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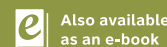
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BIOETHICS
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Bioethics

An Anthology

FOURTH EDITION

Edited by

Udo Schüklenk and Peter Singer

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Contents

Acknowledgments	xiii
Introduction	1
Part I Abortion	9
Introduction	11
1 Abortion and Infanticide <i>Michael Tooley</i>	15
2 A Defense of Abortion <i>Judith Jarvis Thomson</i>	31
3 The Wrong of Abortion <i>Patrick Lee and Robert P. George</i>	42
4 Why Abortion is Immoral <i>Don Marquis</i>	54
Part II Issues in Reproduction	67
Introduction	69
Assisted Reproduction	73
5 The McCaughey Septuplets: God's Will or Human Choice? <i>Gregory Pence</i>	75
6 The Meaning of Synthetic Gametes for Gay and Lesbian People and Bioethics Too <i>Timothy F. Murphy</i>	78
7 Rights, Interests, and Possible People <i>Derek Parfit</i>	85

Prenatal Screening, Sex Selection, and Cloning	91
8 Genetics and Reproductive Risk: Can Having Children Be Immoral? <i>Laura M. Purdy</i>	93
9 Sex Selection and Preimplantation Genetic Diagnosis <i>The Ethics Committee of the American Society of Reproductive Medicine</i>	101
10 Sex Selection and Preimplantation Diagnosis: A Response to the Ethics Committee of the American Society of Reproductive Medicine <i>Julian Savulescu and Edgar Dahl</i>	107
11 Why We Should Not Permit Embryos to Be Selected as Tissue Donors <i>David King</i>	110
12 The Moral Status of Human Cloning: Neo-Lockean Persons versus Human Embryos <i>Michael Tooley</i>	115
Part III Genetic Manipulation	133
Introduction	135
13 Questions about Some Uses of Genetic Engineering <i>Jonathan Glover</i>	139
14 The Moral Significance of the Therapy–Enhancement Distinction in Human Genetics <i>David B. Resnik</i>	151
15 In Defense of Posthuman Dignity <i>Nick Bostrom</i>	162
16 Statement on NIH Funding of Research Using Gene-Editing Technologies in Human Embryos <i>Francis S. Collins</i>	170
17 Genome Editing and Assisted Reproduction: Curing Embryos, Society or Prospective Parents? <i>Giulia Cavaliere</i>	172
18 Who’s Afraid of the Big Bad (Germline Editing) Wolf? <i>R. Alta Charo</i>	185
19 An Ethical Pathway for Gene Editing <i>Julian Savulescu and Peter Singer</i>	191
Part IV Life and Death Issues	195
Introduction	197
20 The Sanctity of Life <i>Jonathan Glover</i>	207
21 Declaration on Euthanasia <i>Sacred Congregation for the Doctrine of the Faith</i>	218

Killing and Letting Die	223
22 Active and Passive Euthanasia <i>James Rachels</i>	225
23 The Morality of Killing: A Traditional View <i>Germain Grisez and Joseph M. Boyle, Jr.</i>	230
24 Is Killing No Worse Than Letting Die? <i>Winston Nesbitt</i>	235
25 Why Killing is Not Always Worse – and Sometimes Better – Than Letting Die <i>Helga Kuhse</i>	240
26 Moral Fictions and Medical Ethics <i>Franklin G. Miller, Robert D. Truog, and Dan W. Brock</i>	244
Newborns	255
27 Can a Physician Ever Justifiably Euthanize a Severely Disabled Newborn? <i>Robert M. Sade</i>	257
28 No to Infant Euthanasia <i>Gilbert Meilaender</i>	259
29 Physicians Can Justifiably Euthanize Certain Severely Impaired Neonates <i>Udo Schüklenk</i>	262
30 You Should Not Have Let Your Baby Die <i>Gary Comstock</i>	266
31 After-Birth Abortion: Why Should the Baby Live? <i>Alberto Giubilini and Francesca Minerva</i>	269
32 Does a Human Being Gain the Right to Live after He or She is Born? <i>Christopher Kaczor</i>	275
33 Hard Lessons: Learning from the Charlie Gard Case <i>Dominic Wilkinson and Julian Savulescu</i>	280
Brain Death	289
34 A Definition of Irreversible Coma <i>Report of the Ad Hoc Committee of the Harvard Medical School to Examine the Definition of Brain Death</i>	291
35 The Challenge of Brain Death for the Sanctity of Life Ethic <i>Peter Singer</i>	296
36 The Philosophical Debate <i>The President's Council on Bioethics</i>	308

37	An Alternative to Brain Death <i>Jeff McMahan</i>	318
Advance Directives		323
38	Life Past Reason <i>Ronald Dworkin</i>	325
39	Dworkin on Dementia: Elegant Theory, Questionable Policy <i>Rebecca Dresser</i>	333
Voluntary Euthanasia and Medically Assisted Suicide		343
40	The Note <i>Chris Hill</i>	345
41	When Self-Determination Runs Amok <i>Daniel Callahan</i>	350
42	When Abstract Moralizing Runs Amok <i>John Lachs</i>	356
43	Physician-Assisted Death and Severe, Treatment-Resistant Depression <i>Bonnie Steinbock</i>	361
44	Are Concerns about Irremediableness, Vulnerability, or Competence Sufficient to Justify Excluding All Psychiatric Patients from Medical Aid in Dying? <i>William Rooney, Udo Schüklenk, and Suzanne van de Vathorst</i>	378
Part V Resource Allocation		393
Introduction		395
45	In a Pandemic, Should We Save Younger Lives? <i>Peter Singer and Lucy Winkett</i>	399
46	The Value of Life <i>John Harris</i>	403
47	Bubbles under the Wallpaper: Healthcare Rationing and Discrimination <i>Nick Beckstead and Toby Ord</i>	413
48	Rescuing Lives: Can't We Count? <i>Paul T. Menzel</i>	420
49	Should Alcoholics Compete Equally for Liver Transplantation? <i>Alvin H. Moss and Mark Siegler</i>	423

Part VI	Obtaining Organs	431
	Introduction	433
50	Organ Donation and Retrieval: Whose Body is it Anyway? <i>Eike-Henner W. Kluge</i>	435
51	The Case for Allowing Kidney Sales <i>Janet Radcliffe-Richards, A. S. Daar, R. D. Guttman, R. Hoffenberg, I. Kennedy, M. Lock, R. A. Sells and N. Tilney and for the International Forum Transplant Ethics</i>	439
52	Ethical Issues in the Supply and Demand of Kidneys <i>Debra Satz</i>	443
53	The Survival Lottery <i>John Harris</i>	456
Part VII	Ethical Issues in Research	463
	Introduction	465
	Experimentation with Humans	473
54	Belmont Report: Ethical Principles and Guidelines for the Protection of Human Subjects of Research <i>National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research</i>	475
55	Scientific Research is a Moral Duty <i>John Harris</i>	483
56	Participation in Biomedical Research is an Imperfect Moral Duty: A Response to John Harris <i>Sandra Shapshay and Kenneth D. Pimple</i>	495
57	Unethical Trials of Interventions to Reduce Perinatal Transmission of the Human Immunodeficiency Virus in Developing Countries <i>Peter Lurie and Sidney M. Wolfe</i>	501
58	We're Trying to Help Our Sickest People, Not Exploit Them <i>Danstan Bagenda and Philippa Musoke-Mudido</i>	507
59	Pandemic Ethics: The Case for Risky Research <i>Peter Singer and Richard Yetter Chappell</i>	510
	Experimentation with Animals	515
60	Duties towards Animals <i>Immanuel Kant</i>	517
61	A Utilitarian View <i>Jeremy Bentham</i>	519

62	The Harmful, Nontherapeutic Use of Animals in Research is Morally Wrong <i>Nathan Nobis</i>	521
63	The Use of Nonhuman Animals in Biomedical Research <i>Dario L. Ringach</i>	535
64	Ethical Issues When Modelling Brain Disorders in Non-Human Primates <i>Carolyn P. Neuhaus</i>	550
	Academic Freedom and Research	559
65	On Liberty <i>John Stuart Mill</i>	561
66	Should Some Knowledge Be Forbidden?: The Case of Cognitive Differences Research <i>Janet A. Kourany</i>	566
67	Academic Freedom and Race: You Ought Not to Believe What You Think May Be True <i>James R. Flynn</i>	575
	Part VIII Public Health Issues	585
	Introduction	587
68	Ethics and Infectious Disease <i>Michael J. Selgelid</i>	591
69	XDR-TB in South Africa: No Time for Denial or Complacency <i>Jerome Amir Singh, Ross Upshur, and Nesri Padayatchi</i>	602
70	Clinical Ethics During the Covid-19 Pandemic: Missing the Trees for the Forest <i>Vijayaprasad Gopichandran</i>	612
71	The Moral Obligation to be Vaccinated: Utilitarianism, Contractualism, and Collective Easy Rescue <i>Alberto Giubilini, Thomas Douglas, and Julian Savulescu</i>	620
72	Taking Responsibility for Responsibility <i>Neil Levy</i>	638
	Part IX Ethical Issues in the Practice of Healthcare	651
	Introduction	653
	When do Doctors have a Duty to Treat?	659
73	What Healthcare Professionals Owe Us: Why Their Duty to Treat During a Pandemic is Contingent on Personal Protective Equipment (PPE) <i>Udo Schüklenk</i>	661
74	Conscientious Objection in Health Care <i>Mark R. Wicclair</i>	667

75	Conscientious Objection in Medicine: Accommodation versus Professionalism and the Public Good <i>Udo Schüklenk</i>	682
	Confidentiality	693
76	Confidentiality in Medicine: A Decrepit Concept <i>Mark Siegler</i>	695
77	A Defense of Unqualified Medical Confidentiality <i>Kenneth Kipnis</i>	699
	Truth-Telling	713
78	On a Supposed Right to Lie from Altruistic Motives <i>Immanuel Kant</i>	715
79	Should Doctors Tell the Truth? <i>Joseph Collins</i>	717
80	On Telling Patients the Truth <i>Roger Higgs</i>	724
	Informed Consent and Patient Autonomy	731
81	On Liberty <i>John Stuart Mill</i>	733
82	From <i>Schloendorff v. New York Hospital</i> <i>Justice Benjamin N. Cardozo</i>	736
83	Informed Consent: Its History, Meaning, and Present Challenges <i>Tom L. Beauchamp</i>	737
84	The Doctor–Patient Relationship in Different Cultures <i>Ruth Macklin</i>	745
85	Transgender Children and the Right to Transition: Medical Ethics When Parents Mean Well But Cause Harm <i>Maura Priest</i>	758
86	Amputees by Choice <i>Carl Elliott</i>	777
87	Rational Desires and the Limitation of Life-Sustaining Treatment <i>Julian Savulescu</i>	788

Part X Disability	807
Introduction	809
88 Valuing Disability, Causing Disability <i>Elizabeth Barnes</i>	811
89 Is Disability Mere Difference? <i>Greg Bognar</i>	829
90 Prenatal Diagnosis and Selective Abortion: A Challenge to Practice and Policy <i>Adrienne Asch</i>	835
91 Down Syndrome Screening Isn't about Public Health: It's about Eliminating a Group of People <i>Renate Lindeman</i>	851
92 I Would've Aborted a Fetus with Down Syndrome: Women Need that Right <i>Ruth Marcus</i>	854
Part XI Neuroethics	857
Introduction	859
93 Neuroethics: Ethics and the Sciences of the Mind <i>Neil Levy</i>	861
94 Engineering Love <i>Julian Savulescu and Anders Sandberg</i>	867
95 Unrequited Love Hurts: Should Doctors Treat Broken Hearts? <i>Francesca Minerva</i>	870
96 Stimulating Brains, Altering Minds <i>Walter Glannon</i>	876
97 Authenticity or Autonomy? When Deep Brain Stimulation Causes a Dilemma <i>Felicitas Kraemer</i>	883
98 On the Necessity of Ethical Guidelines for Novel Neurotechnologies <i>Sara Goering and Rafael Yuste</i>	889
Index	895

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Introduction

The term “bioethics” is often mistakenly ascribed to the biologist Van Rensselaer Potter, who used it in the 1970s to describe his proposal that we need an ethic that can incorporate our obligations, not just to other humans, but to the biosphere as a whole.¹ However, a historically correct account should probably give credit for coining the term to Fritz Jahr, a German Protestant pastor, who in 1927 published an article called “Bio-Ethics: A Review of the Ethical Relationships of Humans to Animals and Plants.”² Jahr tried to establish “bioethics” both as a discipline and as a moral principle. Although the term is still occasionally used in the sense of an ecological ethic, it is now much more commonly used in the narrower sense of the study of ethical issues arising from the biological and medical sciences. So understood, bioethics has become a specialized, although interdisciplinary, area of study. The essays included in this book give an indication of the range of issues which fall within its scope – but it is only an indication. There are many other issues that we simply have not had the space to cover.

Bioethics can be seen as a branch of ethics, or, more specifically, of applied ethics. For this reason some understanding of the nature of ethics is an essential preliminary to any serious study of bioethics. The

remainder of this introduction will seek to provide that understanding.

One question about the nature of ethics is especially relevant to bioethics: to what extent is reasoning or argument possible in ethics? Many people assume without much thought that ethics is subjective. The subjectivist holds that what ethical view we take is a matter of opinion or taste that is not amenable to argument. But if ethics were a matter of taste, why would we even attempt to argue about it? If Helen says “I like my coffee sweetened,” whereas Paul says “I like my coffee unsweetened,” there is not much point in Helen and Paul arguing about it. The two statements do not contradict each other. They can both be true. But if Helen says “Doctors should never assist their patients to die” whereas Paul says “Sometimes doctors should assist their patients to die,” then Helen and Paul are disagreeing, and there does seem to be a point in their trying to argue about the issue of physician-assisted suicide.

It seems clear that there is some scope for argument in ethics. If I say “It is always wrong to kill a human being” and “Abortion is not always wrong,” then I am committed to denying that abortion kills a human being. Otherwise I have contradicted myself, and in doing so I have not stated a coherent position

at all. So consistency, at least, is a requirement of any defensible ethical position, and thus sets a limit to the subjectivity of ethical judgments. The requirement of factual accuracy sets another limit. In discussing issues in bioethics, the facts are often complex. But we cannot reach the right ethical decisions unless we are well-informed about the relevant facts. In this respect ethical decisions are unlike decisions of taste. We can enjoy a taste without knowing what we are eating; but if we assume that it is wrong to resuscitate a terminally ill patient against her wishes, then we cannot know whether an instance of resuscitation was morally right or wrong without knowing something about the patient's prognosis and whether the patient has expressed any wishes about being resuscitated. In that sense, there is no equivalent in ethics to the immediacy of taste.

