"Establishing a Right to Life: Decisive Moment Theories"

Most abortion theories claim that there is a particular moment in time when there comes into existence a being that has a full-fledged right to life. It is presumed that there is a critical occurrence, usually abrupt and decisive, prior to which there is not a human being (or a person) with a right to life and after which there is. Growth and development may be required to get to that point, but there does come a time when the line is crossed and one enters into possession of the right to life fully and completely.

Some theories hold that there is a gray area in which it is not clear whether the line has been crossed. The larger the gray area, of course, the more uncertainty and ambiguity one introduces into the abortion question. Such views, which we might call "decisive moment" theories, stand in contrast to "gradualist" theories, which claim that becoming a human being, or a person, or a holder of a strong right to life is a gradual process occurring over a more extended period of time, and that personhood, or humanity, or the strength of one's right to life is a matter of degree. Decisive moment theories do not talk in terms of degree but in terms of either/or; they presume that at a given moment one either has the right to life completely or lacks it altogether.

There are a number of different decisive moment theories, each specifying a different point at which one acquires totally one's status as a person with the attendant right to life. Some theories hold that the decisive occurrence is prenatal occurring at the moment of conception, or when the zygote implants in the uterine wall or when the fetus achieves viability, external human form, or adequate brain development. Other theories hold that the decisive moment occurs at the point of birth, or when personal consciousness emerges. Some of the theories lend themselves to both gradualist and decisive moment interpretations. One could argue, for instance, that as the brain and central nervous system develop and grow so does the right to life, but one could also argue that as soon as brain waves can be recorded there is an individual with a full-fledged right to life--and not before. However, in our initial look at these theories we shall view them all as decisive moment theories.

Decisive Moment Theory One:

CONCEPTION

Of all the decisive moment theories, the one that presumes the human fetus to have an absolute right to life from the point of conception is the most conservative and, in many ways, the most
straightforward. In the public mind, it is associated with the official teaching of the Roman Catholic Church, though it is held by others as well including many conservative Protestants and even secularists. The claim is that at the point of human conception, when the female ovum is fertilized by the male sperm, there comes into existence a being that merits the same full respect that is due any person. It would seem to follow, and is often so argued, that virtually none of the reasons prompting women to seek abortions is in fact adequate to justify such acts. After all we don't kill children who are unwanted, or deformed, or retarded, or the product of rape, or who stand in the way of our career opportunities, or are the source of our psychological problems, or constitute a financial liability. We would not condone killing children under such circumstances even if there were no apparent alternative solutions to these problems. The reason we hold such a view is that we consider children to be persons, each with a person's right to life that ought to be respected and not set aside for the kinds of reasons just given. But if a fetus also has a person's right to life, then abortion must be invariably--and seriously--wrong. An abortion might possibly be justified to save the mother's life, but even that is not beyond dispute given the premise of an absolute right to life from conception.

The Argument from Genetic Endowment

The appeal to genetic endowment is not merely the contention that the zygote (a newly fertilized ovum) is a living organism, for so are the ovum and the sperm prior to fertilization, and no one is interested in claiming that ova and sperm are human beings or that the use of artificial birth control is a serious act of killing. (The Roman Catholic Church in its official teaching may condemn the use of artificial contraception, but it does not do so for the same reasons it condemns abortion; abortion may involve something akin to murder according to the church's view, but artificial birth control involves only an illicit interruption in a natural process.) The critical difference between the zygote and either the ovum or sperm is that in the case of the zygote the genetic determinants of the subsequent individual are built into the organism in the form of the genetic code. "These include the features of the human species and also the individual trademarks such as male or female sex, the color of eyes, hair and skin; the configuration of face and body; the tendency to be tall or short, fat or lean, ruggedly healthy or prone to some diseases; and undoubtedly also the tendency to certain qualities of temperament and intelligence. Thus, the future human being is latent in the zygote to an extent to which it is not latent in the ovum or sperm. For the first time, with the fertilization of the ovum, we can point to a single living organism in which there is contained encoded instructions for the subsequent unfolding of the whole organism. As one defender of the present view has put it, speaking of the conceptus, "From the very beginning it is visibly impelled by a goal-oriented impetus--and that goal is exclusively human." What the argument from genetic endowment establishes is that from the moment of conception there exists the natural potential for personhood, which is to say that in time the unique potential in the zygote will (with a certain degree of probability) unfold and a person will emerge. But this merely raises the question of whether "potential persons" have the same strong right to life as actual persons. Thus, the appeal to genetic endowment establishes the zygote's special potential but it does not tell us what significance we should assign to that potential. In order to do that we must turn to the argument from potentiality.
The Appeal to Potentiality

