summary of the scholarly dispute over the prelegalization statistics, see Daniel Callahan, *Abortion: Law, Choice and Morality* (New York: Macmillan, 1970), 132-36; and Krason, *Abortion*, 301-10.
24. For more on prenatal development and the scientific evidence of the unborn's humanness, see Part Three in this series in the (forthcoming) Spring 1991 issue of the *Christian Research Journal*.
25. Nicholas Capaldi, *The Art of Deception: An Introduction to Critical Thinking*, rev. ed. (Buffalo, NY: Prometheus Books, 1987), 92.
26. Among the many organizations which help unwed mothers and women in crisis pregnancies are Crisis Pregnancy Centers (branches are found in many cities across North America), Pregnancy Crisis Center (Virginia), and Bethany Lifeline (1-800-234-4269). See also the interview of the administrator of an Assembly of God adoption agency in "Alternative to Abortion," *Pentecostal Evangel* (11 Feb. 1990), 14-15.
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ANSWERING THE ARGUMENTS FOR ABORTION RIGHTS? (PART THREE): Is the Unborn Human Less Than Human?

by Francis J. Beckwith

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Realizing that many popular arguments for abortion rights — such as some of the ones found in the first two installments in this series — have little logical merit, many philosophers, ethicists, and theologians have presented more sophisticated arguments for abortion rights. These radical and moderate pro-choice thinkers agree with pro-life advocates that the abortion debate rests on the moral status of the unborn: if the unborn are fully human, then nearly every abortion performed is tantamount to murder. They argue, however, that although the unborn entity is human, insofar as belonging to the species *homo sapiens*, it is not a person and hence not fully human.

Those who argue in this fashion defend either a decisive moment or gradualist approach to the status of the unborn. Those who defend a decisive moment view argue that, although human life does begin at the moment of conception, it is at some later stage in the unborn human's development that it becomes worthy of our protection. It is at this moment that it becomes a person.

Other philosophers take a gradualist position and argue that the unborn human gradually gains more rights as it develops. Hence, a zygote has less rights than a 6-month-old fetus, but this fetus has less rights than an adult woman.

In order to understand decisive moment and gradualist theories, it is important that we carefully go over the biological facts of fetal development. In this third installment of my four-part series I will cover the facts of fetal development and some decisive moment theories. In Part Four I will critique some more decisive moment theories and the gradualist view, concluding with responses to common questions asked about the pro-life view that full humanness begins at conception.

LIFE BEGINNING AT CONCEPTION AND THE FACTS OF PRE-NATAL DEVELOPMENT¹

While going over the facts of prenatal development I will present the case for the pro-life view that full humanness begins at conception. I will deal with objections to this view when I critique the decisive moment and gradualist views in both this article and the final part of this series.

First Month

Pregnancy begins at conception, the time at which the male sperm and the female ovum unite. What results is called a zygote, a one-celled biological entity, a stage in human development through which each of us has passed (just as we have passed through infancy, childhood, and adolescence). It is a misnomer to refer to this entity as a "fertilized ovum." For both ovum and sperm, which are genetically each a part of its owner (mother and father, respectively), cease to exist at the moment of conception. There is no doubt that the zygote is biologically alive. It fulfills the four criteria needed to establish biological life: (1) metabolism, (2) growth, (3) reaction to stimuli, and (4) reproduction. (There is cell reproduction and twinning, a form of asexual reproduction, which can occur after conception. For more

on twinning, see below.) But is this life fully human? I believe that the facts clearly reveal that it is.

First, the human conceptus — that which results from conception and begins as a zygote — is the sexual product of human parents. Hence, insofar as having human causes, the conceptus is human.

Second, not only is the conceptus human insofar as being caused by humans, it is a unique human individual, just as each of us is. Resulting from the union of the female ovum (which contains 23 chromosomes) and the male sperm (which contains 23 chromosomes), the conceptus is a new — although tiny — individual. It has its own unique genetic code (with forty-six chromosomes), which is neither the mother's nor the father's. From this point until death, no new genetic information is needed to make the unborn entity a unique individual human. Her (or his) genetic make-up is established at conception, determining her unique individual physical characteristics — gender, eye color, bone structure, hair color, skin color, susceptibility to certain diseases, etc. That is to say, at conception, the “genotype” — the inherited characteristics of a unique human being — is established and will remain in force for the entire life of this individual. Although sharing the same nature with all human beings, the unborn individual, like each one of us, is unlike any that has been conceived before and unlike any that will ever be conceived again. The only thing necessary for the growth and development of this human organism (as with the rest of us) is oxygen, food, and water, since this organism — like the newborn, the infant, and the adolescent — needs only to develop in accordance with her already-designed nature that is present at conception.

This is why French geneticist Jerome L. LeJeune, while testifying before a Senate Subcommittee, asserted: “To accept the fact that after fertilization has taken place a new human has come into being is no longer a matter of taste or opinion. The human nature of the human being from conception to old age is not a metaphysical contention, it is plain experimental evidence.”²

There is hence no doubt that the development of a unique individual human life begins at conception. It is vital that you — the reader — understand that you did not come from a zygote, you once were a zygote; you did not come from an embryo, you once were an embryo; you did not come from a fetus, you once were a fetus; you did not come from an adolescent, you once were an adolescent. Consequently, each one of us has experienced these various developmental stages of life. None of these stages, however, imparted to us our humanity.

Within one week after conception, implantation occurs — the time at which the conceptus “nests” or implants in her mother's uterus. During this time, and possibly up to fourteen days after conception,³ a splitting of the conceptus may occur resulting in the creation of identical twins. In some instances the two concepti may recombine and become one conceptus. (I will respond below to the argument that the possibility of the conceptus twinning and the subsequent concepti recombining refutes the pro-life claim that full humanness begins at conception.) At about three weeks, a primitive heart muscle begins to pulsate. Other organs begin to develop during the first month, such as a liver, primitive kidneys, a digestive tract, and a simple umbilical cord. This developing body has a head and a developing face with primitive ears, mouth, and eyes, despite the fact that it is no larger than half the size of a pea. Toward the end of the first month (between 26 and 28 days) the arms and legs begin to appear as tiny buds. A whole embryo is formed by the end of the first month.

From the eighteenth day after conception, substantial development of the brain and nervous system occurs.

This is necessary because the nervous system integrates the action of all the other systems. By the end of the twentieth day the foundation of the child's brain, spinal cord, and entire nervous system will have been established. By the sixth week, this system will have developed so well that it is controlling movements of the baby's muscles, even though the woman may not be aware she is pregnant. At thirty days the primary brain is seen. By the thirty-third day the cerebral cortex, the part of the central nervous system which governs motor activity as well as intellect, may be seen.⁴

Second Month

Despite its small size, the unborn child by the beginning of the second month looks distinctly “human”

(although — as this article maintains — it is human from conception). At this point it is highly likely that the mother does not even know she is pregnant. Brain waves can be detected in the unborn at about forty to forty-three days after conception. During the second month, the eyes, ears, nose, toes, and fingers make their appearance; the skeleton develops; the heart beats; and the blood — with its own type — flows. The unborn at this time has reflexes and her lips become sensitive to touch. By the eighth week her own unique fingerprints start to form, along with the lines in her hands.

A vast majority of abortions are performed during this time, despite the scientific facts which clearly show that an individual human life is developing, as it would after birth, from infant to child to adolescent to adult.