Ethical relativism, sometimes also known as cultural relativism, is one step away from ethical subjectivism, but it also severely limits the scope of ethical argument. The ethical relativist holds that it is not individual attitudes that determine what is right or wrong, but the attitudes of the culture in which one lives. Herodotus tells how Darius, King of Persia, summoned the Greeks from the western shores of his kingdom before him, and asked them how much he would have to pay them to eat their fathers' dead bodies. They were horrified by the idea and said they would not do it for any amount of money, for it was their custom to cremate their dead. Then Darius called upon Indians from the eastern frontiers of his kingdom, and asked them what would make them willing to burn their fathers' bodies. They cried out and asked the King to refrain from mentioning so shocking an act. Herodotus comments that each nation thinks its own customs best. From here it is only a short step to the view that there can be no objective right or wrong, beyond the bounds of one's own culture. This view found increased support in the nineteenth century as Western anthropologists came to know many different cultures, and were impressed by ethical views very different from those that were standardly taken for granted in European society. As a defense against the automatic assumption that Western morality is

superior and should be imposed on "savages," many anthropologists argued that, since morality is relative to culture, no culture can have any basis for regarding its morality as superior to any other culture.

Although the motives with which anthropologists put this view forward were admirable, they may not have appreciated the implications of the position they were taking. The ethical relativist maintains that a statement like "It is good to enslave people from another tribe if they are captured in war" means simply "In my society, the custom is to enslave people from another tribe if they are captured in war." Hence if one member of the society were to question whether it really was good to enslave people in these circumstances, she could be answered simply by demonstrating that this was indeed the custom – for example, by showing that for many generations it had been done after every war in which prisoners were captured. Thus there is no way for moral reformers to say that an accepted custom is wrong – "wrong" just means "in accordance with an accepted custom."

On the other hand, when people from two different cultures disagree about an ethical issue, then according to the ethical relativist there can be no resolution of the disagreement. Indeed, strictly there is no disagreement. If the apparent dispute were over the issue just mentioned, then one person would be saying "In my country it is the custom to enslave people from another tribe if they are captured in war" and the other person would be saying "In my country it is not the custom to allow one human being to enslave another." This is no more a disagreement than such statements as "In my country people greet each other by rubbing noses" and "In my country people greet each other by shaking hands." If ethical relativism is true, then it is impossible to say that one culture is right and the other is wrong. Bearing in mind that some cultures have practiced slavery, or the burning of widows on the funeral pyre of their husbands, this is hard to accept.

A more promising alternative to both ethical subjectivism and cultural relativism is universal prescriptivism, an approach to ethics developed by the Oxford philosopher R. M. Hare. Hare argues that

the distinctive property of ethical judgments is that they are universalizable. In saying this, he means that if I make an ethical judgment, I must be prepared to state it in universal terms, and apply it to all relevantly similar situations. By “universal terms” Hare means those terms that do not refer to a particular individual. Thus a proper name cannot be a universal term. If, for example, I were to say “Everyone should do what is in the interests of Kim Kardashian,” I would not be making a universal judgment, because I have used a proper name. The same would be true if I were to say that everyone must do what is in *my* interests, because the personal pronoun “my” is here used to refer to a particular individual, myself.

It might seem that ruling out particular terms in this way does not take us very far. After all, one can always describe oneself in universal terms. Perhaps I can’t say that everyone should do what is in my interests, but I could say that everyone must do whatever is in the interests of people who . . . and then give a minutely detailed description of myself, including the precise location of all my freckles. The effect would be the same as saying that everyone should do what is in my interests, because there would be no one except me who matches that description. Hare meets this problem by saying that to prescribe an ethical judgment universally means being prepared to prescribe it for all possible circumstances, including hypothetical ones. So if I were to say that everyone should do what is in the interests of a person with a particular pattern of freckles, I must be prepared to prescribe that in the hypothetical situation in which I do not have this pattern of freckles, but someone else does, I should do what is in the interests of that person. Now of course I may *say* that I should do that, since I am confident that I shall never be in such a situation, but this simply means that I am being dishonest. I am not genuinely prescribing the principle universally.

The effect of saying that an ethical judgment must be universalizable for hypothetical as well as actual circumstances is that whenever I make an ethical judgment, I can be challenged to put myself in the position of the parties affected, and see if I would still be able to accept that judgment. Suppose, for example,

that I own a small factory and the cheapest way for me to get rid of some waste is to pour it into a nearby river. I do not take water from this river, but I know that some villagers living downstream do and the waste may make them ill. If I imagine myself in the hypothetical situation of being one of the villagers, rather than the factory-owner, I would not accept that the profits of the factory-owner should outweigh the risk of adverse effects on my health and that of my children. Hence I cannot claim that I am ethically justified in polluting the river.

In this way Hare’s approach introduces an element of reasoning in ethical deliberation. For Hare, however, since universalizability is part of the logic of moral language, an amoralist can avoid it by simply avoiding making any ethical judgments. More recently, several prominent moral philosophers, among them Thomas Nagel, T.M. Scanlon, and Derek Parfit have defended the view that we have objective reasons for action. Ethical judgments, in their view, are not statements of fact, but can nevertheless be true or false, in the same way that the truths of logic, or mathematics, are not statements of fact, but can be true or false. It is true, they would argue, that if someone is in agony, and we can relieve that agony, we have a reason for doing so. If we can relieve it at no cost, or a very low cost, to ourselves or anyone else, we will have a conclusive reason for relieving it, and it will be wrong not to do so.

The questions we have been discussing so far are questions *about* ethics, rather than questions *within* ethics. Philosophers call this “metaethics” and distinguish it from “normative ethics” in which we discuss what we ought to do. Normative ethics can also be divided into two parts, ethical theory and applied ethics. As we noted at the beginning of this introduction, bioethics is an area of applied ethics. Ethical theory, on the other hand, deals with broad ethical theories about how we ought to live and act, and we will now outline some of the more important of these theories.

Consequentialism is the view that the rightness of an action depends on its consequences. The best-known form of consequentialism is utilitarianism, developed in the late eighteenth century by Jeremy Bentham and popularized in the nineteenth century

by John Stuart Mill. They held that an action is right if it leads to a greater surplus of happiness over misery than any possible alternative, and wrong if it does not. By “greater surplus of happiness,” the classical utilitarians had in mind the idea of adding up all the pleasure or happiness that resulted from the action and subtracting from that total all the pain or misery to which the action gave rise. Naturally, in some circumstances, it might be possible only to reduce misery, and then the right action should be understood as the one that will result in less misery than any possible alternative.

The utilitarian view is striking in many ways. It puts forward a single principle that it claims can provide the right answer to all ethical dilemmas, if only we can predict what the consequences of our actions will be. It takes ethics out of the mysterious realm of duties and rules, and bases ethical decisions on something that almost everyone understands and values. Moreover, utilitarianism’s single principle is applied universally, without fear or favor. Bentham said: “Each to count for one and none for more than one.” By that he meant that the happiness of a peasant counted for as much as that of a noble, and the happiness of an African was no less important than that of a European – a progressive view to take when English ships were engaged in the slave trade.

Some contemporary consequentialists agree with Bentham to the extent that they think the rightness or wrongness of an action must depend on its consequences, but they deny that maximizing net happiness is the only consequence that has intrinsic value. Some of them argue that we should seek to bring about whatever will satisfy the greatest number of desires or preference. This variation, which is known as “preference utilitarianism,” does not regard anything as good, except in so far as it is wanted or desired. More intense or strongly held preferences would get more weight than weak preferences. Other consequentialists include independent values, like freedom, justice, and knowledge. They are sometimes referred to as “ideal utilitarians” but it is better to think of them, not as utilitarians at all, but as pluralistic consequentialists (because they hold several independent values, rather than just one).

Consequentialism offers one important answer to the question of how we should decide what is right and what is wrong, but many ethicists reject it. The denial of this view was dramatically presented by Dostoevsky in *The Karamazov Brothers*:

Imagine that you are charged with building the edifice of human destiny, the ultimate aim of which is to bring people happiness, to give them peace and contentment at last, but that in order to achieve this it is essential and unavoidable to torture just one little speck of creation, that same little child beating her chest with her little fists, and imagine that this edifice has to be erected on her unexpiated tears. Would you agree to be the architect under those conditions? Tell me honestly!³

The passage suggests that some things are always wrong, no matter what their consequences. This has, for most of Western history, been the prevailing approach to morality, at least at the level of what has been officially taught and approved by the institutions of Church and State. The ten commandments of the Hebrew scriptures served as a model for much of the Christian era, and the Roman Catholic Church built up an elaborate system of morality based on rules to which no exceptions were allowed.

Another example of an ethic of rules is that of Immanuel Kant. Kant’s ethic is based on his “Categorical Imperative,” which he states in several distinct formulations. One is that we must always act so that we can will the maxim of our action to be a universal law. This can be interpreted as a form of Hare’s idea of universalizability, which we have already encountered. Another is that we must always treat other people as ends, never as means. While these formulations of the Categorical Imperative might be applied in various ways, in Kant’s hands they lead to inviolable rules, for example, against making promises that we do not intend to keep. Kant also thought that it was always wrong to tell a lie. In response to a critic who suggested that this rule has exceptions, Kant said that it would be wrong to lie even if someone had taken refuge in your house, and a person seeking to murder him came to your door and asked if you

knew where he was. Modern Kantians often reject this hardline approach to rules, and claim that Kant's Categorical Imperative did not require him to hold so strictly to the rule against lying.

How would a consequentialist – for example, a classical utilitarian – answer Dostoevsky's challenge? If answering honestly – and if one really could be certain that this was a sure way, and the only way, of bringing lasting happiness to all the people of the world – utilitarians would have to say yes, they would accept the task of being the architect of the happiness of the world at the cost of the child's unexpiated tears. For they would point out that the suffering of that child, wholly undeserved as it is, will be repeated a million fold over the next century, for other children, just as innocent, who are victims of starvation, disease, and brutality. So if this one child must be sacrificed to stop all this suffering then, terrible as it is, the child must be sacrificed.

Fantasy apart, there can be no architect of the happiness of the world. The world is too big and complex a place for that. But we may attempt to bring about less suffering and more happiness, or satisfaction of preferences, for people or sentient beings in specific places and circumstances. Alternatively, we might follow a set of principles or rules – which could be of varying degrees of rigidity or flexibility. Where would such rules come from? Kant tried to deduce them from his Categorical Imperative, which in turn he had reached by insisting that the moral law must be based on formal reason alone, which for him meant the idea of a universal law, without any content from our wants or desires. But the problem with trying to deduce morality from reason alone has always been that it becomes an empty formalism that cannot tell us what to do. To make it practical, it needs to have some additional content, and Kant's own attempts to deduce rules of conduct from his Categorical Imperative are unconvincing.

Others, following Aristotle, have tried to draw on human nature as a source of moral rules. What is good, they say, is what is natural to human beings. They then contend that it is natural and right for us to seek certain goods, such as knowledge, friendship, health,

love, and procreation, and unnatural and wrong for us to act contrary to these goods. This “natural law” ethic is open to criticism on several points. The word “natural” can be used both descriptively and evaluatively, and the two senses are often mixed together so that value judgments may be smuggled in under the guise of a description. The picture of human nature presented by proponents of natural law ethics usually selects only those characteristics of our nature that the proponent considers desirable. The fact that our species, especially its male members, frequently go to war, and are also prone to commit individual acts of violence against others, is no doubt just as much part of our nature as our desire for knowledge, but no natural law theorist therefore views these activities as good. More generally, natural law theory has its origins in an Aristotelian idea of the cosmos, in which everything has a goal or “end,” which can be deduced from its nature. The “end” of a knife is to cut; the assumption is that human beings also have an “end,” and we will flourish when we live in accordance with the end for which we are suited. But this is a pre-Darwinian view of nature. Since Darwin, we know that we do not exist for any purpose, but are the result of natural selection operating on random mutations over millions of years. Hence there is no reason to believe that living according to nature will produce a harmonious society, let alone the best possible state of affairs for human beings.

Another way in which it has been claimed that we can come to know what moral principles or rules we should follow is through our intuition. In practice this usually means that we adopt conventionally accepted moral principles or rules, perhaps with some adjustments in order to avoid inconsistency or arbitrariness. On this view, a moral theory should, like a scientific theory, try to match the data; and the data that a moral theory must match is provided by our moral intuitions. As in science, if a plausible theory matches most, but not all, of the data, then the anomalous data might be rejected on the grounds that it is more likely that there was an error in the procedures for gathering that particular set of data than that the theory as a whole is mistaken. But ultimately the test of a theory is its

ability to explain the data. The problem with applying this model of scientific justification to ethics is that the “data” of our moral intuitions is unreliable, not just at one or two specific points, but as a whole. Here the facts that cultural relativists draw upon are relevant (even if they do not establish that cultural relativism is the correct response to it). Since we know that our intuitions are strongly influenced by such things as culture and religion, they are ill-suited to serve as the fixed points against which an ethical theory must be tested. Even where there is cross-cultural agreement, there may be some aspects of our intuitions on which *all* cultures unjustifiably favor our own interests over those of others. For example, simply because we are all human beings, we may have a systematic bias that leads us to give an unjustifiably low moral status to nonhuman animals. Or, because, in virtually all known human societies, men have taken a greater leadership role than women, the moral intuitions of all societies may not adequately reflect the interests of females.

Some philosophers think that it is a mistake to base ethics on principles or rules. Instead they focus on what it is to be a good person – or, in the case of the problems with which this book is concerned, perhaps on what it is to be a good nurse or doctor or researcher. They seek to describe the virtues that a good person, or a good member of the relevant profession, should possess. Moral education then consists of teaching these virtues and discussing how a virtuous person would act in specific situations. The question is, however, whether we can have a notion of what a virtuous person would do in a specific situation without making a prior decision about what it is right to do. After all, in any particular moral dilemma, different virtues may be applicable, and even a particular virtue will not always give unequivocal guidance. For instance, if a terminally ill patient repeatedly asks a nurse or doctor for assistance in dying, what response best exemplifies the virtues of a healthcare professional? There seems no answer to this question, short of an inquiry into whether it is right or wrong to help a patient in such circumstances to die. But in that case we seem bound, in the end, to come back to discussing such issues as whether it is right to follow

moral rules or principles, or to do what will have the best consequences.