How does one support the claim that whatever has a natural potential for personhood also has a right to life—i.e., the same strong right to life that adult human beings have? One might search for examples of individuals who undeniably have a right to life but who could have that right to life only by virtue of their potential or prospect for personhood. If such examples could be found, they would provide substantial support for the claim that potentiality for personhood invests one with a right to life, and thus that fetuses have a right to life. Perhaps infants would serve the purpose. Certainly most people would concur that infants have a right to life and that their lives ought to be held inviolate—and it might well be argued that they have that right to life or inviolate status because they are biologically human life on the way to becoming personal human life. That much established, it could be argued that there is no substantial difference between the fetus and the infant: the fetus, too, is biological life on the way to becoming personal human life; it merely lags behind the infant by a few months. Although a fetus cannot think, exercise moral or spiritual agency, have hopes or aspirations for the future, or do any of the things that a fully developed human being can do, neither can the infant. The value of the infant, then, is grounded not in what it has actualized but in what it has the potential to actualize, and since fetuses share this potential they should also share the infant’s status and possess a right to life.

This is an interesting and, I believe, powerful argument. But we must postpone giving it a full examination until we have examined the potentiality principle (along with its competitors, the actuality principle and the species principle) in greater detail. That complications await us is intimated by the fact that unfertilized ova also have a potential (in some sense) for developing into persons, and yet we are not inclined to suppose that they have a right to life. What needs to be explained is why the potential possessed by the fertilized ova confers a right to life but the potential possessed by the unfertilized ova does not. Further, the potential for personhood that we see in the infant represents a level of neurophysiological development not present in a zygote or embryo; among other things, the infant has a brain, whereas a newly fertilized ovum does not. We may well wonder whether this advanced level of development does not provide some basis for distinguishing the moral status of infants from the moral status of zygotes.

The Benefit of the Doubt Argument

It has been argued that uncertainty over the moral status of the zygote (and embryo and fetus) favors the conservative position. The conservative might very well concede that it has not been demonstrated that the zygote has the same claim to life as individuals who undeniably are persons while also pointing out that it has not been conclusively demonstrated that the zygote has no such right. The fact is that we just don’t know which is the case. So, the argument continues, we ought to play it safe and act as if the zygote were endowed with the same right to life that we persons possess, lest we unwittingly violate a right to life. Of course this argument will call for adopting a hard line on the abortion issue; in effect it calls for us to act as if abortion were as serious as murder. While it doesn't try to establish that killing fetuses is a moral equivalent to murder, it does suggest that the very possibility must be avoided at all costs. To all of this, however, there is another side. A twist can be given to this kind of argument that will yield liberal implications on the abortion question. One might begin with the claim that we don't know the moral status of the fetus and conclude that we don't know that aborting zygotes is murder.
But one might then make the point that we do know that considerable value attaches to meeting the needs of a pregnant girl or woman. Here no complicated argumentation or metaphysical speculation is called for. To help a person avoid pain, emotional scars, psychological problems, economic stress is good and we know it to be good. One might then argue that it is unreasonable to turn our back on known goods (the reduction of human suffering) in order to avoid what we do not know to be evil (aborting a fetus).

Consider the following case. A thirty-six-year-old woman with four children, worn down and exhausted by poverty and terrible living conditions, married to an alcoholic husband finds herself pregnant. Although not the sole source of income for her family, the woman does work and her income is desperately needed. After wrestling with her predicament, the woman decides that an abortion would be in the interests of herself and of her family. She is convinced of this by the same considerations that prompted her to take birth control measures to begin with--measures that in this instance failed. Concerned about whether abortion might be the killing of a being with a right to life, she consults two moralists, both of whom appeal to the Benefit of the Doubt Argument. One is a "conservative" who warns her to avoid the possibility of a great moral evil--terminating the life of what might be a holder of a right to life. The other is a "liberal" who encourages her to secure what she knows to be good--avoiding considerable suffering for herself and her family.