In an important article, Professor John T. Noonan argues that it is reasonable to infer that toward the end of the second month of pregnancy the unborn has the ability to feel pain.⁵ It is crucial to remember that the end of the second month (7 to 8 1/2 weeks) is in the first trimester, a time at which a great majority of abortions are performed and at which the Supreme Court said a state may not prohibit abortions performed by a licensed practitioner. From the facts of brain and nerve development, the pained expressions on the faces of aborted fetuses, the known ability to experience other sensations at this time, and the current methods by which abortions are performed, Noonan concludes from his research that as soon as a pain mechanism is present in the fetus — possibly as early as day 56 — the methods used will cause pain. The pain is more substantial and lasts longer the later the abortion is. It is most severe and lasts the longest when the method is saline poisoning.

Whatever the method used, the unborn are experiencing the greatest of bodily evils, the ending of their lives. They are undergoing the death agony. However inarticulate, however slight their cognitive powers, however rudimentary their sensations, they are sentient creatures undergoing the disintegration of their being and the termination of their vital capabilities. That experience is painful in itself.⁶

Third Month

Movement is what characterizes the third month of pregnancy. Although she weighs only one ounce and is comparable in size to a goose egg, the unborn begins to swallow, squint, and swim, grasp with her hands, and move her tongue. She also sucks her thumb. Her organs undergo further development. The salivary glands, taste buds, and stomach digestive glands develop — as evidenced by her swallowing and utilization of the amniotic fluid. She also begins to urinate. Depending on the unborn's sex, primitive sperm or eggs form. Parental resemblance may already be seen in the unborn's facial expressions.

Fourth and Fifth Months

Growth is characteristic of the fourth month. The weight of the unborn increases six times — to about one-half her birth weight. Her height is between eight and ten inches long and she can hear her mother's voice.

In the fifth month of pregnancy the unborn becomes viable. That is, she now has the ability, under our current technological knowledge, to live outside her mother's womb. Some babies have survived as early as twenty weeks. The fifth month is also the time at which the mother begins to feel the unborn's movements, although mothers have been known to feel stirrings earlier. This first movement was traditionally called quickening, the time at which some ancient, medieval, and common-law scholars thought the soul entered the body. Not having access to the biological facts we currently possess, they reasoned that prior to quickening it could not be proven that the unborn was "alive." Current biology, by conclusively demonstrating that a biologically living human individual is present from conception, has decisively refuted this notion of "quickening," just as current astronomy has refuted the geocentric solar system.

During the fifth month, the unborn's hair, skin, and nails develop. She can dream (rapid eye movement [REM] sleep) and cry (if air is present). It is, however, perfectly legal under *Roe v. Wade* and *Doe v. Bolton* to kill this unborn human being by abortion for any reason her mother so chooses.

In the remaining four months of pregnancy the unborn continues to develop. The child's chances of survival outside the womb increase as she draws closer to her expected birthday. During this time she responds to sounds, her mother's voice, pain, and the taste of substances placed in the amniotic fluid. Some studies have shown that the child can actually learn before it is born.⁷ The child is born approximately 40 weeks after conception.

In summary, the pro-life advocate believes that full humanness begins at conception for at least four reasons, which were evident in the above presentation of fetal development: (1) At the moment of conception a separate unique human individual, with its own genetic code, comes into existence — needing only food, water, shelter, and oxygen in order to grow and develop. (2) Like the infant, the child, and the adolescent, the conceptus is a being who is in the process of becoming. She is not a becoming who is striving toward being. She is not a potential human life but a human life with great potential. (3) The conceptus is the sexual product of human parents, and whatever is the sexual product of members of a particular mammalian species, is itself a unique individual member of that species. And (4) the same being that begins as a zygote continues to birth and adulthood. There is no decisive break in the continuous development of the human entity from conception until death that would make this entity a different individual before birth. This is why it makes perfect sense for any one of us to say, "When I was conceived..."

DECISIVE MOMENT THEORIES: A CRITIQUE

Throughout the history of the abortion controversy, many have put forth criteria by which to judge whether a human organism has reached the point in its development at which it is fully human. Some criteria are based on so-called "decisive" moments in fetal development. Others are based on certain conditions any entity — born or unborn — must fulfill in order to be considered "fully human." And others argue that there is no "decisive" moment but that the unborn's rights increase as its body develops. I believe that all these views are flawed. I will argue that the pro-life view that full humanness begins at conception is the most coherent and is more consistent with our basic moral intuitions. In order to defend this position adequately, I will — both in this article and in the final installment of this series — critique a number of decisive moment and gradualist theories, whose defenses contain many objections to the pro-life view.

Agnostic Approach: "No One Knows When Life Begins"

It is often claimed by abortion-rights advocates that "no one knows when life begins." Right away it must be observed that this formulation is imprecise. For no one who knows anything about prenatal development seriously doubts that individual biological human life is present from conception (see above). What the abortion-rights advocates probably mean when they say that "no one knows when life begins" is that no one knows when full humanness is attained in the process of human development by the individual in the womb. Thus, from a legal perspective they are arguing: since no one knows when full humanness is attained, abortion should remain legal. I believe, however, that there are at least four problems with this argument.

(1) It is a two-edged sword. If no one knows when full humanness is attained, then we cannot prevent a Satan-worshipping neighbor, who believes that full humanness begins at the age of two, from sacrificing his one-and-a-half-year-old son to the unholy one. After all, who knows when life begins?

(2) If it is true that we don't know when full humanness begins, this is an excellent reason not to kill the unborn, since we may be killing a human entity who has a full right to life. If game hunters shot at rustling bushes with this same philosophical mind-set, the National Rifle Association's membership would become severely depleted. Ignorance of a being's status is certainly not justification for killing it.

(3) As the above biological facts of prenatal development indicate, we have excellent reason to believe that full humanness is present from the moment of conception, and that the nature of prenatal and postuterine existence is merely the unfolding of human growth and development which does not cease

until death. In other words, the unborn — like the rest of us — are not potential human beings, but human beings with much potential.

(4) By permitting abortion for virtually any reason during the entire nine months of pregnancy, abortion-rights advocates have decided, for all practical purposes, when full humanness is attained. They have decided that this moment occurs at birth, although some of them — such as Peter Singer and Michael Tooley — also advocate infanticide.⁸ The very abortion-rights advocates who claim that “no one knows when life begins” often act as if protectable human life begins at birth. Since actions speak louder than words, these “pro-choicers” are not telling the truth when they claim they “don’t know when life begins.”

Some abortion-rights literature, which I am certain is quite embarrassing to the more sophisticated proponents of this cause, claims that “personhood at conception is a religious belief, not a provable biological fact.”⁹ What could possibly be meant by this assertion? Is it claiming that religious claims are in principle unprovable scientifically? If it is, it is incorrect — for many religions, such as Christianity and Islam, believe that the physical world literally exists, which is a major assumption of contemporary science. On the other hand, some religions, such as Christian Science and certain forms of Hinduism,¹⁰ deny the literal existence of the physical world.

But maybe this “pro-choice” assertion is simply claiming that biology can tell us nothing about values. If this is what is meant, it is right in one sense and wrong in another. It is right if it means that the physical facts of science, without any moral reflection on our part, cannot tell us what is right and wrong. But it is wrong if it means that the physical facts of science cannot tell us to whom we should apply the values of which we are already aware. For example, if I don’t know whether the object I am driving toward in my car is a living woman, a female corpse, or a mannequin, biology is extremely important in helping me to avoid committing an act of homicide. Running over mannequins and corpses is not homicide, but running over a living woman is.

Maybe the “pro-choice” assertion is saying that when human life should be valued is a philosophical belief that cannot be proven scientifically. Maybe so, but this cuts both ways. For isn’t the belief that a woman has abortion rights a philosophical belief that cannot be proven scientifically and over which people obviously disagree? But if the pro-life position cannot be enacted into law because it is philosophical (or religious), then neither can the abortion-rights position. Now the abortion-rights advocate may respond to this by saying that this fact alone is a good reason to leave it up to each individual woman to choose whether she should have an abortion. But this response begs the question, for this is precisely the abortion-rights position. Furthermore, the pro-lifer could reply to this abortion-rights response by employing the pro-choicer’s own logic. The pro-lifer could argue that since the abortion-rights position is a philosophical position over which many people disagree, we should permit each individual unborn human being to be born and make up his or her own mind as to whether he or she should or should not die. In sum, it seems that the appeal to ignorance is seriously flawed.