In the late twentieth century, some feminists offered new criticisms of conventional thought about ethics. They argued that the approaches to ethics taken by the influential philosophers of the past – all of whom have been male – give too much emphasis to abstract principles and the role of reason, and give too little attention to personal relationships and the part played by emotion. One outcome of these criticisms has been the development of an “ethic of care,” which is not so much a single ethical theory as a cluster of ways of looking at ethics which put an attitude of caring for others at the center, and seek to avoid reliance on abstract ethical principles. The ethic of care has seemed especially applicable to the work of those involved in direct patient care. Not all feminists, however, support this development. Some worry that presenting an ethic of care in opposition to a “male” ethic based on reasoning reflects and reinforces stereotypes of women as more emotional and less rational than men. They also fear that it could lead to women continuing to carry a disproportionate share of the burden of caring for others.

In this discussion of ethics we have not mentioned anything about religion. This may seem odd, in view of the close connection that has often been made between religion and ethics, but it reflects our belief that, despite this historical connection, ethics and religion are fundamentally independent. Logically, ethics is prior to religion. If religious believers wish to say that a deity is good, or praise her or his creation or deeds, they must have a notion of goodness that is independent of their conception of the deity and what she or he does. Otherwise they will be saying that the deity is good, and when asked what they mean by “good,” they will have to refer back to the deity, saying perhaps that “good” means “in accordance with the wishes of the deity.” In that case, sentences such as “God is good” would be a meaningless tautology. “God is good” could mean no more than “God is in accordance with God’s wishes.” As we have already seen, there are ideas of what it is for something to be “good” that are not rooted in any religious

belief. While religions typically encourage or instruct their followers to obey a particular ethical code, it is obvious that others who do not follow any religion can also think and act ethically.

To say that ethics is independent of religion is not to deny that theologians or other religious believers may have a role to play in bioethics. Religious traditions often have long histories of dealing with ethical dilemmas, and the accumulation of wisdom and experience that they represent can give us valuable insights into particular problems. But these insights should be subject to criticism in the way that any other proposals would be. If in the end we accept them, it is because we have judged them sound, not because they are the utterances of a pope, a rabbi, a mullah, or a holy person.

Ethics is also independent of the law, in the sense that the rightness or wrongness of an act cannot be settled by its legality or illegality. Whether an act is legal or illegal may often be relevant to whether it is right or wrong, because it is arguably wrong to break the law, other things being equal. Many people have thought that this is especially so in a democracy, in which everyone has a say in making the law. Another reason why the fact that an act is illegal may be a reason against doing it is that the legality of an act may affect the consequences that are likely to flow from it. If active voluntary euthanasia is illegal, then doctors who practice it risk going to jail, which will cause them and their families to suffer, and also mean that they will no longer be able to help other patients. This can be a powerful reason for not practicing voluntary euthanasia when it is against the law, but if there is only a very small chance of the offense becoming known, then the weight of this consequentialist reason against breaking the law is reduced accordingly. Whether we have an ethical obligation to obey the law, and, if so, how much weight we should give it, is itself an issue for ethical argument.

Though ethics is independent of the law, in the sense just specified, laws are subject to evaluation from an ethical perspective. Many debates in bioethics focus on questions about what practices should be allowed – for example, should we allow research

on stem cells taken from human embryos, sex selection, or cloning? – and committees set up to advise on the ethical, social, and legal aspects of these questions often recommend legislation to prohibit the activity in question, or to allow it to be practiced under some form of regulation. Discussing a question at the level of law and public policy, however, raises somewhat different considerations than a discussion of personal ethics, because the consequences of adopting a public policy generally have much wider ramifications than the consequences of a personal choice. That is why some healthcare professionals feel justified in assisting a terminally ill patient to die, while at the same time opposing the legalization of physician-assisted suicide. Paradoxical as this position may appear – and it is certainly open to criticism – it is not straightforwardly inconsistent.

Many of the essays we have selected reflect the times in which they were written. Since bioethics often comments on developments in fast-moving areas of medicine and the biological sciences, the factual content of articles in bioethics can become obsolete quite rapidly. In preparing this 4th edition, we have taken the opportunity to cover some new issues and to include some more recent writings. Part X, on Disability, is new, as are the section in Part VII on Academic Freedom and Research and the essays in Part IX on Doctors' Duty to Treat. There are new articles in almost every other section as well, on gene editing, the morality of ending the lives of newborns, brain death, the eligibility of mentally ill patients for assisted dying and experiments on humans and on animals, and on public health.

Some authors of articles that have become dated in their facts have kindly updated them especially for this edition. An article may, however, be dated in its facts but make ethical points that are still valid, or worth considering, so we have not excluded older articles for this reason.

Other articles are dated in a different way. During the past few decades we have become more sensitive about the ways in which our language may exclude women, or reflect our prejudices regarding race or sexuality. We see no merit in trying to disguise past practices on

such matters (although we have made minor changes to some of the older writings in this anthology, in order to bring the terminology used in line with contemporary usage), so we have not excluded otherwise valuable works in bioethics on these grounds. If they are jarring to the modern reader, that may be a salutary reminder of the extent to which we all are subject to the conventions and prejudices of our times.

Helga Kuhse was a co-editor of the first three editions of this anthology. She has now retired from academic work, and so decided not to join us in co-editing this edition. Nevertheless, her influence remains present, in the articles carried over from

earlier editions. We thank her for helping to establish *Bioethics: An Anthology* as a comprehensive and widely used collection of the best articles in the field.

Katherine Carr did a stellar job as the copy-editor of this volume. The number of errors she spotted in previously published peer-reviewed (and presumably copy-edited and proof-read) journal articles is extraordinary.

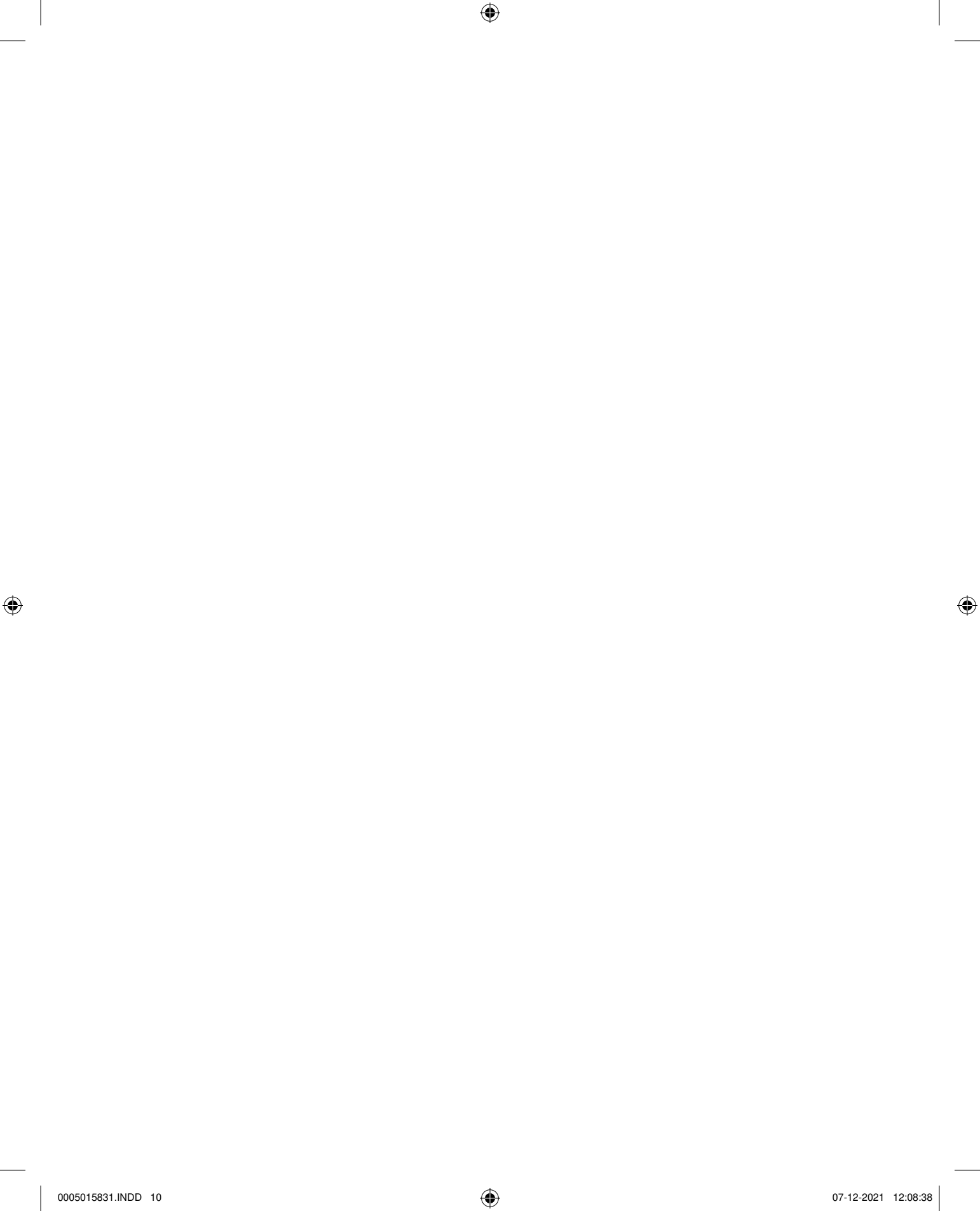
Last, but not least, we thank two Graduate Students in the Queen's University Department of Philosophy who assisted us in sourcing possible materials for inclusion in the 3rd edition of this text (Nikoo Najand) and in this current edition (Chris Zajner).

Notes

- 1 See Van Rensselaer Potter, *Bioethics: Bridge to the Future* (Englewood Cliffs, NJ: Prentice-Hall, 1971).
- 2 Fritz Jahr, Bio-Ethik: Eine Umschau über die ethischen Beziehungen des Menschen zu Tier und Pflanze. *Kosmos. Handweiser für Naturfreunde*, 1927, 24:2–4.
- 3 *The Karamazov Brothers*, trans. Ignat Avsey (Oxford: Oxford University Press, 1994), vol. I, part 2, bk. 5, ch. 4. First published in 1879.

Part I

Abortion



Introduction

The view that human life has special value is deeply rooted in most people's thinking and no serious ethical theory allows a person to be killed without strong moral justification. Abortions terminate the lives of fetuses. Given that these fetuses are human, and of course innocent of any wrongdoing, it is easy to see why some people consider abortion to be unjustifiable homicide. In some respects fetuses are like persons; but in other respects they are very different. Therefore we need to ask whether they have the same moral status as those human beings we think of as persons.

In the first article in this Part, Michael Tooley provides a challenge to the view that fetuses are persons. In his 1972 landmark article "Abortion and Infanticide," he seeks to articulate and defend an ethically significant criterion that confers personhood and a right to life. To have a right to life, Tooley argues, an entity needs to possess a concept of self, that is, be "capable of desiring to continue existing as a subject of experiences and other mental states." An entity that has this capability is a person, whereas one that lacks it is not. This view has implications that enable us to defend abortion, but also challenge the moral views of most people who accept abortion; for on this view neither fetuses nor newborn infants are persons, whereas some nonhuman animals, such as chimpanzees and elephants, do seem to be persons.

Tooley thus holds that the *potential* to become a person is not sufficient to give fetuses a right to life. Here it is important to take a closer look at the notions of potentiality and capacity. Sleeping persons – unable to exercise the capacity to desire their own continued existence while asleep – are, according to Tooley, still persons because they *possess* the relevant capacity in a sense in which fetuses do not. A person who is asleep was self-conscious before she went to sleep and will be the same self-conscious person when she wakes up; a fetus, on the other hand, has never been awake and self-conscious.

Tooley takes the issue of personhood to be central. Judith Jarvis Thomson, in "A Defense of Abortion" takes a very different approach. For the purposes of her argument, Thomson accepts that the fetus is a person, but argues that *even if* one grants this premise, the conclusion that every person has a right to life – in the sense that would make abortion wrong – does not follow. She then uses an ingenious analogy to support her view that one person's right to life does not always outweigh another person's rights to something less than life. This general view applies, Thomson holds, in the case of pregnancy and abortion. A woman has a right to control her body, and a fetus only has the right to use a woman's body if she has implicitly given it that right. This would be the case if the woman is

responsible, in some sense of the term, for its presence in her body. In many cases – certainly in the case of a pregnancy resulting from rape, and arguably, if more doubtfully, when contraception has failed – the woman bears little or no responsibility for the presence of the fetus in her body and would thus, according to Thomson, be justified in having an abortion. She would not be killing the fetus unjustly.

Thomson reminds us that any complete assessment of the ethics of abortion must focus not only on the purported rights or interests of fetuses, but also on the rights of women. But her argument has been criticized as incomplete. One of the strongest objections focuses on her narrow understanding of the right to life. It has, for example, been argued that a right to life, properly understood, also entails the provision of positive aid. If this is correct, then Thomson's argument on abortion is inconclusive.

In "The Wrong of Abortion" Patrick Lee and Robert P. George argue that the choice to have an abortion is immoral, in an objective sense. They begin by noting three features of human embryos: their distinctiveness from sperm and egg, their humanness, and their completeness or wholeness. In their view, it follows from this that during an abortion a human being is killed. This human being is at an earlier stage of development than you or I, but is a member of our species nonetheless.

Lee and George reject Tooley's personhood argument. In their view we are not consciousnesses that inhabit human bodies, rather we are continuing living bodily entities, some of which may take years to develop the capacity to reason. Contra Tooley, they think that the right to life belongs to any being with a rational nature, by which they mean, not that the being is actually capable of reasoning, but that it is a being with "the internal resources and active disposition" to develop the higher mental functions that are typically developed by human beings. This implies, of course, that whole human beings have that right, from the moment of conception. They reject Thomson's argument by suggesting that while an unwanted pregnancy may lead to significant inconvenience, this

inconvenience pales into insignificance considering that abortion leads to the preventable death of a human being.