It seems to me that both pieces of advice are reasonable and that neither is clearly superior to the other. The conservative stresses the magnitude of the moral evil to be avoided by not having an abortion; the liberal stresses the certainty of the suffering to be avoided by having an abortion. So it would seem that the less sure one is that the fetus is a bearer of a right to life and the greater the burden that can be avoided by having an abortion, the more one would be inclined to favor a liberal decision and proceed with an abortion. On the other hand, the more certain one is that the fetus is a bearer of a right to life and the lighter the burden that can be avoided by having an abortion, the more one would be inclined to favor a conservative decision. Thus it turns out that our judgment will depend on how uncertain one is about the moral status of the fetus (which will vary from person to person) and how great a burden can be avoided by having an abortion (which will vary from pregnancy to pregnancy). The upshot of this is that the Benefit of the Doubt Argument does not always succeed in settling matters in favor of the conservative, although it may for some people in some circumstances.

**The Biblical Argument**

There are a number of standard Scripture passages that are often invoked to support the claim that conception is the divinely indicated juncture that marks the beginning of personal existence with its attendant right to life. Among them are the following:

For thou didst form my inward parts,

thou didst knit me together in my mother's womb.

I praise thee, for thou art fearful and wonderful.
Wonderful are thy works!

Thou knowest me right well;

my frame was not hidden from thee,

when I was being made in secret,
intricately wrought in the depths of the earth.

Thy eyes beheld my unformed substance;
in thy book were written, every one of them,
the days that were formed for me,
when as yet there was none of them. (Psalm 139:13-16)

Before I formed you in the womb I knew you,

and before you were born I consecrated you;

I appointed you a prophet to the nations. (Jeremiah 1:5)

After surveying these and a few other verses (Luke 1:44; Ps. 1:5), Harold 0. J. Brown was sufficiently certain to declare forthrightly that "There can be no doubt that God clearly says the unborn child is already a human being, made in the image of God and deserving of protection under the law." But it seems to me that Brown is a bit overconfident. For what is at issue here is not whether these biblical affirmations support a strong respect for developing human life--of course they do--but whether they support the theory that at exactly the moment of fertilization, not before and not after, there comes into existence an individual who has a right to life identical with that of the reader or writer of these words. These verses certainly declare that it is God whose creative activity is at work in the womb forming the individual. This is impressive, awe-inspiring, and not without implications for our attitude toward life, but by itself it does not establish that a newly fertilized ovum has a person's claim to life, nor does it constitute grounds for a strict moral prohibition of abortion. For notice that the passages do not confine God's creative activity to the period that begins with conception; they describe him as also being active in the process preceding conception. But if it is God's creative activity that confers a right to life, then a right to life must exist prior to conception. That conclusion would entail that the employment of artificial contraception is as problematic as abortion unless we could find some way to argue that the divine activity after fertilization is somehow different than the divine activity before fertilization.