Implantation

There are some pro-life advocates, such as Dr. Bernard Nathanson,¹¹ who argue that full humanness begins when the conceptus is implanted in its mother’s womb, which occurs within one week after conception. There are four basic arguments for this position to which I will respond.

(1) Nathanson argues that at the moment of implantation the unborn “establishes its presence to the rest of us by transmitting its own signals — by producing hormones — approximately one week after fertilization and as soon as it burrows into the alien uterine wall.” For Nathanson implantation is significant because prior to this time the unborn “has the genetic structure but is incomplete, lacking the essential element that produces life: an interface with the human community and communication of the fact that it is there.”¹² So, for Nathanson the unborn’s hormonal communication to its mother is essential for humanness.

I believe that this argument is flawed for at least two important reasons. First, how is it possible that one’s

essence is dependent on whether others are aware of one's existence? It seems intuitively correct to say that it is not essential to your being whether or not anyone knows you exist, for you are who you are regardless of whether others are aware of your existence. One interacts with a human being, one does not make a being human by interacting with it. In philosophical terms, Nathanson is confusing epistemology (the study of how we know things) with ontology (the study of being or existence).

A second objection, which supports my first objection, is mentioned by Nathanson himself. He writes, "If implantation is biologically the decisive point for alpha's [the unborn's] existence, what do we do about the 'test-tube' conceptions? The zygote in these cases is seen in its culture dish and could be said to announce its existence even before it is implanted." Nathanson responds to these questions by asserting, "It seems to me that when it is in the dish the zygote is already implanted, philosophically and biochemically, and has established the nexus with the human community, before it is 're'-implanted into the mother's womb."¹³ This response, however, does not support Nathanson's position, for he is admitting that there is no real essential difference between the implanted and the nonimplanted zygote, just an accidental difference (the former's existence is known while the latter's is not). Hence, just as there is no essential difference between a Donald Trump who is an unknown hermit and a Donald Trump who is an entrepreneur and billionaire (there are only accidental differences between the two Trumps), there is no essential difference between an unknown conceptus and a known conceptus. In sum, it seems counterintuitive to assert that one's essence is dependent on another's knowledge of one's existence.

(2) There is a second argument for implantation as the decisive moment: If we say that full humanness begins at conception, we must respond to the observation that "some entities that stem from the union of sperm and egg are not 'human beings' and never will develop into them," and that there may be some human beings who come into being without the union of sperm and egg.¹⁴ Concerning the former, Nathanson gives examples of nonhuman entities that result from the sperm-egg union: the hydatidiform mole ("an entity which is usually just a degenerated placenta and typically has a random number of chromosomes"), the choriocarcinoma ("a 'conception-cancer' resulting from the sperm-egg union is one of gynecology's most malignant tumors"), and the blighted ovum ("a conception with the forty-six chromosomes but which is only a placenta, lacks an embryonic plate, and is always aborted naturally after implantation"). Concerning the latter, a clone is an example of a human entity that may come into being without benefit of a sperm-egg union.¹⁵

The problem with Nathanson's argument is that he confuses necessary and sufficient conditions. One who holds that full humanness begins at conception is not arguing that everything which results from the sperm-egg union is necessarily a conception. That is, every conception of a unique individual human entity is the result of a sperm-egg union, but not every sperm-egg union results in such a conception. Hence, the sperm-egg union is a necessary condition for conception, but not a sufficient condition.

Furthermore, Nathanson is correct in asserting that it is possible that some day there may be human beings, such as clones, who come into existence without benefit of conception.¹⁶ But this would only mean that conception is not a necessary condition for full humanness, just as the sperm-egg union is not a sufficient condition for conception. In sum, Nathanson's argument from both nonhuman products of sperm-egg unions and the possibility of clones is inadequate in overturning the pro-life position that full humanness begins at conception.

(3) It is estimated that twenty to fifty percent of all conceptions die before birth. Thirty percent, it is estimated, die before implantation.¹⁷ Some people argue that these facts make it difficult to believe that the unborn are fully human in at least the very earliest stage of their development prior to implantation. But this is clearly an invalid argument, for it does not logically follow from the number of unborn entities who die that these entities are not by nature fully human. To cite an example, it does not follow from the fact that underdeveloped countries have a high infant mortality rate that their babies are less human than those born in countries with a low infant mortality rate.

Suppose the pro-choice advocate responds to this by arguing that if every fertilized ovum is human, then we are obligated to save all spontaneous abortions as well. But if we did, it would lead to overpopulation,

death by medical neglect, and starvation. The problem with this response is that it confuses our obvious prima facie moral obligation not to commit homicide (that is, to perform an abortion) with the questionable moral obligation to interfere with natural death (that is, to permit the conceptus to abort spontaneously). "Protecting life is a moral obligation, but resisting natural death is not necessarily a moral duty...There is no inconsistency between preserving natural life, opposing artificial abortion and allowing natural death by spontaneous abortion."¹⁸

Admittedly, the question of interference in spontaneous abortions provokes the pro-life ethicist to think more deeply and sensitively about his or her position and to make distinctions and nuances that may not be pleasing to all who call themselves pro-life. But just as the difficult question of whether to pull the plug on the irreversibly comatose who are machine-dependent does not count against the position that murdering healthy adults is morally wrong, the question of how we should ethically respond to spontaneous abortions does not count against the pro-life ethic which says that we should not directly kill the healthy and normally developing unborn.

(4) Some people argue that since both twinning (the division of a single conceptus) and recombination (the reuniting of two concepti) occur prior to implantation, individual human life does not begin until that time. However, a careful examination of the nature of twinning and recombination reveals that there is no reason to suppose that the original pre-twinning conceptus or any pre-recombined conceptus was not fully human.

First, scientists are not agreed on many aspects of twinning. Some claim that twinning may be a nonsexual form of parthenogenesis or "parenting." This occurs in some animals and plants. Others claim that when twinning occurs, an existing human being dies and gives life to two new and identical human beings like himself or herself. Still others claim that since not all human concepti have the capacity to twin, one could argue that there exists in some concepti a basic duality prior to the split. Hence, it may be claimed that at least in some incipient form two individual lives were present from the start at conception. In any event, the fact of twinning does not seem to be a sufficient reason to give up the belief that full humanness begins at conception.¹⁹

Second, every conceptus, whether before twinning or recombination, is still a genetically unique individual who is distinct from his or her parents. In other words, if identical twins result from a conceptus split or one individual results from two concepti that recombine, it does not logically follow that any of the concepti prior to twinning or recombining were not human.²⁰ To help us understand this point, philosopher Robert Wennberg provides the following story:

Imagine that we lived in a world in which a certain small percentage of teenagers replicated themselves by some mysterious natural means, splitting in two upon reaching their sixteenth birthday. We would not in the least be inclined to conclude that no human being could therefore be considered a person prior to becoming sixteen years of age; nor would we conclude that life could be taken with greater impunity prior to replication than afterward. The real oddity — to press the parallel — would be two teenagers becoming one. However, in all of this we still would not judge the individual's claim to life to be undermined in any way. We might puzzle over questions of personal identity... but we would not allow these strange replications and fusions to influence our thinking about an individual's right to life. Nor therefore does it seem that such considerations are relevant in determining the point at which an individual might assume a right to life in utero.²¹

The Appearance of "Humanness"

Some argue that the unborn becomes fully human at the time at which it begins to take on the appearance of a child. Professor Ernest Van Den Haag²² is sympathetic to this criterion, though he combines it with the criterion of sentience which I will deal with below. He writes that when the unborn acquires a functioning brain and neural system soon after the first trimester (though brain waves can be detected at 40 to 42 days after conception, which Van Den Haag does not mention), it "starts to resemble an embryonic human being." After this point "abortion seems justifiable only by the gravest of reasons, such

as the danger to the mother; for what is being aborted undeniably resembles a human being to an uncomfortable degree."²³

There are several problems with this argument. First, though appearance can be helpful in determining what is or is not fully human, it is not a sufficient or a necessary condition for doing so. After all, mannequins in stores resemble humans and they are not even remotely human. On the other hand, some human oddities — such as the bearded lady or the elephant man, who more closely resemble nonhuman primates — are nonetheless fully human. The reason why we believe that the bearded lady and the elephant man are fully human and the mannequin is not is because the former are functioning individual organisms that genetically belong to the species *homo sapiens*. The latter is an inanimate object.