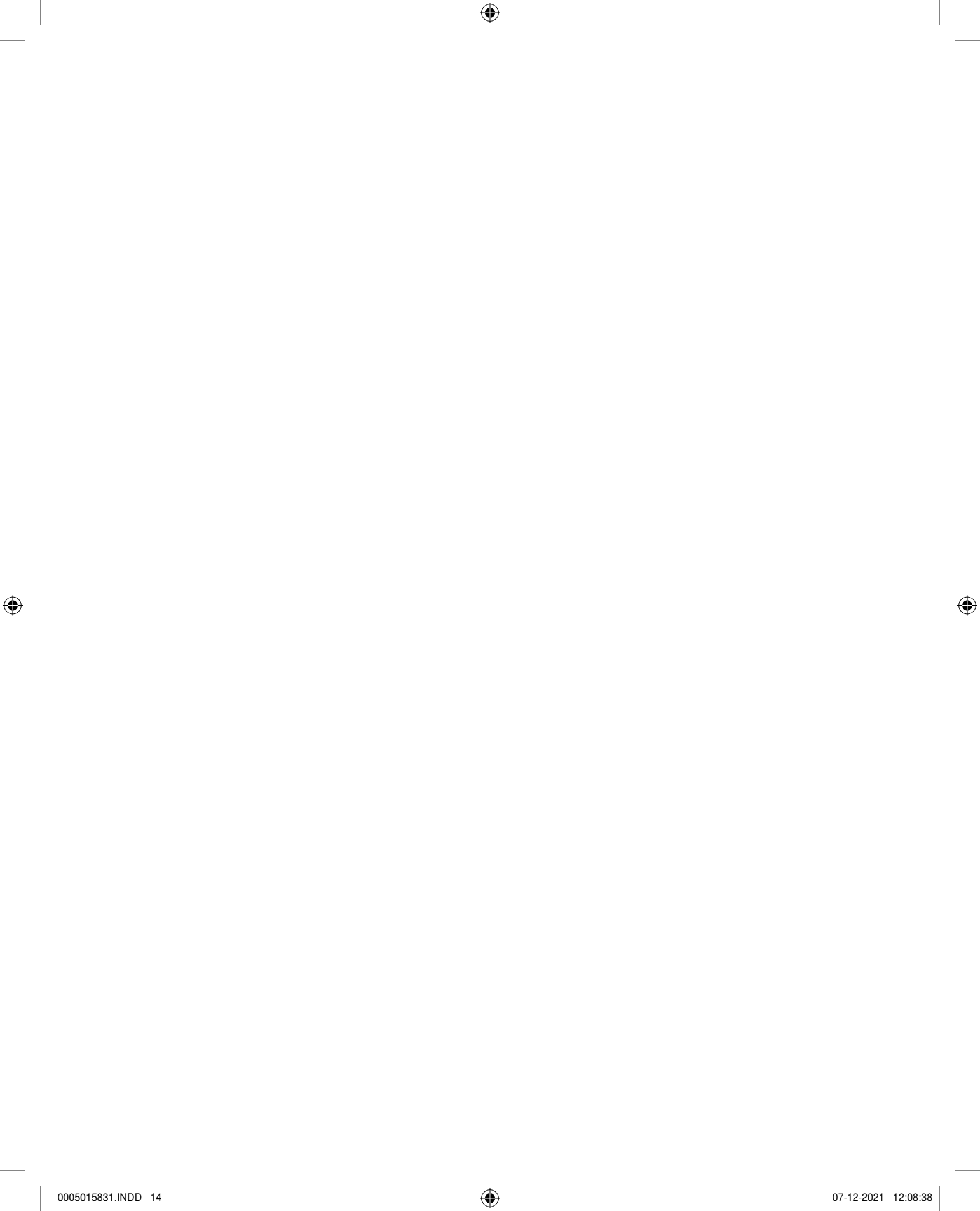
In the final article of Part I, Don Marquis adopts yet another approach to explain, as the title of his article indicates, "Why Abortion is Immoral." Like Tooley, and Lee and George, he assumes that the morality of abortion depends on whether or not the fetus is the kind of being whose life it is seriously wrong to end. According to Marquis, abortion is immoral for the same reason that it is wrong to kill you or me – not because the fetus is a person or a potential person, but rather because killing the fetus deprives it of its future. The loss of one's life is one of the greatest losses one can suffer; it deprives the victim of all the projects, experiences, enjoyments and so on that would otherwise have constituted that individual's future. This, Marquis holds, is what makes killing, other things being equal, wrong – regardless of whether one is a fetus, child, or adult.

Marquis argues that his position must not be confused with a sanctity of human life view. It does not, for example, rule out euthanasia. Killing a person who wants to die when she is seriously ill and faces a life of pain and suffering does not deprive that person of a valuable future. Nor is his theory, he claims, speciesist. The view that killing is wrong because it is the loss to the victim of the victim's future is, Marquis points out, straightforwardly incompatible with the view that it is wrong to kill only beings that are biologically human. It would be equally wrong to kill nonhuman animals and species from other planets, if these beings have futures relevantly like ours. Similarly, it would not be wrong to kill a human fetus with a genetic abnormality that precludes any possibility of a life that is worth living.

These features of his theory, Marquis claims, avoid some of the problems faced both by proponents of the sanctity of all human life, and by adherents of a personhood view. Those who deny that fetuses are persons find themselves in the embarrassing position of having to accept that their theory will, in principle, not only allow the killing of fetuses, but also the killing of infants. Opponents of abortion, on the other

hand, often rely on what Marquis calls the “invalid inference” that it is wrong to kill fetuses because they are potential persons. But is Marquis’ own account really so different from the argument from potential? Does it, like that argument, face the further criticism that such accounts make abortion and contraception

equally wrong: if it is wrong to kill a one-cell zygote because doing so deprives the zygote of a valuable future, why is it not equally wrong to deprive an egg and a sperm, still separate but considered jointly, of a valuable future?



Abortion and Infanticide

*Michael Tooley*¹

This essay deals with the question of the morality of abortion and infanticide. The fundamental ethical objection traditionally advanced against these practices rests on the contention that human fetuses and infants have a right to life. It is this claim which will be the focus of attention here. The basic issue to be discussed, then, is what properties a thing must possess in order to have a serious right to life. My approach will be to set out and defend a basic moral principle specifying a condition an organism must satisfy if it is to have a serious right to life. It will be seen that this condition is not satisfied by human fetuses and infants, and thus that they do not have a right to life. So unless there are other substantial objections to abortion and infanticide, one is forced to conclude that these practices are morally acceptable ones. In contrast, it may turn out that our treatment of adult members of other species – cats, dogs, polar bears – is morally indefensible. For it is quite possible that such animals do possess properties that endow them with a right to life.

I Abortion and Infanticide

One reason the question of the morality of infanticide is worth examining is that it seems very difficult to formulate a completely satisfactory liberal position on abortion without coming to grips with the infanticide issue. The problem the liberal encounters is essentially that of specifying a cutoff point which is not arbitrary: at what stage in the development of a human being does it cease to be morally permissible to destroy it? It is important to be clear about the difficulty here. The conservative's objection is not that since there is a continuous line of development from a zygote to a newborn baby, one must conclude that if it is seriously wrong to destroy a newborn baby it is also seriously wrong to destroy a zygote or any intermediate stage in the development of a human being. His point is rather that if one says it is wrong to destroy a newborn baby but not a zygote or some intermediate stage in the development of a human being, one should be prepared to point to a *morally relevant* difference

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between a newborn baby and the earlier stage in the development of a human being.

Precisely the same difficulty can, of course, be raised for a person who holds that infanticide is morally permissible. The conservative will ask what morally relevant differences there are between an adult human being and a newborn baby. What makes it morally permissible to destroy a baby, but wrong to kill an adult? So the challenge remains. But I will argue that in this case there is an extremely plausible answer.

Reflecting on the morality of infanticide forces one to face up to this challenge. In the case of abortion a number of events – quickening or viability, for instance – might be taken as cutoff points, and it is easy to overlook the fact that none of these events involves any morally significant change in the developing human. In contrast, if one is going to defend infanticide, one has to get very clear about what makes something a person, what gives something a right to life.

One of the interesting ways in which the abortion issue differs from most other moral issues is that the plausible positions on abortion appear to be extreme positions. For if a human fetus is a person, one is inclined to say that, in general, one would be justified in killing it only to save the life of the mother.² Such is the extreme conservative position.³ On the other hand, if the fetus is not a person, how can it be seriously wrong to destroy it? Why would one need to point to special circumstances to justify such action? The upshot is that there is no room for a moderate position on the issue of abortion such as one finds, for example, in the Model Penal Code recommendations.⁴

Aside from the light it may shed on the abortion question, the issue of infanticide is both interesting and important in its own right. The theoretical interest has been mentioned: it forces one to face up to the question of what makes something a person. The practical importance need not be labored. Most people would prefer to raise children who do not suffer from gross deformities or from severe physical, emotional, or intellectual handicaps. If it could be shown that there is no moral objection to infanticide the

happiness of society could be significantly and justifiably increased.

Infanticide is also of interest because of the strong emotions it arouses. The typical reaction to infanticide is like the reaction to incest or cannibalism, or the reaction of previous generations to masturbation or oral sex. The response, rather than appealing to carefully formulated moral principles, is primarily visceral. When philosophers themselves respond in this way, offering no arguments, and dismissing infanticide out of hand it is reasonable to suspect that one is dealing with a taboo rather than with a rational prohibition.⁵ I shall attempt to show that this is in fact the case.

II Terminology: “Person” versus “Human Being”

How is the term “person” to be interpreted? I shall treat the concept of a person as a purely moral concept, free of all descriptive content. Specifically, in my usage the sentence “X is a person” will be synonymous with the sentence “X has a (serious) moral right to life.”

This usage diverges slightly from what is perhaps the more common way of interpreting the term “person” when it is employed as a purely moral term, where to say that X is a person is to say that X has rights. If everything that had rights had a right to life, these interpretations would be extensionally equivalent. But I am inclined to think that it does not follow from acceptable moral principles that whatever has any rights at all has a right to life. My reason is this. Given the choice between being killed and being tortured for an hour, most adult humans would surely choose the latter. So it seems plausible to say it is worse to kill an adult human being than it is to torture him for an hour. In contrast, it seems to me that while it is not seriously wrong to kill a newborn kitten, it is seriously wrong to torture one for an hour. This *suggests* that newborn kittens may have a right not to be tortured without having a serious right to life. For it seems to be true that an individual has a right to something whenever it is the case that, if he wants that

thing, it would be wrong for others to deprive him of it. Then if it is wrong to inflict a certain sensation upon a kitten if it doesn't want to experience that sensation, it will follow that the kitten has a right not to have sensation inflicted upon it.⁶ I shall return to this example later. My point here is merely that it provides some reason for holding that it does not follow from acceptable moral principles that if something has any rights at all, it has a serious right to life.

There has been a tendency in recent discussions of abortion to use expressions such as "person" and "human being" interchangeably. B. A. Brody, for example, refers to the difficulty of determining "whether destroying the foetus constitutes the taking of a human life," and suggests it is very plausible that "the taking of a human life is an action that has bad consequences for him whose life is being taken."⁷ When Brody refers to something as a human life he apparently construes this as entailing that the thing is a person. For if every living organism belonging to the species *Homo sapiens* counted as a human life, there would be no difficulty in determining whether a fetus inside a human mother was a human life.

The same tendency is found in Judith Jarvis Thomson's article, which opens with the statement: "Most opposition to abortion relies on the premise that the fetus is a human being, a person, from the moment of conception."⁸ The same is true of Roger Wertheimer, who explicitly says: "First off I should note that the expressions 'a human life,' 'a human being,' 'a person' are virtually interchangeable in this context."⁹

The tendency to use expressions like "person" and "human being" interchangeably is an unfortunate one. For one thing, it tends to lend covert support to antiabortionist positions. Given such usage, one who holds a liberal view of abortion is put in the position of maintaining that fetuses, at least up to a certain point, are not human beings. Even philosophers are led astray by this usage. Thus Wertheimer says that "except for monstrosities, every member of our species is indubitably a person, a human being, at the very latest at birth."¹⁰ Is it really *indubitable* that newborn babies are persons? Surely this is a wild contention.

Wertheimer is falling prey to the confusion naturally engendered by the practice of using "person" and "human being" interchangeably. Another example of this is provided by Thomson: "I am inclined to think also that we shall probably have to agree that the fetus has already become a human person well before birth. Indeed, it comes as a surprise when one first learns how early in its life it begins to acquire human characteristics. By the tenth week, for example, it already has a face, arms and legs, fingers and toes; it has internal organs, and brain activity is detectable."¹¹ But what do such physiological characteristics have to do with the question of whether the organism is a person? Thomson, partly, I think, because of the unfortunate use of terminology, does not even raise this question. As a result she virtually takes it for granted that there are some cases in which abortion is "positively indecent."¹²

There is a second reason why using "person" and "human being" interchangeably is unhappy philosophically. If one says that the dispute between pro- and anti-abortionists centers on whether the fetus is a human, it is natural to conclude that it is essentially a disagreement about certain facts, a disagreement about what properties a fetus possesses. Thus Wertheimer says that "if one insists on using the raggy fact-value distinction, then one ought to say that the dispute is over a matter of fact in the sense in which it is a fact that the Negro slaves were human beings."¹³ I shall argue that the two cases are not parallel, and that in the case of abortion what is primarily at stake is what moral principles one should accept. If one says that the central issue between conservatives and liberals in the abortion question is whether the fetus is a person, it is clear that the dispute may be either about what properties a thing must have in order to be a person, in order to have a right to life – a moral question – or about whether a fetus at a given stage of development as a matter of fact possesses the properties in question. The temptation to suppose that the disagreement must be a factual one is removed.

It should now be clear why the common practice of using expressions such as "person" and "human being" interchangeably in discussions of abortion is

unfortunate. It would perhaps be best to avoid the term “human” altogether, employing instead some expression that is more naturally interpreted as referring to a certain type of biological organism characterized in physiological terms, such as “member of the species *Homo sapiens*.” My own approach will be to use the term “human” only in contexts where it is not philosophically dangerous.

III The Basic Issue: When is a Member of the Species *Homo sapiens* a Person?

Settling the issue of the morality of abortion and infanticide will involve answering the following questions: What properties must something have to be a person, i.e., to have a serious right to life? At what point in the development of a member of the species *Homo sapiens* does the organism possess the properties that make it a person? The first question raises a moral issue. To answer it is to decide what basic¹⁴ moral principles involving the ascription of a right to life one ought to accept. The second question raises a purely factual issue, since the properties in question are properties of a purely descriptive sort.

Some writers seem quite pessimistic about the possibility of resolving the question of the morality of abortion. Indeed, some have gone so far as to suggest that the question of whether the fetus is a person is in principle unanswerable: “we seem to be stuck with the indeterminateness of the fetus’ humanity.”¹⁵ An understanding of some of the sources of this pessimism will, I think, help us to tackle the problem. Let us begin by considering the similarity a number of people have noted between the issue of abortion and the issue of Negro slavery. The question here is why it should be more difficult to decide whether abortion and infanticide are acceptable than it was to decide whether slavery was acceptable. The answer seems to be that in the case of slavery there are moral principles of a quite uncontroversial sort that settle the issue. Thus most people would agree to some such principle

as the following: No organism that has experiences, that is capable of thought and of using language, and that has harmed no one, should be made a slave. In the case of abortion, on the other hand, conditions that are generally agreed to be sufficient grounds for ascribing a right to life to something do not suffice to settle the issue. It is easy to specify other, purportedly sufficient conditions that will settle the issue, but no one has been successful in putting forward considerations that will convince others to accept those additional moral principles.