Harold Brown also contends that "It is abundantly clear from Scripture that God relates to us and
is personally concerned for us before birth." Why, we may ask, is this significant? Brown states that "If God relates in a personal way to a human creature this is evidence that that creature is made in God's image." But I would contend that his argument trades on an ambiguity. To be personally concerned with another before birth (as an expectant mother might have her own personal concerns that her baby will be strong and healthy at birth and grow up to be an adult of good character) is not the same as being personally related to another (the woman cannot have a person-to-person relationship with a newly fertilized ovum). If God were personally related to an individual that would be an undeniable sign of the presence of the image of God in that individual but we have no real evidence that God, any more than the woman, has a person-to-person relationship with a single-cell zygote. Again, we do have ample evidence from Scripture that God is personally concerned with individuals not only before their birth but before their conception; as he declares in the oft-quoted Jeremiah 1:5, "Before I formed you in the womb I knew you...." But the fact remains that God's knowing Jeremiah before his conception does not demonstrate the presence of the image of God at that early point. If it did, artificial contraception would be as problematic as abortion. Brown also uses Scripture less than persuasively when he seeks to generalize from an account involving the unborn John the Baptist. In the passage in question, Mary greets Elizabeth, who has come to visit her, and "when Elizabeth heard the greetings of Mary, the babe leaped in her womb" (Luke 1:41). Elizabeth subsequently interprets the event as follows: "When the voice of your greeting came to my ears, the babe in my womb leaped for joy" (Luke 1:44). This interpretation can be viewed as an example of legitimate poetic license or even as the reporting of a miraculous sign. Brown assumes the latter, suggesting that the fetal John the Baptist recognized the presence of the fetal Jesus and then rejoiced over it. But it is clearly bad methodology to generalize from such an atypical circumstance. Surely one would not want to maintain that all fetuses are capable of such acts of cognition in the womb--capable, that is, of comprehending certain facts ("This is the Messiah") and then experiencing a range of emotional responses to what they comprehend. Nevertheless, even if this passage does not establish that the unborn are persons, we should acknowledge that, along with the other stories associated with the birth of Jesus, it does serve to underscore the fact that the unborn are special ringed around with a sacredness that must be respected. It would be difficult to reflect on the nativity stories devotionally and remain indifferent to such practices as infanticide and abortion. I think we can safely say that Brown has articulated an abortion theory that is consistent with the biblical emphasis--but this is not to say that it is the only theory consistent with that emphasis. Brown also argues that Scripture recognizes that an individual's identity begins with conception. He cites, for example, the Psalmist's declaration that, "behold, I was brought forth in iniquity, and in sin did my mother conceive me" (Ps. 51:5). There are other verses (e.g., Ps. 139:13,15) in which developing fetal life is likewise referred to with personal pronouns. But again, such references designate individuals not only before birth but before conception (e.g., Jer. 1:5: "Before I formed you in the womb I knew you"), and so they are not really to the point. As one able church study document has put it, "The use of these personal pronouns does not prove that those in the womb are, while in the womb, persons. That use proves only that in God's plan those particular fetuses were (at least) destined to become persons." And they were so destined even before conception.

Extending our examination, it would be a mistake to argue that since it was David who was being formed in his mother's womb (Ps. 51:5) it must therefore have been David the person who was in
his mother's womb. That would be to confuse the "formation/creation" of a thing with the "completion/existence" of that thing. The fact is that an entity can be on the way to becoming a particular thing without it being that thing. It is quite natural for us to refer to what is in the process of becoming (the zygote or fetus in a Semite woman's womb) in terms of what it will eventually become (a King David), but we are not then speaking with technical accuracy. If a butterfly is being formed in a cocoon, it does not follow that there is a butterfly there (rather than a caterpillar or something betwixt or between). In this connection the following comments demonstrate a sensitivity to language:

If the fetus were not a person from conception, it is not clear that the writers would have avoided the personal pronouns. In Psm. 139:13 and in Psm. 51:5, David is reflecting on his origins.... In considering his relation with God, [he] traces it back to his fetal life, back even to his conception. Naturally, he uses the terms "me and "my"; the use of "it, whether more precise or not, would be jarring, pedantic and pointless. These pronouns are quite natural even on the supposition that the unborn child is not a person from conception.... If the fetus were not a person from conception, it is not clear that the writers would have avoided the personal pronouns.9

These verses, then, do not teach--either directly or by implication--that the zygote or fetus is a person, an individual fully in the image of God. Nor do they teach that zygotes have the same claim to life as a person. As one reads these verses one cannot help but receive the impression that fetal life is to be respected, valued, honored--but this does not by itself translate neatly into a full and unqualified right-to-life-from-conception position.

**The Argument from Exodus 21:22-25**

The closest Scripture comes to dealing directly with the abortion issue is in a reference in the Old Testament law code to accidentally induced miscarriage:

"When men strive together, and hurt a woman with child, so that there is a miscarriage, and yet no harm follows, the one who hurt her shall be fined, according as the woman's husband shall lay upon him; and he shall pay as the judges determine. If any harm follows, then you shall give life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burn for burn, wound for wound, stripe for stripe." (Ex. 21:22-25 RSV)

The passage is sufficiently ambiguous to divide interpreters. Some critics hold that the fetus and the woman are treated according to different principles, a different status being ascribed to each.10 If the woman is caused to miscarry but is not herself injured, then those who cause the miscarriage are to pay the husband compensation for the loss of his property (i.e., the fetus), but if the woman dies or is injured then the principle of *lex talionis* applies (i.e., an eye for an eye, etc.). According to this interpretation, accidentally killing a fetus is not as serious as accidentally killing a woman. The fetus has the status of property, whereas the woman receives the full protection of the law governing persons. This interpretation is made explicit in the American Bible Society's Today's English Version:
If some men are fighting and hurt a pregnant woman so that she loses her child, but she is not injured in any other way, the one who hurt her is to be fined whatever amount the woman's husband demands, subject to the approval of the judges. But if the woman herself is injured, the punishment shall be life for life....