Second, Davis points out that “this objection assumes that personhood presupposes a postnatal form. A little reflection, however, will show that the concept of a ‘human form’ is a dynamic and not a static one. Each of us, during normal growth and development, exhibits a long succession of different outward forms.” An early embryo, though not looking like a newborn, does look exactly like a human ought to look at this stage of his or her development. Thus, “the appearance of an 80-year-old adult differs greatly from that of a newborn child, and yet we speak without hesitation of both as persons. In both cases, we have learned to recognize the physical appearances associated with those development stages as normal expressions of human personhood.”²⁴

It may be true that it is psychologically easier to kill something that does not resemble the human beings we see in everyday life, but it does not follow from this that the being in question is any less human or that the executioner is any more humane. Once we recognize that human development is a process that does not cease at the time of birth, then “to insist that the unborn at six weeks look like the newborn infant is no more reasonable than to expect the newborn to look like a teenager. If we acknowledge as ‘human’ a succession of outward forms after birth, there is no reason not to extend that courtesy to the unborn, since human life is a continuum from conception to natural death.”²⁵ Hence, Van Den Haag, by confusing appearance with reality, may have inadvertently created a new prejudice, “natalism.” And, like other prejudices such as sexism and racism, natalism emphasizes nonessential differences (“they have a different appearance”) in order to support a favored group (“the already born”).

Human Sentiment

Some pro-choice people argue that since parents do not grieve at the death of an embryo or fetus as they would at the death of an infant, the unborn are not fully human.

As a standard for moral action, this criterion rests on a very unstable foundation. As Noonan has observed, “Feeling is notoriously an unsure guide to the humanity of others. Many groups of humans have had difficulty in feeling that persons of another tongue, color, religion, sex, are as human as they.”²⁶ One usually feels a greater sense of loss at the sudden death of a healthy parent than one feels for the hundreds who die daily of starvation in underdeveloped countries. Does this mean that the latter are less human than one’s parent? Certainly not. Noonan points out that “apart from reactions to alien groups, we mourn the loss of a ten-year-old boy more than the loss of his one-day-old brother or his 90-year-old grandfather.” The reason for this is that “the difference felt and the grief expressed vary with the potentialities extinguished, or the experience wiped out; they do not seem to point to any substantial difference in the humanity of baby, boy, or grandfather.”²⁷

Quickening

Quickening has traditionally referred to the first movement of the unborn felt by her mother. It was at this time in fetal development that some ancient, medieval and common-law scholars thought it could be proved that the unborn was “alive” or that the soul had entered her body. Not having access to the biological facts we currently possess, they reasoned that prior to quickening it could not be proved that the unborn entity was “alive” or fully human. Current biology, which has conclusively demonstrated that a biologically living human individual is present from conception, has decisively refuted this notion of “quickening,” just as current astronomy has refuted the geocentric solar system.

Now, does this mean that our ancestors were not pro-life? Not at all. Legal scholar and theologian John Warwick Montgomery notes that when our ancient, medieval, and common-law forefathers talked about quickening as the beginning of life, “they were just identifying the first evidence of life they could conclusively detect...They were saying that as soon as you had life, there must be protection. Now we know that life starts at the moment of conception with nothing superadded.”²⁸ Hence, to be consistent with contemporary science, legal protection must be extended to the unborn entity from the moment of conception.

Furthermore, we now know that the ability to feel the unborn’s movement is contingent upon the amount of the mother’s body fat. It seems silly to say that one’s preborn humanness is contingent upon whether one is fortunate to have been conceived in a body that frequents aerobics classes.

Birth

Some people argue that birth is the time the human entity becomes fully human. They usually hold this position for two reasons: (1) our society calculates the beginning of one’s existence from one’s day of birth; and (2) it is only after birth that a child is named, baptized, and accepted into a family.

This argument is subject to several criticisms. First, that our society counts one’s beginning from one’s birthday and that people name and baptize children after their births are simply social conventions. One is not less human if one is abandoned, unnamed, and not baptized. Some cultures, such as the Chinese, count one’s beginning from the moment of conception. Does that mean that the American unborn are not fully human while the Chinese unborn are? Second, there is no essential difference between an unborn entity and a newborn baby, just a difference in location. As Wennberg writes, “surely personhood and the right to life is not a matter of location. It should be what you are, not where you are that determines whether you have a right to life.”²⁹ In fact, abortion-rights philosophers Peter Singer and Helga Kuhse write, “The pro-life groups are right about one thing: the location of the baby inside or outside the womb cannot make such a crucial moral difference. We cannot coherently hold that it is all right to kill a fetus a week before birth, but as soon as the baby is born everything must be done to keep it alive.”³⁰ Third, as Wennberg points out, a newborn chimpanzee can be treated like a human newborn (i.e., named, baptized, accepted into a family), but this does not mean that it is fully human³¹

NOTES

1. The facts in this section are taken from the following: F. Beck, D. B. Moffat, and D. P. Davies, *Human Embryology*, 2d ed. (Oxford: Basil Blackwell, 1985); Keith L. Moore, *The Developing Human: Clinically Oriented Embryology*, 2d ed. (Philadelphia: W. B. Saunders, 1977); Andre E. Hellegers, “Fetal Development,” in *Biomedical Ethics*, ed. Thomas A. Mappes and Jane S. Zembaty (New York: Macmillan, 1981), 405-9; and Stephen M. Krason, *Abortion: Politics, Morality, and the Constitution* (Lanham, MD: University Press of America, 1984), 337-49.
2. Subcommittee on Separation of Powers, report to Senate Judiciary Committee S-158, 97th Congress, 1st Session, 1981, as quoted in Norman L. Geisler, *Christian Ethics: Options and Issues* (Grand Rapids: Baker, 1989), 149.
3. James J. Diamond, M.D., “Abortion, Animation and Biological Hominization,” *Theological Studies* 36 (June 1975): 305-42.
4. Krason, 341.
5. John T. Noonan, “The Experience of Pain by the Unborn,” in *The Zero People*, ed. Jeff Lane Hensley (Ann Arbor, MI: Servant, 1983), 141-56.
6. *Ibid.*, 151-52.
7. See Mortimer Rosen, “The Secret Brain: Learning Before Birth,” *Harper’s*, April 1978, 46-47.
8. See Michael Tooley, *Abortion and Infanticide* (Oxford: Clarendon Press, 1983); and Peter Singer and Helga Kuhse, “On Letting Handicapped Infants Die,” in *The Right Thing to Do*, ed. James Rachels (New York: Random House, 1989).
9. This is from a pamphlet distributed by the National Abortion Rights Action League, *Choice — Legal Abortion: Abortion Pro & Con*, prepared by Polly Rothstein and Marian Williams (White Plains, NY: Westchester Coalition for Legal Abortion, 1983), n.p.
10. On Christian Science, see Walter R. Martin, *Kingdom of the Cults*, 2d rev. ed. (Minneapolis: Bethany House, 1977), 111-46. On the Hindu denial of the physical world, see Elliot Miller, *A Crash Course on the New Age Movement* (Grand Rapids: Baker, 1989), 16-18, 22.
11. Bernard Nathanson, M.D., *Aborting America* (New York: Doubleday, 1979), 213-17.
12. *Ibid.*, 216.
13. *Ibid.*, 217.
14. *Ibid.*, 214.
15. *Ibid.*