I do not share the general pessimism about the possibility of resolving the issue of abortion and infanticide because I believe it is possible to point to a very plausible moral principle dealing with the question of *necessary* conditions for something’s having a right to life, where the conditions in question will provide an answer to the question of the permissibility of abortion and infanticide.

There is a second cause of pessimism that should be noted before proceeding. It is tied up with the fact that the development of an organism is one of gradual and continuous change. Given this continuity, how is one to draw a line at one point and declare it permissible to destroy a member of *Homo sapiens* up to, but not beyond, that point? Won’t there be an arbitrariness about any point that is chosen? I will return to this worry shortly. It does not present a serious difficulty once the basic moral principles relevant to the ascription of a right to life to an individual are established.

Let us turn now to the first and most fundamental question: What properties must something have in order to be a person, i.e., to have a serious right to life? The claim I wish to defend is this: An organism possesses a serious right to life only if it possesses the concept of a self as a continuing subject of experiences and other mental states, and believes that it is itself such a continuing entity.

My basic argument in support of this claim, which I will call the self-consciousness requirement, will be clearest, I think, if I first offer a simplified version of the argument, and then consider a modification that seems desirable. The simplified version of my argument is this. To ascribe a right to an individual is to

assert something about the *prima facie* obligations of other individuals to act, or to refrain from acting, in certain ways. However, the obligations in question are conditional ones, being dependent upon the existence of certain desires of the individual to whom the right is ascribed. Thus if an individual asks one to destroy something to which he has a right, one does not violate his right to that thing if one proceeds to destroy it. This suggests the following analysis: "A has a right to X" is roughly synonymous with "If A desires X, then others are under a *prima facie* obligation to refrain from actions that would deprive him of it."¹⁶

Although this analysis is initially plausible, there are reasons for thinking it not entirely correct. I will consider these later. Even here, however, some expansion is necessary, since there are features of the concept of a right that are important in the present context, and that ought to be dealt with more explicitly. In particular, it seems to be a conceptual truth that things that lack consciousness, such as ordinary machines, cannot have rights. Does this conceptual truth follow from the above analysis of the concept of a right? The answer depends on how the term "desire" is interpreted. If one adopts a completely behavioristic interpretation of "desire," so that a machine that searches for an electrical outlet in order to get its batteries recharged is described as having a desire to be recharged, then it will not follow from this analysis that objects that lack consciousness cannot have rights. On the other hand, if "desire" is interpreted in such a way that desires are states necessarily standing in some sort of relationship to states of consciousness, it will follow from the analysis that a machine that is not capable of being conscious, and consequently of having desires, cannot have any rights. I think those who defend analyses of the concept of a right along the lines of this one do have in mind an interpretation of the term "desire" that involves reference to something more than behavioral dispositions. However, rather than relying on this, it seems preferable to make such an interpretation explicit. The following analysis is a natural way of doing that: "A has a right to X" is roughly synonymous with "A is the sort of thing that is a subject of experiences and other mental states, A

is capable of desiring X, and if A does desire X, then others are under a *prima facie* obligation to refrain from actions that would deprive him of it."

The next step in the argument is basically a matter of applying this analysis to the concept of a right to life. Unfortunately the expression "right to life" is not entirely a happy one, since it suggests that the right in question concerns the continued existence of a biological organism. That this is incorrect can be brought out by considering possible ways of violating an individual's right to life. Suppose, for example, that by some technology of the future the brain of an adult human were to be completely reprogrammed, so that the organism wound up with memories (or rather, apparent memories), beliefs, attitudes, and personality traits completely different from those associated with it before it was subjected to reprogramming. In such a case one would surely say that an individual had been destroyed, that an adult human's right to life had been violated, even though no biological organism had been killed. This example shows that the expression "right to life" is misleading, since what one is really concerned about is not just the continued existence of a biological organism, but the right of a subject of experiences and other mental states to continue to exist.

Given this more precise description of the right with which we are here concerned, we are now in a position to apply the analysis of the concept of a right stated above. When we do so we find that the statement "A has a right to continue to exist as a subject of experiences and other mental states" is roughly synonymous with the statement "A is a subject of experiences and other mental states, A is capable of desiring to continue to exist as a subject of experiences and other mental states, and if A does desire to continue to exist as such an entity, then others are under a *prima facie* obligation not to prevent him from doing so."

The final stage in the argument is simply a matter of asking what must be the case if something is to be capable of having a desire to continue existing as a subject of experiences and other mental states. The basic point here is that the desires a thing can have are limited by the concepts it possesses. For the fundamental way of

describing a given desire is as a desire that a certain proposition be true.¹⁷ Then, since one cannot desire that a certain proposition be true unless one understands it, and since one cannot understand it without possessing the concepts involved in it, it follows that the desires one can have are limited by the concepts one possesses. Applying this to the present case results in the conclusion that an entity cannot be the sort of thing that can desire that a subject of experiences and other mental states exist unless it possesses the concept of such a subject. Moreover, an entity cannot desire that it itself *continue* existing as a subject of experiences and other mental states unless it believes that it is now such a subject. This completes the justification of the claim that it is a necessary condition of something's having a serious right to life that it possess the concept of a self as a continuing subject of experiences, and that it believe that it is itself such an entity.

Let us now consider a modification in the above argument that seems desirable. This modification concerns the crucial conceptual claim advanced about the relationship between ascription of rights and ascription of the corresponding desires. Certain situations suggest that there may be exceptions to the claim that if a person doesn't desire something, one cannot violate his right to it. There are three types of situations that call this claim into question: (i) situations in which an individual's desires reflect a state of emotional disturbance; (ii) situations in which a previously conscious individual is temporarily unconscious; (iii) situations in which an individual's desires have been distorted by conditioning or by indoctrination.

As an example of the first, consider a case in which an adult human falls into a state of depression which his psychiatrist recognizes as temporary. While in the state he tells people he wishes he were dead. His psychiatrist, accepting the view that there can be no violation of an individual's right to life unless the individual has a desire to live, decides to let his patient have his way and kills him. Or consider a related case in which one person gives another a drug that produces a state of temporary depression; the recipient expresses a wish that he were dead. The person who administered the drug then kills him. Doesn't

one want to say in both these cases that the agent did something seriously wrong in killing the other person? And isn't the reason the action was seriously wrong in each case the fact that it violated the individual's right to life? If so, the right to life cannot be linked with a desire to live in the way claimed above.

The second set of situations are ones in which an individual is unconscious for some reason – that is, he is sleeping, or drugged, or in a temporary coma. Does an individual in such a state have any desires? People do sometimes say that an unconscious individual wants something, but it might be argued that if such talk is not to be simply false it must be interpreted as actually referring to the desires the individual *would* have if he were now conscious. Consequently, if the analysis of the concept of a right proposed above were correct, it would follow that one does not violate an individual's right if one takes his car, or kills him, while he is asleep.

Finally, consider situations in which an individual's desires have been distorted, either by inculcation of irrational beliefs or by direct conditioning. Thus an individual may permit someone to kill him because he has been convinced that if he allows himself to be sacrificed to the gods he will be gloriously rewarded in a life to come. Or an individual may be enslaved after first having been conditioned to desire a life of slavery. Doesn't one want to say that in the former case an individual's right to life has been violated, and in the latter his right to freedom?

Situations such as these strongly suggest that even if an individual doesn't want something, it is still possible to violate his right to it. Some modification of the earlier account of the concept of a right thus seems in order. The analysis given covers, I believe, the paradigmatic cases of violation of an individual's rights, but there are other, secondary cases where one also wants to say that someone's right has been violated which are not included.

Precisely how the revised analysis should be formulated is unclear. Here it will be sufficient merely to say that, in view of the above, an individual's right to X can be violated not only when he desires X, but also when he *would* now desire X were it not for one

of the following: (i) he is in an emotionally unbalanced state; (ii) he is temporarily unconscious; (iii) he has been conditioned to desire the absence of X.

The critical point now is that, even given this extension of the conditions under which an individual's right to something can be violated, it is still true that one's right to something can be violated only when one has the conceptual capability of desiring the thing in question. For example, an individual who would now desire not to be a slave if he weren't emotionally unbalanced, or if he weren't temporarily unconscious, or if he hadn't previously been conditioned to want to be a slave, must possess the concepts involved in the desire not to be a slave. Since it is really only the conceptual capability presupposed by the desire to continue existing as a subject of experiences and other mental states, and not the desire itself, that enters into the above argument, the modification required in the account of the conditions under which an individual's rights can be violated does not undercut my defense of the self-consciousness requirement.¹⁸

To sum up, my argument has been that having a right to life presupposes that one is capable of desiring to continue existing as a subject of experiences and other mental states. This in turn presupposes both that one has the concept of such a continuing entity and that one believes that one is oneself such an entity. So an entity that lacks such a consciousness of itself as a continuing subject of mental states does not have a right to life.

It would be natural to ask at this point whether satisfaction of this requirement is not only necessary but also sufficient to ensure that a thing has a right to life. I am inclined to an affirmative answer. However, the issue is not urgent in the present context, since as long as the requirement is in fact a necessary one we have the basis of an adequate defense of abortion and infanticide. If an organism must satisfy some other condition before it has a serious right to life, the result will merely be that the interval during which infanticide is morally permissible may be somewhat longer. Although the point at which an organism first achieves self-consciousness and hence the capacity of desiring to continue existing as a subject of experiences and

other mental states may be a theoretically incorrect cutoff point, it is at least a morally safe one: any error it involves is on the side of caution.

IV Some Critical Comments on Alternative Proposals

I now want to compare the line of demarcation I am proposing with the cutoff points traditionally advanced in discussions of abortion. My fundamental claim will be that none of these cutoff points can be defended by appeal to plausible, basic moral principles. The main suggestions as to the point past which it is seriously wrong to destroy something that will develop into an adult member of the species *Homo sapiens* are these: (a) conception; (b) the attainment of human form; (c) the achievement of the ability to move about spontaneously; (d) viability; (e) birth.¹⁹ The corresponding moral principles suggested by these cutoff points are as follows. (1) It is seriously wrong to kill an organism, from a zygote on, that belongs to the species *Homo sapiens*. (2) It is seriously wrong to kill an organism that belongs to *Homo sapiens* and that has achieved human form. (3) It is seriously wrong to kill an organism that is a member of *Homo sapiens* and that is capable of spontaneous movement. (4) It is seriously wrong to kill an organism that belongs to *Homo sapiens* and that is capable of existing outside the womb. (5) It is seriously wrong to kill an organism that is a member of *Homo sapiens* that is no longer in the womb.

My first comment is that it would not do *simply* to omit the reference to membership in the species *Homo sapiens* from the above principles, with the exception of principle (2). For then the principles would be applicable to animals in general, and one would be forced to conclude that it was seriously wrong to abort a cat fetus, or that it was seriously wrong to abort a motile cat fetus, and so on.

The second and crucial comment is that none of the five principles given above can plausibly be viewed as a *basic* moral principle. To accept any of them as

such would be akin to accepting as a basic moral principle the proposition that it is morally permissible to enslave black members of the species *Homo sapiens* but not white members. Why should it be seriously wrong to kill an unborn member of the species *Homo sapiens* but not seriously wrong to kill an unborn kitten? Difference in species is not per se a morally relevant difference. If one holds that it is seriously wrong to kill an unborn member of the species *Homo sapiens* but not an unborn kitten, one should be prepared to point to some property that is morally significant and that is possessed by unborn members of *Homo sapiens* but not by unborn kittens. Similarly, such a property must be identified if one believes it seriously wrong to kill unborn members of *Homo sapiens* that have achieved viability but not seriously wrong to kill unborn kittens that have achieved that state.

What property might account for such a difference? That is to say, what *basic* moral principles might a person who accepts one of these five principles appeal to in support of his secondary moral judgment? Why should events such as the achievement of human form, or the achievement of the ability to move about, or the achievement of viability, or birth serve to endow something with a right to life? What the liberal must do is to show that these events involve changes, or are associated with changes, that are morally relevant.

Let us now consider reasons why the events involved in cutoff points (b) through (e) are not morally relevant, beginning with the last two: viability and birth. The fact that an organism is not physiologically dependent upon another organism, or is capable of such physiological independence, is surely irrelevant to whether the organism has a right to life. In defense of this contention, consider a speculative case where a fetus is able to learn a language while in the womb. One would surely not say that the fetus had no right to life until it emerged from the womb, or until it was capable of existing outside the womb. A less speculative example is the case of Siamese twins who have learned to speak. One doesn't want to say that since one of the twins would die were the two to be separated, it therefore has no right to life. Consequently it seems difficult to disagree with the conservative's claim that

an organism which lacks a right to life before birth or before becoming viable cannot acquire this right immediately upon birth or upon becoming viable.

This does not, however, completely rule out viability as a line of demarcation. For instead of defending viability as a cutoff point on the ground that only then does a fetus acquire a right to life, it is possible to argue rather that when one organism is physiologically dependent upon another, the former's right to life may conflict with the latter's right to use its body as it will, and moreover, that the latter's right to do what it wants with its body may often take precedence over the other organism's right to life. Thomson has defended this view: "I am arguing only that having a right to life does not guarantee having either a right to the use of or a right to be allowed continued use of another person's body – even if one needs it for life itself. So the right to life will not serve the opponents of abortion in the very simple and clear way in which they seem to have thought it would."²⁰ I believe that Thomson is right in contending that philosophers have been altogether too casual in assuming that if one grants the fetus a serious right to life, one must accept a conservative position on abortion.²¹ I also think the only defense of viability as a cutoff point which has any hope of success at all is one based on the considerations she advances. I doubt very much, however, that this defense of abortion is ultimately tenable. I think that one can grant even stronger assumptions than those made by Thomson and still argue persuasively for a semiconservative view. What I have in mind is this. Let it be granted, for the sake of argument, that a woman's right to free her body of parasites which will inhibit her freedom of action and possibly impair her health is stronger than the parasite's right to life, and is so even if the parasite has as much right to life as an adult human. One can still argue that abortion ought not to be permitted. For if A's right is stronger than B's, and it is impossible to satisfy both, it does not follow that A's should be satisfied rather than B's. It may be possible to compensate A if his right isn't satisfied, but impossible to compensate B if his right isn't satisfied. In such a case the best thing to do may be to satisfy B's claim and to compensate A. Abortion may be a case in point. If the fetus has a right to life and the

right is not satisfied, there is certainly no way the fetus can be compensated. On the other hand, if the woman's right to rid her body of harmful and annoying parasites is not satisfied, she can be compensated. Thus it would seem that the just thing to do would be to prohibit abortion, but to compensate women for the burden of carrying a parasite to term. Then, however, we are back at a (modified) conservative position.²² Our conclusion must be that it appears unlikely there is any satisfactory defense either of viability or of birth as cutoff points.