This interpretation is disputed, however. Other critics argue that the *lex talionis* covers both the woman and the fetus, giving them equality of treatment under the law.¹¹ One commentator who shares this point of view makes the following interpretative remarks:

The statute commences, And when men strive together, etc., in order to give an example of accidental injury to a pregnant woman, and ... the law presents the case realistically. Details follow: and they hurt unintentionally a woman with child--the sense is, that one of the combatants, whichever of them it be (for this reason the verb translated 'and they hurt' is in the plural) is responsible--and her children come forth(i.e., there is a miscarriage) on account of the hurt she suffers (irrespective of the nature of the fetus, be it male or female, one or two; hence here, too, there is a generic plural as in the case of the verb 'they hurt'), but no mischief happens—that is, the woman and the children do not die—the one who hurt her shall surely be punished by a fine, according as the woman's husband shall lay--impose--upon him, having regard to the extent of the injuries and the special circumstances of the accident; and he who caused the hurt shall pay the amount of the fine to the woman's husband with judges, in accordance with the decision of the court that will confirm the husband's claim and compel the offender to pay compensation, for it is impossible to leave the determination of the amount of the fine to the husband, and, on the other hand, it is not within the husband's power to compel the assailant to pay if he refuses. But if any mischief happen, that is, if the woman dies or the children die, then you shall give life for life, eye for eye, etc.: you, O judge (or you, O Israel, through the judge who represents you) shall adopt the principle of "life for life," etc.¹²

There are then difficulties standing in the way of using the Exodus 21:22-25 passage in the abortion debate. First, the interpretation of the passage is disputed, based on genuine ambiguities in the text and not simply reflecting the biases of interpreters. Second, even if we could be certain of our interpretation, we might well still be uncertain about what general lessons could be extracted from the passage. It could be argued that the laws laid down in Exodus 21 and 22 are contextual in nature and not generalizable to other times and places (note that bestiality is punishable by death according to Ex. 22:19, but there is no punishment for one who strikes his slave and causes him to die a day or two later according to Ex. 21:21). At the very least one would have to think this through very carefully before making any applications to the current abortion dispute.

**The Appeal to the Continuum**

Some would contend that as we move back in time from birth to conception there is no discernible difference from moment to moment—that is, there is no difference between an infant at birth and that same infant one minute before birth, no difference between an infant one minute before birth and that infant one minute before that, and so on until the moment of conception. This shows, it is argued, that there is no difference between a newborn infant who has a right to
life and a newly fertilized ovum. In other words, the fertilized ovum must have the same right to life that the infant has. Though not perfectly clear, it does seem that C. Everett Koop is arguing something like this when he says, "My question to my pro-abortion friend who will not kill a newborn baby is this: 'Would you kill the infant a minute before he was born, or a minute before that?' You see what I am getting at. At what minute can one consider life to be worthless and the next minute consider that same life to be precious?"

It may be that what is in operation here is what has been called the "fallacy of the continuum," which "is committed when it is argued that because there is a continuous distribution of differences between two extremes, there is no 'real' difference." By this mode of reasoning one could show, for example, that there is no difference between night and day, since as you move from twelve midnight to twelve noon there is never any discernible difference from one moment to the very next. But clearly that is absurd, and this form of reasoning is invalid.

**Difficulties with Arguments for a Right to Life from Conception**

If it is claimed that from conception onward there exists an individual with the same right to life that we grant to persons, then we are struck with certain oddities. The first is that the use of the intra-uterine device (IUD) and the so-called morning-after pill both of which serve to induce abortion,\(^{15}\) is as serious a moral offense as causing the death (in comparable circumstances) of a seven-month-old fetus, a newborn infant, a child, or an adult. Even if we grant that we ought to have some moral reservations about the use of the IUD and the morning-after pill--reservations that we need not have with respect to contraceptive devices that merely prevent fertilization--it is nevertheless hard for most people to believe that these methods are as morally objectionable as the conservative position would seem to demand. Causing the death of a newly fertilized ovum does not seem as intrinsically objectionable as causing the death of, say, a person sitting next to me.\(^{16}\) For most people, using the IUD seems more like contraception in its moral seriousness than like infanticide, manslaughter, or possibly even murder, to which the conservative position compares it.