16. For a summary of the philosophical and scientific problems surrounding human cloning, see Andrew Varga, *The Main Issues in Bioethics*, 2d. ed. (New York: Paulist Press, 1984), 119-26.
17. As cited in John Jefferson Davis, *Abortion and the Christian* (Phillipsburg, NJ: Presbyterian and Reformed, 1984), 60. Cf. Thomas W. Hilgers, M.D., "Human Reproduction," *Theological Studies* 38 (1977):136-52.
18. Geisler, *Christian Ethics*, 153.
19. See Varga, 64-65.
20. *Ibid.*, 65.
21. Robert Wennberg, *Life in the Balance: Exploring the Abortion Controversy* (Grand Rapids: William B. Eerdmans Publishing Co., 1985), 71.
22. Ernest Van Den Haag, "Is There a Middle Ground?," *National Review*, 12 December 1989, 29-31.
23. *Ibid.*, 30.
24. Davis, 58.
25. *Ibid.*, 59.
26. John T. Noonan, "An Almost Absolute Value in History," in *The Morality of Abortion*, ed. and intro. John T. Noonan (Cambridge, MA: Harvard University Press, 1970), 53.
27. *Ibid.*
28. John Warwick Montgomery, *Slaughter of the Innocents* (Westchester, IL: Crossway, 1981), 37. For more on quickening, see *ibid.*, 103-19; and David W. Louisell and John T. Noonan, "Constitutional Balance," in *The Morality of Abortion*, 223-26.
29. Wennberg, *Life in the Balance*, 77.
30. Singer and Kuhse, 146.
31. Wennberg, 77-78.

ANSWERING THE ARGUMENTS FOR ABORTION RIGHTS (PART FOUR):

When Does a Human Become a Person?

by Francis J. Beckwith

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In this final installment of my series on the arguments for abortion rights, I will continue where I left off in the previous article with a critique of some “decisive moment theories.” In addition, I will make some brief comments about the “gradualist” thesis. I will conclude with responses to common questions about the pro-life view that full humanness begins at conception.

DECISIVE MOMENT THEORIES (CONTINUED)

Beginning of Brain Development

Some bioethicists, such as Baruch Brody, believe that full humanness begins when the brain starts functioning, which can first be detected by the electroencephalogram (EEG) at about 40 to 43 days after conception.¹ (Although Brody has moral problems with abortion on demand prior to brain functioning, this is not because he believes the unborn is fully human.) Brody maintains that in order to decide when something is fully human, “we must first see...what properties are such that their loss would mean the going out of existence (the death) of a human being.”² He concludes that since at brain death a human being goes out of existence (at least in this mortal realm), the presence of a functioning human brain is the property which makes one fully human. Hence, it would only follow that the start of brain functioning is the beginning of full humanness.

The fundamental difficulty with this argument “is that brain death indicates the end of human life as we know it, the dead brain having no capacity to revive itself. But the developing embryo has the natural capacity to bring on the functioning of the brain.”³ That is to say, an entity’s irreversible absence of brain waves after the brain waves have come into existence indicates that the entity no longer has the natural, inherent capacity to function as a human being, since our current technology is incapable of “reactivating” the brain. However, the unborn entity who has yet to reach the stage in (his or) her development at which brain waves can be detected, unlike the brain dead individual, possesses the inherent capacity to have brain waves. She is like a patient with a temporarily flat EEG. “The two stages of human life are, then, entirely different from the point of view of brain functioning. The embryo contains the natural capacity to develop all the human activities: perceiving, reasoning, willing and relating to others. Death means the end of natural growth, the cessation of these abilities.”⁴

Brody responds to this criticism by presenting the following science-fiction case:

Imagine that medical technology has reached the stage at which, when brain death occurs, the brain is removed, “liquified,” and “recast” into a new functioning brain. The new brain bears no relation to the old one (it has none of its memory traces, and so on). If the new brain were put into the old body, would the same human being exist or a new human being who made use of the body of the old one? I am inclined to suppose the latter. But consider the entity whose brain has died. Is he not like the fetus? Both have the potential for developing into an entity with a functioning brain (we shall call this a weak potential) but we can conclude, it seems to me, that an entity can go out of existence even if it retains a weak potential for having a functioning brain, and that, analogously, the fetus is not a human being just because it has this weak potential. What is essential for being human is the possession of the potential for human activities that comes with

having the structures required for a functioning brain. It is this potential that the fetus acquires at (or perhaps slightly before) the time that its brain starts functioning, and it is this potential that the newly conceived fetus does not have.⁵

I do not believe that this response succeeds. First, unlike the potential of the corpse's dead brain to be liquified and recast as a new brain, the unborn's potency to develop is within itself (intrinsic). "As in the case of other organisms," philosopher A. Chadwick Ray points out, the unborn's development "admittedly requires nourishment from outside and an appropriate environment (consider parasites), but still, the fetus has within itself the power to appropriate nourishment and grow." On the other hand, the potential of Brody's corpse is utterly extrinsic. That is, "it can be acted upon from the outside and brought to life, but without immediate surgery its life will not be restored, and it will simply rot."⁶

Second, the unborn has "interests of itself, in a straightforward, non-projective way, that go beyond the interests of its component parts cells, tissues, etc.," just as I as a living organism have interests that go beyond the interests of my component parts ears, nose, teeth, etc. On the other hand, the corpse "has no interests beyond those of its parts. The component cells may have an interest in continuing to live, but the corpse itself has none." For example, "there would be no loss in the corpse's organs, all being donated to different patients (imagine donating every living cell if you prefer), whereas in a living fetus's being chopped up for spare parts its own interests would be sacrificed."⁷

In summary, "the growth of the fetus is in its own interest and is the realization of its intrinsic potential, in which realization its identity is preserved." However, "the implanting of a new brain into a brainless corpse would constitute the genesis of a new organism with its own new telos and interests where there were none."⁸ Therefore, since the prebrain-functioning unborn entity has a natural inherent capacity for brain functioning while the corpse does not, they do not have the same kind of weak potential that Brody claims they have.

Viability

As I noted in Part Three, viability is the time at which the unborn human can live outside her mother's womb. Some have argued that prior to this time, since the unborn cannot survive independent of her mother, she is not a completely independent human life and hence not fully human.

Bioethicist Andrew Varga points out a number of problems with the viability criterion. First, "how does viability transform the nature of the fetus so that the non-human being then turns into a human being?" That is to say, viability is a measure of the sophistication of our neonatal life-support systems. Humanity remains the same, but viability changes. Viability measures medical technology, not one's humanity.

Second, "is viability not just an extrinsic criterion imposed upon the fetus by some members of society who simply declare that the fetus will be accepted at that moment as a human being?"⁹ In other words, the viability criterion seems to be arbitrary and not applicable to the question of whether the unborn is fully human, since it relates more to the location and dependency of the unborn than to any essential change in her state of being. This criterion only tells us when certain members of our society want to accept the humanity of the unborn.