Let us now consider the third suggested line of demarcation, the achievement of the power to move about spontaneously. It might be argued that acquiring this power is a morally relevant event on the grounds that there is a connection between the concept of an agent and the concept of a person, and being motile is an indication that a thing is an agent.²³

It is difficult to respond to this suggestion unless it is made more specific. Given that one's interest here is in defending a certain cutoff point, it is natural to interpret the proposal as suggesting that motility is a necessary condition of an organism's having a right to life. But this won't do, because one certainly wants to ascribe a right to life to adult humans who are completely paralyzed. Maybe the suggestion is rather that motility is a sufficient condition of something's having a right to life. However, it is clear that motility alone is not sufficient, since this would imply that all animals, and also certain machines, have a right to life. Perhaps, then, the most reasonable interpretation of the claim is that motility together with some other property is a sufficient condition of something's having a right to life, where the other property will have to be a property possessed by unborn members of the species *Homo sapiens* but not by unborn members of other familiar species.

The central question, then, is what this other property is. Until one is told, it is very difficult to evaluate either the moral claim that motility together with that property is a sufficient basis for ascribing to an organism a right to life or the factual claim that a motile human fetus possesses that property while a motile fetus belonging to some other species does not. A conservative would presumably reject motility

as a cutoff point by arguing that whether an organism has a right to life depends only upon its potentialities, which are of course not changed by its becoming motile. If, on the other hand, one favors a liberal view of abortion, I think that one can attack this third suggested cutoff point, in its unspecified form, only by determining what properties are necessary, or what properties sufficient, for an individual to have a right to life. Thus I would base my rejection of motility as a cutoff point on my claim, defended above, that a necessary condition of an organism's possessing a right to life is that it conceive of itself as a continuing subject of experiences and other mental states.

The second suggested cutoff point – the development of a recognizably human form – can be dismissed fairly quickly. I have already remarked that membership in a particular species is not itself a morally relevant property. For it is obvious that if we encountered other “rational animals,” such as Martians, the fact that their physiological makeup was very different from our own would not be grounds for denying them a right to life.²⁴ Similarly, it is clear that the development of human form is not in itself a morally relevant event. Nor do there seem to be any grounds for holding that there is some other change, associated with this event, that is morally relevant. The appeal of this second cutoff point is, I think, purely emotional.

The overall conclusion seems to be that it is very difficult to defend the cutoff points traditionally advanced by those who advocate either a moderate or a liberal position on abortion. The reason is that there do not seem to be any basic moral principles one can appeal to in support of the cutoff points in question. We must now consider whether the conservative is any better off.

V Refutation of the Conservative Position

Many have felt that the conservative's position is more defensible than the liberal's because the conservative can point to the gradual and continuous development

of an organism as it changes from a zygote to an adult human being. He is then in a position to argue that it is morally arbitrary for the liberal to draw a line at some point in this continuous process and to say that abortion is permissible before, but not after, that particular point. The liberal's reply would presumably be that the emphasis upon the continuity of the process is misleading. What the conservative is really doing is simply challenging the liberal to specify the properties a thing must have in order to be a person, and to show that the developing organism does acquire the properties at the point selected by the liberal. The liberal may then reply that the difficulty he has meeting this challenge should not be taken as grounds for rejecting his position. For the conservative cannot meet this challenge either; the conservative is equally unable to say what properties something must have if it is to have a right to life.

Although this rejoinder does not dispose of the conservative's argument, it is not without bite. For defenders of the view that abortion is always wrong have failed to face up to the question of the basic moral principles on which their position rests. They have been content to assert the wrongness of killing any organism, from a zygote on, if that organism is a member of the species *Homo sapiens*. But they have overlooked the point that this cannot be an acceptable *basic* moral principle, since difference in species is not in itself a morally relevant difference. The conservative can reply, however, that it is possible to defend his position – but not the liberal's – *without* getting clear about the properties a thing must possess if it is to have a right to life. The conservative's defense will rest upon the following two claims: first, that there is a property, even if one is unable to specify what it is, that (i) is possessed by adult humans, and (ii) endows any organism possessing it with a serious right to life. Second, that if there are properties which satisfy (i) and (ii) above, at least one of those properties will be such that any organism potentially possessing that property has a serious right to life even now, simply by virtue of that potentiality, where an organism possesses a property potentially if it will come to have that property in the normal course of its development. The second

claim – which I shall refer to as the potentiality principle – is critical to the conservative's defense. Because of it he is able to defend his position without deciding what properties a thing must possess in order to have a right to life. It is enough to know that adult members of *Homo sapiens* do have such a right. For then one can conclude that any organism which belongs to the species *Homo sapiens*, from a zygote on, must also have a right to life by virtue of the potentiality principle.

The liberal, by contrast, cannot mount a comparable argument. He cannot defend his position without offering at least a partial answer to the question of what properties a thing must possess in order to have a right to life.

The importance of the potentiality principle, however, goes beyond the fact that it provides support for the conservative's position. If the principle is unacceptable, then so is his position. For if the conservative cannot defend the view that an organism's having certain potentialities is sufficient grounds for ascribing to it a right to life, his claim that a fetus which is a member of *Homo sapiens* has a right to life can be attacked as follows. The reason an adult member of *Homo sapiens* has a right to life, but an infant ape does not, is that there are certain psychological properties which the former possesses and the latter lacks. Now, even if one is unsure exactly what these psychological properties are, it is clear that an organism in the early stages of development from a zygote into an adult member of *Homo sapiens* does not possess these properties. One need merely compare a human fetus with an ape fetus. What mental states does the former enjoy that the latter does not? Surely it is reasonable to hold that there are no significant differences in their respective mental lives – assuming that one wishes to ascribe any mental states at all to such organisms. (Does a zygote have a mental life? Does it have experiences? Or beliefs? Or desires?) There are, of course, physiological differences, but these are not in themselves morally significant. If one held that potentialities were relevant to the ascription of a right to life, one could argue that the physiological differences, though not morally significant in themselves, are morally significant by virtue of their causal consequences: they will lead

to later psychological differences that are morally relevant, and for this reason the physiological differences are themselves morally significant. But if the potentiality principle is not available, this line of argument cannot be used, and there will then be no differences between a human fetus and an ape fetus that the conservative can use as grounds for ascribing a serious right to life to the former but not to the latter.

It is therefore tempting to conclude that the conservative view of abortion is acceptable if and only if the potentiality principle is acceptable. But to say that the conservative position can be defended if the potentiality principle is acceptable is to assume that the argument is over once it is granted that the fetus has a right to life, and, as was noted above, Thomson has shown that there are serious grounds for questioning this assumption. In any case, the important point here is that the conservative position on abortion is acceptable *only if* the potentiality principle is sound.

One way to attack the potentiality principle is simply to argue in support of the self-consciousness requirement – the claim that only an organism that conceives of itself as a continuing subject of experiences has a right to life. For this requirement, when taken together with the claim that there is at least one property, possessed by adult humans, such that any organism possessing it has a serious right to life, entails the denial of the potentiality principle. Or at least this is so if we add the uncontroversial empirical claim that an organism that will in the normal course of events develop into an adult human does not from the very beginning of its existence possess a concept of a continuing subject of experiences together with a belief that it is itself such an entity.

I think it best, however, to scrutinize the potentiality principle itself, and not to base one's case against it simply on the self-consciousness requirement. Perhaps the first point to note is that the potentiality principle should not be confused with principles such as the following: the value of an object is related to the value of the things into which it can develop. This "valuation principle" is rather vague. There are ways of making it more precise, but we need not consider these here. Suppose now that one were to speak not

of a right to life, but of the value of life. It would then be easy to make the mistake of thinking that the valuation principle was relevant to the potentiality principle – indeed, that it entailed it. But an individual's right to life is not based on the value of his life. To say that the world would be better off if it contained fewer people is not to say that it would be right to achieve such a better world by killing some of the present inhabitants. *If* having a right to life were a matter of a thing's value, then a thing's potentialities, being connected with its expected value, would clearly be relevant to the question of what rights it had. Conversely, once one realizes that a thing's rights are not a matter of its value, I think it becomes clear that an organism's potentialities are irrelevant to the question of whether it has a right to life.

But let us now turn to the task of finding a direct refutation of the potentiality principle. The basic issue is this. Is there any property J which satisfies the following conditions: (1) There is a property K such that any individual possessing property K has a right to life, and there is a scientific law L to the effect that any organism possessing property J will in the normal course of events come to possess property K at some later time. (2) Given the relationship between property J and property K just described, anything possessing property J has a right to life. (3) If property J were not related to property K in the way indicated, it would not be the case that anything possessing property J thereby had a right to life. In short, the question is whether there is a property J that bestows a right to life on an organism *only because* J stands in a certain causal relationship to a second property K, which is such that anything possessing that property *ipso facto* has a right to life.

My argument turns upon the following critical principle: Let C be a causal process that normally leads to outcome E. Let A be an action that initiates process C, and B be an action involving a minimal expenditure of energy that stops process C before outcome E occurs. Assume further that actions A and B do not have any other consequences, and that E is the only morally significant outcome of process C. Then there is no moral difference between intentionally

performing action B and intentionally refraining from performing action A, assuming identical motivation in both cases. This principle, which I shall refer to as the moral symmetry principle with respect to action and inaction, would be rejected by some philosophers. They would argue that there is an important distinction to be drawn between “what we owe people in the form of aid and what we owe them in the way of non-interference,”²⁵ and that the latter, “negative duties,” are duties that it is more serious to neglect than the former, “positive” ones. This view arises from an intuitive response to examples such as the following. Even if it is wrong not to send food to starving people in other parts of the world, it is more wrong still to kill someone. And isn’t the conclusion, then, that one’s obligation to refrain from killing someone is a more serious obligation than one’s obligation to save lives?

I want to argue that this is not the correct conclusion. I think it is tempting to draw this conclusion if one fails to consider the motivation that is likely to be associated with the respective actions. If someone performs an action he knows will kill someone else, this will usually be grounds for concluding that he wanted to kill the person in question. In contrast, failing to help someone may indicate only apathy, laziness, selfishness, or an amoral outlook: the fact that a person knowingly allows another to die will not normally be grounds for concluding that he desired that person’s death. Someone who knowingly kills another is more likely to be seriously defective from a moral point of view than someone who fails to save another’s life.

If we are not to be led to false conclusions by our intuitions about certain cases, we must explicitly assume identical motivations in the two situations. Compare, for example, the following: (1) Jones sees that Smith will be killed by a bomb unless he warns him. Jones’s reaction is: “How lucky, it will save me the trouble of killing Smith myself.” So Jones allows Smith to be killed by the bomb, even though he could easily have warned him. (2) Jones wants Smith dead, and therefore shoots him. Is one to say there is a significant difference between the wrongness of Jones’s behavior in these two cases? Surely not. This shows

the mistake of drawing a distinction between positive duties and negative duties and holding that the latter impose stricter obligations than the former. The difference in our intuitions about situations that involve giving aid to others and corresponding situations that involve not interfering with others is to be explained by reference to probable differences in the motivations operating in the two situations, and not by reference to a distinction between positive and negative duties. For once it is specified that the motivation is the same in the two situations, we realize that inaction is as wrong in the one case as action is in the other.

There is another point that may be relevant. Action involves effort, while inaction usually does not. It usually does not require any effort on my part to refrain from killing someone, but saving someone’s life will require an expenditure of energy. One must then ask how large a sacrifice a person is morally required to make to save the life of another. If the sacrifice of time and energy is quite large it may be that one is not morally obliged to save the life of another in that situation. Superficial reflection upon such cases might easily lead us to introduce the distinction between positive and negative duties, but again it is clear that this would be a mistake. The point is not that one has a greater duty to refrain from killing others than to perform positive actions that will save them. It is rather that positive actions require effort, and this means that in deciding what to do a person has to take into account his own right to do what he wants with his life, and not only the other person’s right to life. To avoid this confusion, we should confine ourselves to comparisons between situations in which the positive action involves minimal effort.

The moral symmetry principle, as formulated above, explicitly takes these two factors into account. It applies only to pairs of situations in which the motivations are identical and the positive action involves minimal effort. Without these restrictions, the principle would be open to serious objection; with them, it seems perfectly acceptable. For the central objection to it rests on the claim that we must distinguish positive from negative duties and recognize that negative duties impose stronger obligations than positive ones.

I have tried to show how this claim derives from an unsound account of our moral intuitions about certain situations.

My argument against the potentiality principle can now be stated. Suppose at some future time a chemical were to be discovered which when injected into the brain of a kitten would cause the kitten to develop into a cat possessing a brain of the sort possessed by humans, and consequently into a cat having all the psychological capabilities characteristic of adult humans. Such cats would be able to think, to use language, and so on. Now it would surely be morally indefensible in such a situation to ascribe a serious right to life to members of the species *Homo sapiens* without also ascribing it to cats that have undergone such a process of development: there would be no morally significant differences.

Secondly, it would not be seriously wrong to refrain from injecting a newborn kitten with the special chemical, and to kill it instead. The fact that one could initiate a causal process that would transform a kitten into an entity that would eventually possess properties such that anything possessing them *ipso facto* has a serious right to life does not mean that the kitten has a serious right to life even before it has been subjected to the process of injection and transformation. The possibility of transforming kittens into persons will not make it any more wrong to kill newborn kittens than it is now.

Thirdly, in view of the symmetry principle, if it is not seriously wrong to refrain from initiating such a causal process, neither is it seriously wrong to interfere with such a process. Suppose a kitten is accidentally injected with the chemical. As long as it has not yet developed those properties that in themselves endow something with a right to life, there cannot be anything wrong with interfering with the causal process and preventing the development of the properties in question. Such interference might be accomplished either by injecting the kitten with some “neutralizing” chemical or simply by killing it.

But if it is not seriously wrong to destroy an injected kitten which will naturally develop the properties that bestow a right to life, neither can it be seriously wrong

to destroy a member of *Homo sapiens* which lacks such properties, but will naturally come to have them. The potentialities are the same in both cases. The only difference is that in the case of a human fetus the potentialities have been present from the beginning of the organism’s development, while in the case of the kitten they have been present only from the time it was injected with the special chemical. This difference in the time at which the potentialities were acquired is a morally irrelevant difference.

It should be emphasized that I am not here assuming that a human fetus does not possess properties which in themselves, and irrespective of their causal relationships to other properties, provide grounds for ascribing a right to life to whatever possesses them. The point is merely that if it is seriously wrong to kill something, the reason cannot be that the thing will later acquire properties that in themselves provide something with a right to life.