A second point we ought to consider is that approximately one-third of all fertilized ova never implant in the uterine wall being carried away in the menstrual flow.\(^{17}\) In other words, these fertilized ova are spontaneously aborted without the woman ever being aware of the fact. But if the conceptus has the value of a person, then these spontaneous abortions ought to be viewed as a natural tragedy of vast and virtually unparalleled proportions, not unlike an unrelenting plague or disease systematically killing one-third of the world's population. Obviously most people would find it difficult to accept such an interpretation. Nevertheless, if the conservative position is correct and zygotes have as strong a right to life as adults, then we who are able should be as morally compelled to use our medical technology to save them as we are morally compelled to save, for example, the large numbers of people perishing from lack of food in parts of Africa today.

A third moral consideration involves the fact that a very high percentage of abnormalities have been discovered in cases of spontaneous abortions; figures range up to 61 percent.\(^{18}\) At the present time approximately one in every fifty babies is born with some sort of congenital
abnormality, mostly of a relatively mild order. But if spontaneous abortion did not occur, the estimate is that this percentage would skyrocket to one in ten or possibly one in five. Most of these defects would be much more severe than those found in the present spectrum of congenital disease and would turn pregnancy and birth into a nightmare. But suppose we discovered a drug that would totally eliminate spontaneous abortions, a drug that produced no bad side-effects and was no more expensive than an aspirin tablet. The argument for a right to life from conception would seem to suggest that people would be morally obliged to take this drug, for if the zygote has a person's claim to life, then it has the right to be protected not only from intentional abortion but also from natural unintended abortion when reasonable measures are available for doing so. We might grant, even if only for the sake of argument, that taking life is morally worse than not saving life, but that would not in any way undercut the very strong obligation we have to save life whenever we are in a position to do so. The consequence of saving all these lives would, of course, be horrendous; gross congenital deformity would become commonplace, among other things.

I think it is not unreasonable for individuals to argue that they are more certain that these odd implications are unacceptable than they are that the unqualified right-to-life-from-conception position is true. But even though the moral price that one has to pay in order to accept the right-to-life-from-conception position is clearly high, it still has much to recommend it and remains one of the main options in the abortion debate. While not specifically taught in either the Old or New Testaments, it does not conflict with biblical teachings, and it certainly represents one way—even if not the only way—to capture the high regard for fetal life that is affirmed in Scripture and in the Christian tradition in general. For those of us for whom biblical sanction represents an important consideration, this constitutes no small recommendation for the theory. In addition, there is an admirable consistency and appealing simplicity to this theory. There are no suspicious ad hoc qualifications made to avoid hard cases. And for those who have a strong preference for placing one's moral trust in principles and very little in one's pre-analytic intuitions, this is a very attractive theory. But still for many the implications are sufficiently difficult to accept that there seems sufficient warrant to continue to search to find a better way—though I feel impelled to add that it is not easy to find that better way.

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Wennberg's Notes for Chapter 4


3. This argument can be formulated in two basic ways: in terms of uncertainty about whether a fetus is a person, or in terms of uncertainty about the moral status of the fetus (i.e., uncertainty about whether potential persons have as strong a right to life as fully actualized persons).

4. Brown, Death before Birth (Nashville: Thomas Nelson, 1977), p. 127. 5. It ought, incidentally, to be noted that to maintain that God is at work in the womb is not to deny any biological
realities (e.g., the sperm fertilizing the ovum and creating the zygote), for these can be viewed as the secondary means through which God works his will and purposes.


7. See Brown, p. 127.


15. "There is some question as to just how the IUD prevents pregnancy but basically it is assumed to do one of two things: either it prevents fertilization from occurring by speeding the egg through the fallopian tubes and uterus and out before fertilization can occur, or its presence in the uterine cavity creates a chemical hostility that prevents implantation of the fertilized egg.... There is also retroactive contraception in the form of a 'morning after' pill that induces actual miniature abortions if fertilization has taken place. This method, which is used for rape victims, causes severe vomiting and nausea and involves large dosages of estrogen which, although potentially harmful, seldom are." R. Bruce Sloane and Diana F. Horvitz, A General Guide to Abortion (Chicago: Nelson Hall, 1973), pp. 244, 249.