And third, "the time of viability cannot be determined precisely, and this fact would create great practical problems for those who hold this opinion."¹⁰ For example, in 1973, when the Supreme Court legalized abortion, viability was at about twenty-four weeks. But now babies have survived 20 weeks after conception. This, of course, puts the pro-abortionist in a morally difficult situation. For some health care facilities are killing viable babies by abortion in one room while in another room heroically trying to save premature infants (preemies). It seems only logical that if the 21-week-old preemie is fully human, then so is the 28-week-old unborn who can be legally killed by abortion. This is why philosopher Jane English, who is a moderate on the abortion issue (i.e., her position does not fit well into either the pro-life or pro-choice camp, although she seems closer to the latter), has asserted that "the similarity of a fetus to a baby is very significant. A fetus one week before birth is so much like a newborn baby in our psychological

space that we cannot allow any cavalier treatment of the former while expecting full sympathy and nurturative support for the latter...An early horror story from New York about nursers who were expected to alternate between caring for six-month premature infants and disposing of viable 24-week aborted fetuses is just that — a horror story.” English writes that “these beings are so much alike that no one can be asked to draw a distinction and treat them so differently.”¹¹

Many who defend the viability criterion argue in a circle. Take, for example, Supreme Court Justice Harry Blackmun’s use of it in his dissenting opinion in *Webster v. Reproductive Health Services* (1989):

The viability line reflects the biological facts and truths of fetal development; it marks the threshold moment prior to which a fetus cannot survive separate from the woman and cannot reasonably and objectively be regarded as a subject of rights or interests distinct from, or paramount to, those of the pregnant woman. At the same time, the viability standard takes account of the undeniable fact that as the fetus evolves into its postnatal form, and as it loses its dependence on the uterine environment, the State’s interest in the fetus’ potential human life, and in fostering a regard for human life in general, becomes compelling.¹²

Blackmun first tells us that viability is the time at which the state has interest in protecting potential human life because the fetus has no interests or rights prior to being able to survive outside the womb. But then we are told that viability is the best criterion because it “takes account of the undeniable fact that as the fetus evolves...and loses its dependence on the uterine environment, the State’s interest in the fetus’ potential human life... becomes compelling.” In other words, Blackmun is claiming that the state only has an interest in protecting fetal life when that life can live outside the womb. But why is this correct? Because, we are told, prior to being able to live outside the womb the fetus has no interests or rights. But this is clearly circular reasoning, for Blackmun is assuming (that the fetus has no interests or rights prior to viability) what he is trying to prove (that the fetus has no interests or rights prior to viability). This argument is no more compelling than the one given by the political science professor who argues that democracy is the best form of government because the best form of government is one run by the people (which, of course, is democracy). Such arguments are circular because they provide no independent reasons for their conclusions.

The Attainment of Sentience

Some ethicists argue that the unborn becomes fully human sometime after brain development has begun, when it becomes sentient: capable of experiencing sensations such as pain. The reason for choosing sentience as the criterion is that a being that cannot experience anything (i.e., a presentient unborn entity) cannot be harmed. Of course, if this position is correct, then the unborn becomes fully human probably during the second trimester and at least by the third trimester. Therefore, one does not violate anyone’s rights when one aborts a nonsentient unborn entity.¹³

There are several problems with this argument. First, it confuses harm with hurt and the experience of harm with the reality of harm.¹⁴ One can be harmed without experiencing the hurt that sometimes follows from that harm, and which we often mistake for the harm itself. For example, a temporarily comatose person who is suffocated to death “experiences no harm,” but he is nevertheless harmed. Hence, one does not have to experience harm, which is sometimes manifested in hurt, in order to be truly harmed.

Second, if sentience is the criterion of full humanness, then the reversibly comatose, the momentarily unconscious, and the sleeping would all have to be declared nonpersons. Like the presentient unborn, these individuals are all at the moment nonsentient though they have the natural inherent capacity to be sentient. Yet to countenance their executions would be morally reprehensible. Therefore, one cannot countenance the execution of some unborn entities simply because they are not currently sentient.

Someone may reply that while these objections make important points, there is a problem of false analogy in the second objection: the reversibly comatose, the momentarily unconscious, and the sleeping once functioned as sentient beings, though they are now in a temporary state of nonsentience. The presentient

unborn, on the other hand, were never sentient. Hence, one is fully human if one was sentient “in the past” and will probably become sentient again in the future, but this cannot be said of the presentient unborn.

There are at least three problems with this response. First, to claim that a person can be sentient, become nonsentient, and then return to sentience is to assume there is some underlying personal unity to this individual that enables us to say that the person who has returned to sentience is the same person who was sentient prior to becoming nonsentient. But this would mean that sentience is not a necessary condition for personhood. (Neither is it a sufficient condition, for that matter, since nonhuman animals are sentient.) Consequently, it does not make sense to say that a person comes into existence when sentience arises, but it does make sense to say that a fully human entity is a person who has the natural inherent capacity to give rise to sentience. A presentient unborn human entity does have this capacity. Therefore, an ordinary unborn human entity is a person, and hence, fully human.

Second, Ray points out that this attempt to exclude many of the unborn from the class of the fully human is “ad hoc and counterintuitive.” He asks us to “consider the treatment of comatose patients. We would not discriminate against one merely for rarely or never having been sentient in the past while another otherwise comparable patient had been sentient....In such cases, potential counts for everything.”¹⁵

Third, why should sentience “in the past” be the decisive factor in deciding whether an entity is fully human when the presentient human being “is one with a natural, inherent capacity for performing personal acts?”¹⁶ Since we have already seen that one does not have to experience harm in order to be harmed, it seems more consistent with our moral sensibilities to assert that what makes it wrong to kill the reversibly comatose, the sleeping, the momentarily unconscious, and the presentient unborn is that they all possess the natural inherent capacity to perform personal acts. And what makes it morally right to kill plants and to pull the plug on the respirator-dependent brain dead, who were sentient “in the past,” is that their deaths cannot deprive them of their natural inherent capacity to function as persons, since they do not possess such a capacity.

Criteria of Personhood

Several ethicists, such as Michael Tooley,¹⁷ Mary Anne Warren,¹⁸ James Rachels,¹⁹ and Virginia Ramey Mollenkott,²⁰ have put forth criteria that a being must fulfill in order to be considered fully human. For some these criteria apply to any entity, whether before or after birth. In fact, according to Tooley, birth has no bearing on the moral status of the newborn.²¹

Those who defend criteria for full humanness make a distinction between “being a human” and “being a person.” They argue that although the unborn are part of the species *homo sapiens*, and in that sense are human, they are not truly persons since they fail to fulfill a particular set of personhood criteria. Although the defenders of personhood criteria do not agree on everything, their underlying philosophical assumptions are similar enough that it is safe to say that if I can show that these assumptions are significantly flawed then no personhood criteria theory can succeed in supporting the abortion-rights position. Since Mollenkott’s view is the most clear and succinct example, I will use her article as my point of departure to critique the personhood criteria position. Although much of my critique of this view can be found in my criticisms of the other decisive moment and gradualist theories, its underlying philosophical assumptions, which are oftentimes not addressed by the proponents of this view, are deserving of a separate critique.

In order to fully grasp Mollenkott’s position, let me quote her at length:

Kay Coles James of the National Right to Life Committee claimed that fetal personhood is a biological fact rather than a theological perception. But in all truthfulness, the most that biology can claim is that the fetus is genetically human.... The issue of personhood is one that must be addressed through religious reasoning. Hence, the Lutheran Church in America makes “a qualitative distinction” between the claims of the fetus and “the rights of a responsible person made in God’s image who is in living relationships with God and

other human beings." Except in the most materialistic of philosophies, human personhood has a great deal to do with feelings, awareness, and interactive experience.²²

Mollenkott's argument can be put in the following argument-outline:

(Premise 1) A person can be defined as a living being with feelings, awareness, and interactive experience. (I assume she means some sort of consciousness.)