Finally, it is reasonable to believe that there are properties possessed by adult members of *Homo sapiens* which establish their right to life, and also that any normal human fetus will come to possess those properties shared by adult humans. But it has just been shown that if it is wrong to kill a human fetus, it cannot be because of its potentialities. One is therefore forced to conclude that the conservative’s potentiality principle is false.

In short, anyone who wants to defend the potentiality principle must either argue against the moral symmetry principle or hold that in a world in which kittens could be transformed into “rational animals” it would be seriously wrong to kill newborn kittens. It is hard to believe there is much to be said for the latter moral claim. Consequently one expects the conservative’s rejoinder to be directed against the symmetry principle. While I have not attempted to provide a thorough defense of that principle, I have tried to show that what seems to be the most important objection to it – the one that appeals to a distinction between positive and negative duties – is based on a superficial analysis of our moral intuitions. I believe that a more thorough examination of the symmetry principle would show it to be sound. If so, we should

reject the potentiality principle, and the conservative position on abortion as well.

VI Summary and Conclusions

Let us return now to my basic claim, the self-consciousness requirement: An organism possesses a serious right to life only if it possesses the concept of a self as a continuing subject of experiences and other mental states, and believes that it is itself such a continuing entity. My defense of this claim has been twofold. I have offered a direct argument in support of it, and I have tried to show that traditional conservative and liberal views on abortion and infanticide, which involve a rejection of it, are unsound. I now want to mention one final reason why my claim should be accepted. Consider the example mentioned in section II – that of killing, as opposed to torturing, newborn kittens. I suggested there that while in the case of adult humans most people would consider it worse to kill an individual than to torture him for an hour, we do not usually view the killing of a newborn kitten as morally outrageous, although we would regard someone who tortured a newborn kitten for an hour as heinously evil. I pointed out that a possible conclusion that might be drawn from this is that newborn kittens have a right not to be tortured, but do not have a serious right to life. If this is the correct conclusion, how is one to explain it? One merit of the self-consciousness requirement is that it provides an explanation of this situation. The reason a newborn kitten does not have a right to life is explained by the fact that it does not possess the concept of a self. But how is one to explain the kitten's having a right not to be tortured? The answer is that a desire not to suffer pain can be ascribed to something without assuming that it has any concept of a continuing self. For while something that lacks the concept of a self cannot desire that a self not suffer, it can desire that a given sensation not exist. The state desired – the absence of a particular sensation, or of sensations of a certain sort – can be described in a purely phenomenalistic language, and hence without the concept of

a continuing self. So long as the newborn kitten possesses the relevant phenomenal concepts, it can truly be said to desire that a certain sensation not exist. So we can ascribe to it a right not to be tortured even though, since it lacks the concept of a continuing self, we cannot ascribe to it a right to life.

This completes my discussion of the basic moral principles involved in the issue of abortion and infanticide. But I want to comment upon an important factual question, namely, at what point an organism comes to possess the concept of a self as a continuing subject of experiences and other mental states, together with the belief that it is itself such a continuing entity. This is obviously a matter for detailed psychological investigation, but everyday observation makes it perfectly clear, I believe, that a newborn baby does not possess the concept of a continuing self, any more than a newborn kitten possesses such a concept. If so, infanticide during a time interval shortly after birth must be morally acceptable.

But where is the line to be drawn? What is the cutoff point? If one maintained, as some philosophers have, that an individual possesses concepts only if he can express these concepts in language, it would be a matter of everyday observation whether or not a given organism possessed the concept of a continuing self. Infanticide would then be permissible up to the time an organism learned how to use certain expressions. However, I think the claim that acquisition of concepts is dependent on acquisition of language is mistaken. For example, one wants to ascribe mental states of a conceptual sort – such as beliefs and desires – to organisms that are incapable of learning a language. This issue of prelinguistic understanding is clearly outside the scope of this discussion. My point is simply that *if* an organism can acquire concepts without thereby acquiring a way of expressing those concepts linguistically, the question of whether a given organism possesses the concept of a self as a continuing subject of experiences and other mental states, together with the belief that it is itself such a continuing entity, may be a question that requires fairly subtle experimental techniques to answer.

If this view of the matter is roughly correct, there are two worries one is left with at the level of practical moral decisions, one of which may turn out to be deeply disturbing. The lesser worry is where the line is to be drawn in the case of infanticide. It is not troubling because there is no serious need to know the exact point at which a human infant acquires a right to life. For in the vast majority of cases in which infanticide is desirable, its desirability will be apparent within a short time after birth. Since it is virtually certain that an infant at such a stage of its development does not possess the concept of a continuing self, and thus does not possess a serious right to life, there is excellent reason to believe that infanticide is morally permissible in most cases where it is otherwise desirable. The practical moral problem can thus be satisfactorily handled by choosing some period of time, such as a week after birth, as the interval during which infanticide will be permitted. This interval could then be modified once psychologists have established the point at which a human organism comes to believe

that it is a continuing subject of experiences and other mental states.

The troubling worry is whether adult animals belonging to species other than *Homo sapiens* may not also possess a serious right to life. For once one says that an organism can possess the concept of a continuing self, together with the belief that it is itself such an entity, without having any way of expressing that concept and that belief linguistically, one has to face up to the question of whether animals may not possess properties that bestow a serious right to life upon them. The suggestion itself is a familiar one, and one that most of us are accustomed to dismiss very casually. The line of thought advanced here suggests that this attitude may turn out to be tragically mistaken. Once one reflects upon the question of the *basic* moral principles involved in the ascription of a right to life to organisms, one may find himself driven to conclude that our everyday treatment of animals is morally indefensible, and that we are in fact murdering innocent persons.

Notes

- 1 I am grateful to a number of people, particularly the editors of *Philosophy & Public Affairs*, Rodelia Hapke and Walter Kaufmann, for their helpful comments. It should not, of course, be inferred that they share the views expressed in this paper.
- 2 Judith Jarvis Thomson, in her article "A Defense of Abortion," *Philosophy & Public Affairs*, I, no. I (Fall 1971): 47–66 [see chapter 2 in this volume], has argued with great force and ingenuity that this conclusion is mistaken. I will comment on her argument later in this paper.
- 3 While this is the position conservatives tend to hold, it is not clear that it is the position they ought to hold. For if the fetus is a person it is far from clear that it is permissible to destroy it to save the mother. Two moral principles lend support to the view that it is the fetus which should live. First, other things being equal, should not one give something to a person who has had less rather than to a person who has had more? The mother has had a chance to live, while the fetus has not. The choice is thus between giving the mother more of an opportunity to enjoy life while giving the fetus none at all and giving the fetus an opportunity to enjoy life while not giving the mother a further opportunity to do so. Surely fairness requires the latter. Secondly, since the fetus has a greater life expectancy than the mother, one is in effect distributing more goods by choosing the life of the fetus over the life of the mother.
- 4 The position I am here recommending to the conservative should not be confused with the official Catholic position. The Catholic Church holds that it is seriously wrong to kill a fetus directly even if failure to do so will result in the death of *both* the mother and the fetus. This perverse value judgment is not part of the conservative's position.
- 5 Section 230.3 of the American Law Institute's *Model Penal Code* (Philadelphia, 1962). There is some interesting, though at times confused, discussion of the proposed code in *Model Penal Code – Tentative Draft No. 9* (Philadelphia, 1959), pp. 146–62.

- 5 A clear example of such an unwillingness to entertain seriously the possibility that moral judgments widely accepted in one's own society may nevertheless be incorrect is provided by Roger Wertheimer's superficial dismissal of infanticide on pages 69–70 of his article "Understanding the Abortion Argument," *Philosophy & Public Affairs*, I, no. I (Fall 1971): 67–95.
- 6 Compare the discussion of the concept of a right offered by Richard B. Brandt in his *Ethical Theory* (Englewood Cliffs, NJ, 1959), pp. 434–41. As Brandt points out, some philosophers have maintained that only things that can *claim* rights can have rights. I agree with Brandt's view that "inability to claim does not destroy the right" (p. 440).
- 7 B. A. Brody, "Abortion and the Law," *Journal of Philosophy*, LXVIII, no. 12 (17 June 1971): 357–69. See pp. 357–8.
- 8 Thomson, "A Defense of Abortion," p. 47.
- 9 Wertheimer, "Understanding the Abortion Argument," p. 69.
- 10 Ibid.
- 11 Thomson, "A Defense of Abortion," pp. 47–8.
- 12 Ibid., p. 65.
- 13 Wertheimer, "Understanding the Abortion Argument," p. 78.
- 14 A moral principle accepted by a person is *basic for him* if and only if his acceptance of it is not dependent upon any of his (nonmoral) factual beliefs. That is, no change in his factual beliefs would cause him to abandon the principle in question.
- 15 Wertheimer, "Understanding the Abortion Argument," p. 88.
- 16 Again, compare the analysis defended by Brandt in *Ethical Theory*, pp. 434–41.
- 17 In everyday life one often speaks of desiring things, such as an apple or a newspaper. Such talk is elliptical, the context together with one's ordinary beliefs serving to make it clear that one wants to eat the apple and read the newspaper. To say that what one desires is that a certain proposition be true should not be construed as involving any particular ontological commitment. The point is merely that it is sentences such as "John wants it to be the case that he is eating an apple in the next few minutes" that provide a completely explicit description of a person's desires. If one fails to use such sentences one can be badly misled about what concepts are presupposed by a particular desire.
- 18 There are, however, situations other than those discussed here which might seem to count against the claim that a person cannot have a right unless he is conceptually capable of having the corresponding desire. Can't a young child, for example, have a right to an estate, even though he may not be conceptually capable of wanting the estate? It is clear that such situations have to be carefully considered if one is to arrive at a satisfactory account of the concept of a right. My inclination is to say that the correct description is not that the child now has a right to the estate, but that he will come to have such a right when he is mature, and that in the meantime no one else has a right to the estate. My reason for saying that the child does not now have a right to the estate is that he cannot now do things with the estate, such as selling it or giving it away that he will be able to do later on.
- 19 Another frequent suggestion as to the cutoff point not listed here is quickening. I omit it because it seems clear that if abortion after quickening is wrong, its wrongness must be tied up with the motility of the fetus, not with the mother's awareness of the fetus' ability to move about.
- 20 Thomson, "A Defense of Abortion," p. 56.
- 21 A good example of a failure to probe this issue is provided by Brody's "Abortion and the Law."
- 22 Admittedly the modification is a substantial one, since given a society that refused to compensate women, a woman who had an abortion would not be doing anything wrong.
- 23 Compare Wertheimer's remarks, "Understanding the Abortion Argument," p. 79.
- 24 This requires qualification. If their central nervous systems were radically different from ours, it might be thought that one would not be justified in ascribing to them mental states of an experiential sort. And then, since it seems to be a conceptual truth that only things having experiential states can have rights, one would be forced to conclude that one was not justified in ascribing any rights to them.
- 25 Philippa Foot, "The Problem of Abortion and the Doctrine of the Double Effect," *Oxford Review*, 5 (1967): 5–15. See the discussion on pp. 11ff.

A Defense of Abortion

*Judith Jarvis Thomson*¹

Most opposition to abortion relies on the premise that the fetus is a human being, a person, from the moment of conception. The premise is argued for, but, as I think, not well. Take, for example, the most common argument. We are asked to notice that the development of a human being from conception through birth into childhood is continuous; then it is said that to draw a line, to choose a point in this development and say “before this point the thing is not a person, after this point it is a person” is to make an arbitrary choice, a choice for which in the nature of things no good reason can be given. It is concluded that the fetus is, or anyway that we had better say it is, a person from the moment of conception. But this conclusion does not follow. Similar things might be said about the development of an acorn into an oak tree, and it does not follow that acorns are oak trees, or that we had better say they are. Arguments of this form are sometimes called “slippery slope arguments” – the phrase is perhaps self-explanatory – and it is dismayed that opponents of abortion rely on them so heavily and uncritically.

I am inclined to agree, however, that the prospects for “drawing a line” in the development of the fetus

look dim. I am inclined to think also that we shall probably have to agree that the fetus has already become a human person well before birth. Indeed, it comes as a surprise when one first learns how early in its life it begins to acquire human characteristics. By the tenth week, for example, it already has a face, arms and legs, fingers and toes; it has internal organs, and brain activity is detectable.² On the other hand, I think that the premise is false, that the fetus is not a person from the moment of conception. A newly fertilized ovum, a newly implanted clump of cells, is no more a person than an acorn is an oak tree. But I shall not discuss any of this. For it seems to me to be of great interest to ask what happens if, for the sake of argument, we allow the premise. How, precisely, are we supposed to get from there to the conclusion that abortion is morally impermissible? Opponents of abortion commonly spend most of their time establishing that the fetus is a person, and hardly any time explaining the step from there to the impermissibility of abortion. Perhaps they think the step too simple and obvious to require much comment. Or perhaps instead they are simply being economical in argument. Many of

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those who defend abortion rely on the premise that the fetus is not a person, but only a bit of tissue that will become a person at birth; and why pay out more arguments than you have to? Whatever the explanation, I suggest that the step they take is neither easy nor obvious, that it calls for closer examination than it is commonly given, and that when we do give it this closer examination we shall feel inclined to reject it.

I propose, then, that we grant that the fetus is a person from the moment of conception. How does the argument go from here? Something like this, I take it. Every person has a right to life. So the fetus has a right to life. No doubt the mother has a right to decide what shall happen in and to her body; everyone would grant that. But surely a person's right to life is stronger and more stringent than the mother's right to decide what happens in and to her body, and so outweighs it. So the fetus may not be killed; an abortion may not be performed.

It sounds plausible. But now let me ask you to imagine this. You wake up in the morning and find yourself back to back in bed with an unconscious violinist. A famous unconscious violinist. He has been found to have a fatal kidney ailment, and the Society of Music Lovers has canvassed all the available medical records and found that you alone have the right blood type to help. They have therefore kidnapped you, and last night the violinist's circulatory system was plugged into yours, so that your kidneys can be used to extract poisons from his blood as well as your own. The director of the hospital now tells you, "Look, we're sorry the Society of Music Lovers did this to you – we would never have permitted it if we had known. But still, they did it, and the violinist now is plugged into you. To unplug you would be to kill him. But never mind, it's only for nine months. By then he will have recovered from his ailment, and can safely be unplugged from you." Is it morally incumbent on you to accede to this situation? No doubt it would be very nice of you if you did, a great kindness. But do you *have* to accede to it? What if it were not nine months, but nine years? Or longer still? What if the director of the hospital says, "Tough luck, I agree, but you've

now got to stay in bed, with the violinist plugged into you, for the rest of your life. Because remember this. All persons have a right to life, and violinists are persons. Granted you have a right to decide what happens in and to your body, but a person's right to life outweighs your right to decide what happens in and to your body. So you cannot ever be unplugged from him." I imagine you would regard this as outrageous, which suggests that something really is wrong with that plausible-sounding argument I mentioned a moment ago.

In this case, of course, you were kidnapped; you didn't volunteer for the operation that plugged the violinist into your kidneys. Can those who oppose abortion on the ground I mentioned make an exception for a pregnancy due to rape? Certainly. They can say that persons have a right to life only if they didn't come into existence because of rape; or they can say that all persons have a right to life, but that some have less of a right to life than others, in particular, that those who came into existence because of rape have less. But these statements have a rather unpleasant sound. Surely the question of whether you have a right to life at all, or how much of it you have, shouldn't turn on the question of whether or not you are the product of a rape. And in fact the people who oppose abortion on the ground I mentioned do not make this distinction, and hence do not make an exception in the case of rape.

Nor do they make an exception for a case in which the mother has to spend the nine months of her pregnancy in bed. They would agree that would be a great pity, and hard on the mother; but all the same, all persons have a right to life, the fetus is a person, and so on. I suspect, in fact, that they would not make an exception for a case in which, miraculously enough, the pregnancy went on for nine years, or even the rest of the mother's life.

Some won't even make an exception for a case in which continuation of the pregnancy is likely to shorten the mother's life; they regard abortion as impermissible even to save the mother's life. Such cases are nowadays very rare, and many opponents of abortion do not accept this extreme view. All the

same, it is a good place to begin: a number of points of interest come out in respect to it.

1. Let us call the view that abortion is impermissible even to save the mother's life "the extreme view." I want to suggest first that it does not issue from the argument I mentioned earlier without the addition of some fairly powerful premises. Suppose a woman has become pregnant, and now learns that she has a cardiac condition such that she will die if she carries the baby to term. What may be done for her? The fetus, being a person, has a right to life, but as the mother is a person too, so has she a right to life. Presumably they have an equal right to life. How is it supposed to come out that an abortion may not be performed? If mother and child have an equal right to life, shouldn't we perhaps flip a coin? Or should we add to the mother's right to life her right to decide what happens in and to her body, which everybody seems to be ready to grant – the sum of her rights now outweighing the fetus' right to life?

The most familiar argument here is the following. We are told that performing the abortion would be directly killing³ the child, whereas doing nothing would not be killing the mother, but only letting her die. Moreover, in killing the child, one would be killing an innocent person, for the child has committed no crime, and is not aiming at his mother's death. And then there are a variety of ways in which this might be continued. (1) But as directly killing an innocent person is always and absolutely impermissible, an abortion may not be performed. Or, (2) as directly killing an innocent person is murder, and murder is always and absolutely impermissible, an abortion may not be performed.⁴ Or, (3) as one's duty to refrain from directly killing an innocent person is more stringent than one's duty to keep a person from dying, an abortion may not be performed. Or, (4) if one's only options are directly killing an innocent person or letting a person die, one must prefer letting the person die, and thus an abortion may not be performed.⁵

Some people seem to have thought that these are not further premises which must be added if the conclusion is to be reached, but that they follow from the

very fact that an innocent person has a right to life.⁶ But this seems to me to be a mistake, and perhaps the simplest way to show this is to bring out that while we must certainly grant that innocent persons have a right to life, the theses in (1) through (4) are all false. Take (2), for example. If directly killing an innocent person is murder, and thus is impermissible, then the mother's directly killing the innocent person inside her is murder, and thus is impermissible. But it cannot seriously be thought to be murder if the mother performs an abortion on herself to save her life. It cannot seriously be said that she *must* refrain, that she *must* sit passively by and wait for her death. Let us look again at the case of you and the violinist. There you are, in bed with the violinist, and the director of the hospital says to you, "It's all most distressing, and I deeply sympathize, but you see this is putting an additional strain on your kidneys, and you'll be dead within the month. But you *have* to stay where you are all the same. Because unplugging you would be directly killing an innocent violinist, and that's murder, and that's impermissible." If anything in the world is true, it is that you do not commit murder, you do not do what is impermissible, if you reach around to your back and unplug yourself from that violinist to save your life.

The main focus of attention in writings on abortion has been on what a third party may or may not do in answer to a request from a woman for an abortion. This is in a way understandable. Things being as they are, there isn't much a woman can safely do to abort herself. So the question asked is what a third party may do, and what the mother may do, if it is mentioned at all, is deduced, almost as an afterthought, from what it is concluded that third parties may do. But it seems to me that to treat the matter in this way is to refuse to grant to the mother that very status of person which is so firmly insisted on for the fetus. For we cannot simply read off what a person may do from what a third party may do. Suppose you find yourself trapped in a tiny house with a growing child. I mean a very tiny house, and a rapidly growing child – you are already up against the wall of the house and in a few minutes you'll be crushed to death. The child on the other hand won't be crushed to death; if nothing

is done to stop him from growing he'll be hurt, but in the end he'll simply burst open the house and walk out a free man. Now I could well understand it if a bystander were to say, "There's nothing we can do for you. We cannot choose between your life and his, we cannot be the ones to decide who is to live, we cannot intervene." But it cannot be concluded that you too can do nothing, that you cannot attack it to save your life. However innocent the child may be, you do not have to wait passively while it crushes you to death. Perhaps a pregnant woman is vaguely felt to have the status of house, to which we don't allow the right of self-defense. But if the woman houses the child, it should be remembered that she is a person who houses it.

I should perhaps stop to say explicitly that I am not claiming that people have a right to do anything whatever to save their lives. I think, rather, that there are drastic limits to the right of self-defense. If someone threatens you with death unless you torture someone else to death, I think you have not the right, even to save your life, to do so. But the case under consideration here is very different. In our case there are only two people involved, one whose life is threatened, and one who threatens it. Both are innocent: the one who is threatened is not threatened because of any fault, the one who threatens does not threaten because of any fault. For this reason we may feel that we bystanders cannot intervene. But the person threatened can.

In sum, a woman surely can defend her life against the threat to it posed by the unborn child, even if doing so involves its death. And this shows not merely that the theses in (1) through (4) are false; it shows also that the extreme view of abortion is false, and so we need not canvass any other possible ways of arriving at it from the argument I mentioned at the outset.

2. The extreme view could of course be weakened to say that while abortion is permissible to save the mother's life, it may not be performed by a third party, but only by the mother herself. But this cannot be right either. For what we have to keep in mind is that the mother and the unborn child are not like two tenants in a small house which has, by an unfortunate mistake, been rented to both: the mother *owns*

the house. The fact that she does adds to the offensiveness of deducing that the mother can do nothing from the supposition that third parties can do nothing. But it does more than this: it casts a bright light on the supposition that third parties can do nothing. Certainly it lets us see that a third party who says "I cannot choose between you" is fooling himself if he thinks this is impartiality. If Jones has found and fastened on a certain coat, which he needs to keep him from freezing, but which Smith also needs to keep him from freezing, then it is not impartiality that says "I cannot choose between you" when Smith owns the coat. Women have said again and again "This body is *my* body!" and they have reason to feel angry, reason to feel that it has been like shouting into the wind. Smith, after all, is hardly likely to bless us if we say to him, "Of course it's your coat, anybody would grant that it is. But no one may choose between you and Jones who is to have it."

We should really ask what it is that says "no one may choose" in the face of the fact that the body that houses the child is the mother's body. It may be simply a failure to appreciate this fact. But it may be something more interesting, namely the sense that one has a right to refuse to lay hands on people, even where it would be just and fair to do so, even where justice seems to require that somebody do so. Thus justice might call for somebody to get Smith's coat back from Jones, and yet you have a right to refuse to be the one to lay hands on Jones, a right to refuse to do physical violence to him. This, I think, must be granted. But then what should be said is not "no one may choose," but only "*I* cannot choose," and indeed not even this, but "*I* will not *act*," leaving it open that somebody else can or should, and in particular that anyone in a position of authority, with the job of securing people's rights, both can and should. So this is no difficulty. I have not been arguing that any given third party must accede to the mother's request that he perform an abortion to save her life, but only that he may.

I suppose that in some views of human life the mother's body is only on loan to her, the loan not being one which gives her any prior claim to it. One who held this view might well think it impartiality to

say “I cannot choose.” But I shall simply ignore this possibility. My own view is that if a human being has any just, prior claim to anything at all, he has a just, prior claim to his own body. And perhaps this needn’t be argued for here anyway, since, as I mentioned, the arguments against abortion we are looking at do grant that the woman has a right to decide what happens in and to her body.

But although they do grant it, I have tried to show that they do not take seriously what is done in granting it. I suggest the same thing will reappear even more clearly when we turn away from cases in which the mother’s life is at stake, and attend, as I propose we now do, to the vastly more common cases in which a woman wants an abortion for some less weighty reason than preserving her own life.

3. Where the mother’s life is not at stake, the argument I mentioned at the outset seems to have a much stronger pull. “Everyone has a right to life, so the unborn person has a right to life.” And isn’t the child’s right to life weightier than anything other than the mother’s own right to life, which she might put forward as ground for an abortion?

This argument treats the right to life as if it were unproblematic. It is not, and this seems to me to be precisely the source of the mistake.

For we should now, at long last, ask what it comes to, to have a right to life. In some views having a right to life includes having a right to be given at least the bare minimum one needs for continued life. But suppose that what in fact *is* the bare minimum a man needs for continued life is something he has no right at all to be given? If I am sick unto death, and the only thing that will save my life is the touch of Henry Fonda’s cool hand on my fevered brow, then all the same, I have no right to be given the touch of Henry Fonda’s cool hand on my fevered brow. It would be frightfully nice of him to fly in from the West Coast to provide it. It would be less nice, though no doubt well meant, if my friends flew out to the West Coast and carried Henry Fonda back with them. But I have no right at all against anybody that he should do this for me. Or again, to return to the story I told earlier, the fact that for continued life that violinist needs

the continued use of your kidneys does not establish that he has a right to be given the continued use of your kidneys. He certainly has no right against you that *you* should give him continued use of your kidneys. For nobody has any right to use your kidneys unless you give him such a right; and nobody has the right against you that you shall give him this right – if you do allow him to do on using your kidneys, this is a kindness on your part, and not something he can claim from you as his due. Nor has he any right against anybody else that *they* should give him continued use of your kidneys. Certainly he had no right against the Society of Music Lovers that they should plug him into you in the first place. And if you now start to unplug yourself, having learned that you will otherwise have to spend nine years in bed with him, there is nobody in the world who must try to prevent you, in order to see to it that he is given something he has a right to be given.

Some people are rather stricter about the right to life. In their view, it does not include the right to be given anything, but amounts to, and only to, the right not to be killed by anybody. But here a related difficulty arises. If everybody is to refrain from killing that violinist, then everybody must refrain from doing a great many different sorts of things. Everybody must refrain from slitting his throat, everybody must refrain from shooting him – and everybody must refrain from unplugging you from him. But does he have a right against everybody that they shall refrain from unplugging you from him? To refrain from doing this is to allow him to continue to use your kidneys. It could be argued that he has a right against us that *we* should allow him to continue to use your kidneys. That is, while he had no right against us that we should give him the use of your kidneys, it might be argued that he anyway has a right against us that we shall not now intervene and deprive him of the use of your kidneys. I shall come back to third-party interventions later. But certainly the violinist has no right against you that *you* shall allow him to continue to use your kidneys. As I said, if you do allow him to use them, it is a kindness on your part, and not something you owe him.

The difficulty I point to here is not peculiar to the right to life. It reappears in connection with all the other natural rights; and it is something which an adequate account of rights must deal with. For present purposes it is enough just to draw attention to it. But I would stress that I am not arguing that people do not have a right to life – quite to the contrary, it seems to me that the primary control we must place on the acceptability of an account of rights is that it should turn out in that account to be a truth that all persons have a right to life. I am arguing only that having a right to life does not guarantee having either a right to be given the use of or a right to be allowed continued use of another person's body – even if one needs it for life itself. So the right to life will not serve the opponents of abortion in the very simple and clear way in which they seem to have thought it would.

4. There is another way to bring out the difficulty. In the most ordinary sort of case, to deprive someone of what he has a right to is to treat him unjustly. Suppose a boy and his small brother are jointly given a box of chocolates for Christmas. If the older boy takes the box and refuses to give his brother any of the chocolates, he is unjust to him, for the brother has been given a right to half of them. But suppose that, having learned that otherwise it means nine years in bed with that violinist, you unplug yourself from him. You surely are not being unjust to him, for you gave him no right to use your kidneys, and no one else can have given him any such right. But we have to notice that in unplugging yourself, you are killing him; and violinists, like everybody else, have a right to life, and thus in the view we were considering just now, the right not to be killed. So here you do what he supposedly has a right you shall not do, but you do not act unjustly to him in doing it.

The emendation which may be made at this point is this: the right to life consists not in the right not to be killed, but rather in the right not to be killed unjustly. This runs a risk of circularity, but never mind: it would enable us to square the fact that the violinist has a right to life with the fact that you do not act unjustly toward him in unplugging yourself, thereby killing him. For if you do not kill him unjustly, you do

not violate his right to life, and so it is no wonder you do him no injustice.

But if this emendation is accepted, the gap in the argument against abortion stares us plainly in the face: it is by no means enough to show that the fetus is a person, and to remind us that all persons have a right to life – we need to be shown also that killing the fetus violates its right to life, i.e., that abortion is unjust killing. And is it?

I suppose we may take it as a datum that in a case of pregnancy due to rape the mother has not given the unborn person a right to the use of her body for food and shelter. Indeed, in what pregnancy could it be supposed that the mother has given the unborn person such a right? It is not as if there were unborn persons drifting about the world, to whom a woman who wants a child says "I invite you in."

But it might be argued that there are other ways one can have acquired a right to the use of another person's body than by having been invited to use it by that person. Suppose a woman voluntarily indulges in intercourse, knowing of the chance it will issue in pregnancy, and then she does become pregnant; is she not in part responsible for the presence, in fact the very existence, of the unborn person inside her? No doubt she did not invite it in. But doesn't her partial responsibility for its being there itself give it a right to the use of her body?⁷ If so, then her aborting it would be more like the boy's taking away the chocolates, and less like your unplugging yourself from the violinist – doing so would be depriving it of what it does have a right to, and thus would be doing it an injustice.

And then, too, it might be asked whether or not she can kill it even to save her own life: If she voluntarily called it into existence, how can she now kill it, even in self-defense?

The first thing to be said about this is that it is something new. Opponents of abortion have been so concerned to make out the independence of the fetus, in order to establish that it has a right to life, just as its mother does, that they have tended to overlook the possible support they might gain from making out that the fetus is *dependent* on the mother, in order to establish that she has a special kind of responsibility for