(Premise 2) An unborn entity does not possess the characteristics of a person as defined in Premise 1.

(Intermediate Conclusion) Therefore, an unborn entity does not possess personhood.

(Final Conclusion) Therefore, killing an unborn entity is not seriously wrong.

Others, such as Tooley and Warren, give more elaborate criteria of human personhood. For instance, Tooley claims that a being "cannot have a right to continued existence unless he possesses the concept of a subject of experiences, the concept of a temporal order, and the concept of identity of things over time." And since "the concept of a right is such that an individual cannot have a right that p be the case unless the individual is capable of desiring that p be the case," it follows that a nonself-conscious being with no desire for its own continued existence has no right to life.²³ Hence, the unborn do not have a right to life. In any event, the philosophical assumption behind both Mollenkott's and Tooley's arguments, as well as the arguments of others such as Warren and Rachels, is that only an entity that functions in a certain way (e.g., in the case of Tooley, "is capable of desiring that p be the case") is a person with a full right to life (i.e., fully human). I maintain that this position has several flaws.

First, it does not seem to follow from the intermediate conclusion (that an unborn human is not a person) that abortion is always morally justified. Jane English has pointed out that "non-persons do get some consideration in our moral code, though of course they do not have the same rights as persons have (and in general they do not have moral responsibilities), and though their interests may be overridden by the interests of persons. Still, we cannot just treat them in any way at all."²⁴

English goes on to write that we consider it morally wrong to torture beings that are nonpersons, such as dogs or birds, although we do not say these beings have the same rights as persons. And though she considers it problematic as to how we are to decide what one may or may not do to nonpersons, she nevertheless draws the conclusion that "if our moral rules allowed people to treat some person-like nonpersons in ways we do not want people to be treated, this would undermine the system of sympathies and attitudes that makes the ethical system work."²⁵

Second, one can question why one must accept a functional definition of personhood to exclude the unborn. It is not obvious that functional definitions always succeed. For example, when the Boston Celtics' Larry Bird is kissing his wife, does he cease to be a basketball player because he is not functioning as one? Of course not. He does not become a basketball player when he functions as a basketball player, but rather, he functions as a basketball player because he is a basketball player. Similarly, when a person is asleep, unconscious, or temporarily comatose, or a newborn, he (or she) is not functioning as a person as defined in premise 2. Nevertheless, no reasonable person would say that this individual is not a person while in this state.²⁶ Therefore, since a person functions as a person because he is a person and is not a person because he functions as a person, defining personhood strictly in terms of function is inadequate.

Of course, the abortion-rights advocate may want to argue, as was argued in the case of the sentience criterion, that the analogy between sleeping/unconscious/comatose persons and the unborn breaks down because the former at one time in their existence functioned as persons while the latter, the unborn, did not. Although this point is worth noting, the abortion-rights advocate fails to grasp the significant flaw in defining personhood strictly in terms of function.

As I pointed out in my criticism of the sentience criterion, to claim that a person can be functional, become nonfunctional, and then return to a state of function is to assume that there is some underlying personal unity to this individual that allows us to say that the person who has returned to functional capacity is the same person who was functional prior to being in a nonfunctional state. But this would

mean that human function is a sufficient but not a necessary condition for personhood. Consequently, it does not make sense to say that a person comes into existence when human function arises. Rather, it does make sense to say that a fully human entity is a person who has the natural inherent capacity to give rise to human functions. And since an unborn entity typically has this natural inherent capacity, (he or she) is a person.

As John Jefferson Davis writes, "Our ability to have conscious experiences and recollections arises out of our personhood; the basic metaphysical reality of personhood precedes the unfolding of the conscious abilities inherent in it."²⁷ Therefore, an ordinary unborn human entity is a person, and hence, fully human. In other words, because the unborn human is a person with a certain natural inherent capacity (i.e., her essence), she will function as a person in the near future, just as the reversibly comatose and the temporarily unconscious will likewise do because of their natural inherent capacity. The unborn are not potential persons but persons with much potential.

Along the same lines, Ray has made the observation that the view of human person as a natural "kind" which provides a ground for certain functions, rather than as an emergence of certain functions, is more consistent with our general moral intuitions. For "the recognition of the rights of the young is less dependent on their actual, current capacities than on their species and potential [i.e., their natural inherent capacity]."

For example, no one doubts that day-old human children have fewer actual capacities than day-old calves. Human infants, in terms of environmental awareness, mobility, etc., are rather unimpressive in comparison to the calves, especially if one calculates their ages from conception. But this comparison does not persuade us to believe that the calves have greater intrinsic worth and an inherent right to life. For if human infants were sold to butchers (let us suppose for the high market value of their body parts) in the same way that farmers sell calves to humane butchers, we would find such a practice deeply disturbing. Yet if intrinsic worth is really contingent upon current capacities rather than natural inherent capacity, we should have no problem with the selling of human infants to butchers. But Ray points out why we do find such a practice morally repugnant: "The wrongness would consist not merely in ignoring the interest that society might have in the children, but in violating the children's own rights. Yet if those rights are grounded in current capacities alone, the calves should enjoy at least the same moral status as the children, and probably higher status." What follows is that "the difference in status is plausibly explained... only with reference to the children's humanity, their natural kind."²⁸

THE GRADUALIST THESIS

Those who defend the gradualist thesis, such as Daniel Callahan and Robert Wennberg,²⁹ argue that the unborn entity increases in value as it develops physically. Unlike the theories critiqued above, in this view there is no one decisive moment at which the unborn entity moves from nonperson to person. For example, the one-celled zygote has less value than the three-month fetus while the three-month fetus has a lesser right-to-life than the eight-month fetus.

There have been a number of critiques of this position which space does not permit me to articulate here.³⁰ However, our critique of the major decisive-moment theories in Parts Three and Four of this series is sufficient to refute gradualism. That is to say, since none of the decisive moments we have already gone over can be shown to eradicate the full humanness of the unborn entity at any stage of her development, it follows that there are no philosophical, scientific, or moral grounds by which to say that the unborn gradually becomes fully human. For she would still need to achieve full humanness at some decisive moment. That is, someone who is fully human cannot gradually become more fully human. Certainly it is true that the unborn human physically develops gradually, as is true of humans at later stages (e.g., infancy, childhood, adolescence). But it does not follow from this fact that the unborn human is any less human than the infant, the child, or the adolescent. They are nonetheless fully human although they are gradually developing.

COMMON QUESTIONS

In my critique of the decisive moment theories, I dealt with a number of objections to the pro-life position. However, there are other common objections which should be answered. In this final section, I will briefly respond to five common questions asked about the pro-life position.

1. Why don't sperm and ova have a right to life since they are also genetically human? Sperm and ova do not have a right to life because they are not individual genetic human beings, but are merely parts of individual genetic human beings. They are only genetically human insofar as they share the genetic codes of their owners, but this is also true of their owners' other parts (e.g., hands, feet, kidneys, etc.). Sperm and ova cease to exist at conception when the zygote, an individual genetic human being, comes into existence.

2. Doesn't this view "absolutize" biological human life? Not at all. Although the pro-life advocate believes that biological human life is important, he or she certainly does not believe that it is absolute. For biological human life without the natural inherent capacity to function as a person is probably not fully human. And it is questionable whether the taking of such a life or the permitting of such a life to die can be classified as homicide. For example, I do not think it is homicide to pull the plug on a respirator that is biologically sustaining a brain-dead patient. Such a patient's natural capacity for personal acts is simply not present. Of course, other questions surrounding the problem of the withdrawal of certain forms of health care are much more complex and fall outside the scope of this series.³¹ In any event, the pro-life advocate does not absolutize biological human life and is willing to apply his principles critically and to think reflectively in morally challenging situations.

3. Aren't you absolutizing the unborn's right to life? No, for there could be times at which abortion is justified. The pro-lifer is fully cognizant of the fact that we live in a world in which moral conflicts can occur. Take, for example, the case in which it is highly likely that a woman's pregnancy will result in her death, as with a tubal pregnancy. Because it is a greater good that one human should live rather than two die, the pro-lifer believes that in this case abortion is justified, since otherwise both unborn and mother would die. However, as I argued elsewhere in this series, abortion is not justified by appeals to reasons such as financial burden or the child's potential handicap, because if the unborn entity is fully human, one must respect her life as one respects the lives of those who are already born.

4. Wouldn't your position mean that some forms of artificial birth control result in homicide? Yes. For example, forms of birth control that result in the death of the conceptus, such as the IUD and the "morning-after" pill (RU-486), would logically entail homicide if the pro-life position is correct. However, not every form of birth control results in the death of the conceptus. For example, the condom, diaphragm, some forms of the Pill, spermicides, and sterilization would not logically entail homicide if the pro-life position is correct, for they merely prevent conception.

This is why the pro-life advocate makes a distinction between contraception and birth control. Contraception literally means "to prevent conception." Therefore, all contraception is a form of birth control, since it prevents birth. But not all forms of birth control are contraceptive, since some forms — such as the ones cited above — prevent birth by killing the conceptus after conception. Hence, the pro-life advocate as such finds no problem with contraception as a form of family planning.

5. Isn't it true that some zygotes do not have forty-six chromosomes? Yes. Although the normal number of chromosomes is 46, some people are born with less (e.g., people with Turner's syndrome have 45) and some people are born with more (e.g., people with Down's syndrome have 47). But don't forget that my case for the unborn's humanness does not rest necessarily on the number of chromosomes an individual may have, but on the fact that the entity in question has a human genetic structure. Consequently, a human genetic structure can still subsist in an abnormal number of chromosomes (genes are contained in the chromosomes within the nuclei of a person's cells). That is to say, the Down's or Turner's syndrome child with human genes and an abnormal number of chromosomes is no more nonhuman than a child with an abnormal number of more obvious parts. For example, a person born with six fingers is human, as is a person born with one arm or one leg.

SUMMING IT UP

In this four-part series I critiqued four basic types of arguments that have been put forth in defense of both liberal and moderate positions on abortion rights: (1) arguments from pity (Parts One and Two); (2) arguments from tolerance (Part Two); (3) ad hominem arguments (Part Two); and (4) arguments from decisive moments (Parts Three and Four). In the process of critiquing these arguments I gave a defense of the pro-life position that full humanness begins at conception (Parts Three and Four), which included a detailed presentation of fetal development (Part Three).

Despite the number of arguments covered in this series, some readers will be disappointed that I did not deal with some theological arguments³² or lesser known philosophical arguments.³³ But since even a four-part series has its limitations and since Justice Harry Blackmun (who wrote the majority decision in *Roe v. Wade* [1973]) has argued that the morality of abortion is completely contingent on the full humanness of the unborn,³⁴ what has been covered in this series is more than sufficient. For this series has clearly established the following conclusions: (1) the popular arguments for abortion rights either beg the question as to the full humanness of the unborn or ignore the question altogether; and (2) both sound philosophical and scientific reasoning clearly establish the full humanness of the unborn from the moment of conception.

NOTES

1. Baruch Brody, *Abortion and the Sanctity of Human Life: A Philosophical View* (Cambridge, MA: M.I.T. Press, 1975).
2. *Ibid.*, 102.
3. Andrew Varga, *The Main Issues in Bioethics*, 2d ed. (New York: Paulist Press, 1984), 61-62.
4. *Ibid.*, 62.
5. Brody, 113-14.
6. A. Chadwick Ray, "Humanity, Personhood, and Abortion," *International Philosophical Quarterly* 25 (1985):238.
7. *Ibid.*
8. *Ibid.*
9. Varga, 62-63.
10. *Ibid.*, 63.
11. Jane English, "Abortion and the Concept of a Person," in *Biomedical Ethics*, ed. Thomas A. Mappes and Jane S. Zembatty (New York: McGraw-Hill, 1981), 430.
12. *Webster v. Reproductive Health Services* (1989) in *United States Law Week* 57 (July 1989):5040.
13. For a defense of this view, see Richard Werner, "Abortion: The Ontological and Moral Status of the Unborn," *Social Policy and Practice* 3 (1974):201-22.
14. See Joel Feinberg, "Grounds For Coercion," in *Ethical Theory and Social Issues*, ed. David Theo Goldberg (New York: Holt, Rinehart, and Winston, 1989), 307-15.
15. Ray, 240.
16. Peter Kreeft, "Human Personhood Begins at Conception," in *Journal of Biblical Ethics in Medicine* 4 (Winter 1990):11.
17. Michael Tooley, *Abortion and Infanticide* (Oxford: Clarendon Press, 1983).
18. Mary Anne Warren, "On the Moral and Legal Status of Abortion," in *Biomedical Ethics*, 417-23.
19. James Rachels, *The End of Life* (Oxford: Oxford University Press, 1986). For a critical analysis of this book, see J. P. Moreland's review in *The Thomist* 53 (Oct. 1989):714-22.
20. Virginia Ramey Mollenkott, "Reproductive Choice: Basic to Justice for Women," *Christian Scholar's Review* 17 (March 1988):286-93.
21. See Tooley.
22. Mollenkott, 291.
23. Tooley, 167. In rebuttal, see David Clark, "An Evaluation of the Quality of Life Argument for Infanticide," *Simon Greenleaf Law Review* 5 (1985-86):104-8; and Richard A. McCormick, S.J., *How Brave a New World? Dilemmas in Bioethics* (Washington, DC: Georgetown University Press, 1981), 157-59.
24. English, 429.
25. *Ibid.*, 430.
26. Some philosophers, such as Tooley (*Abortion & Infanticide*), "bite the bullet" and say that infanticide is not a form of murder since the newborn is not a person.
27. John Jefferson Davis, *Abortion and the Christian* (Phillipsburg, NJ: Presbyterian and Reformed Publishing Co., 1984), 57.
28. Ray, 240-41.
29. Daniel Callahan, *Abortion: Law, Choice, and Morality* (New York: Macmillan, 1970); and Robert Wennberg, *Life in the Balance: Exploring the Abortion Controversy* (Grand Rapids, MI: Williams B. Eerdmans Publishing Co., 1985).
30. Philip Devine, *The Ethics of Homicide* (Ithaca, NY: Cornell University Press, 1979); Robert E. Joyce, "Personhood and the Conception Event," *The New Scholasticism* 52 (Winter 1978):104-9; J. P. Moreland and Norman L. Geisler, *The Life and Death Debate: Moral Issues of Our Time* (Westport, CT: Praeger Books, 1990), 31-34.

31. See Moreland and Geisler, *The Life and Death Debate*; and Francis J. Beckwith and Norman L. Geisler, *Matters of Life and Death: Calm Answers to Tough Questions about Abortion and Euthanasia* (Grand Rapids: Baker Book House, 1991), part 2.
32. See my "A Critical Appraisal of the Theological Arguments for Abortion Rights," *Bibliotheca Sacra* (July/September 1991).
33. Judith Jarvis Thomson, for example, argues that abortion is morally justified even if the unborn are fully human. I critique this argument in "Personal Bodily Rights, Abortion, and Unplugging the Violinist: A Critical Analysis," *International Philosophical Quarterly* (March 1992) (forthcoming).
34. Justice Harry Blackmun, in "The 1973 Supreme Court Decisions on State Abortion Laws: Excerpts from Opinion in *Roe v. Wade*," in *The Problem of Abortion*, 2d ed., ed. Joel Feinberg (Belmont, CA: Wadsworth, 1984), 195.