16. It might be argued that keeping a fertilized ovum from implanting (e.g., by means of the IUD) is not as serious as removing a fertilized ovum that is already implanted (which is what happens in most abortions). But this is not obviously so. In fact, an analogy that readily comes to mind suggests otherwise. Consider the difference between preventing a person from being connected to a life-support system and disconnecting a person who is already connected, both acts causing the patient's death. In essence the two acts would seem to share a common moral status: if the
one is a morally unacceptable act, so is the other and equally so. However, even if removing an implanted ovum is more serious than preventing a fertilized ovum from being implanted, still, on the assumption that fertilized ova are persons, the latter act would nonetheless be a grave act, seriously wrong and way out of keeping with what most people would judge to be the actual seriousness attaching to the use of the IUD.

17. Clinical studies suggest that "one fertilized ovum in three perishes before pregnancy is recognized and one in four or five is lost after the diagnosis of pregnancy has been established. In total ... one fertilized ovum in two is aborted spontaneously" (Malcolm Potts et al., Abortion [Cambridge: Cambridge University Press, 19771, p. 60).

Chapter 5

"The Actuality Principle"

Unquestionably the most radical theory on the current scene Is what I have christened "the actuality principle." It maintains that an individual comes to possess a right to life only when personhood has emerged sufficiently so there is a self-consciousness, an ability to envisage a future for oneself, and a capacity to have hopes and aspirations for that future. Potential for all this counts for nothing, it is argued; only what is actualized is relevant to assigning a right to life. The contention is that it makes no sense to attribute a right to someone who does not have the capacity to desire what he or she supposedly has right to: if an individual is not capable of having a desire to continue to live, for example, then this individual has no right to the continuation of that life. It is for this reason, the argument often proceeds, that animal shelters that painlessly end the lives of cats and dogs violate no right to life because cats and dogs simply are not capable of desiring a future existence for themselves. Neither do these animals have a fear of passing out of existence, of ceasing to be, even though in certain life-threatening circumstances they instinctively "fight for their lives." Crucially, this means that infants, in addition to cats, dogs, and human fetuses, have no right to life because they too cannot desire a future existence for themselves. Of course this is an extreme view, as difficult in the final analysis to accept for those operating outside the Judeo-Christian tradition as it is for those within it. Nevertheless, it is an important and instructive view that takes us to the heart of a number of critical issues in the present debate. In summary the theory looks like this:

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At the outset several things should be noted about the radical option. First, it is among the best argued positions on the abortion debate. The name most associated with the position is that of Michael Tooley; the comment has been made that his discussion of the whole abortion topic is "the most convincingly argued in the literature." Second, this denial that infants have a right to life is not only being well argued but is receiving a wide hearing. To be sure, advocacy of the actuality principle, along with a tough-minded acceptance of its implications, has been exclusively the work of professional philosophers, but the anthologizing of articles written by proponents of the actuality principle and the fact that it is advocated in college textbooks does mean that serious discussion of the principle is no longer restricted to low-circulation professional journals. Third, the claim that infants lack a right to life undercuts one of the strongest arguments for a conservative position on the abortion issue: (1) infants have a right to life; (2) there is no morally relevant difference between infants and fetuses; therefore, (3) fetuses have a right to life. If infants lack a right to life, then obviously this argument cannot even get off the ground. Fourth, when fully argued, the position may confront some of us with a tension between certain conceptual arguments (e.g., that infants can't sensibly be said to have a right to life) and our moral convictions (e.g., that killing infants is seriously and intrinsically wrong). In constructing a moral theory, we may sometimes have to choose between revising our concepts (if we judge that we have the logical freedom to do so) or revising our moral judgments (if we have the moral freedom to do so). Fifth, the discussion of rights may prompt us to seek alternative accounts of the evil of murder; we might decide that the wrongness of unjustly taking the life of another person (i.e., someone who undeniably is a person) could better be accounted for without any reference to rights being violated. (Such an option may be especially attractive to those in the Judeo-Christian tradition.) If we could fully establish that murder is intrinsically evil (that it is wrong in and of itself) without any reference to a right to life, then it would be of little consequence that infants (or fetuses) lack a right to life. We shall explore this possibility when we turn to a discussion of the potentiality principle in Chapter Six.

**Infanticide and Abortion**

Critically, the actuality principle involves the denial that infants have a right to life. But in making this denial proponents of the argument are not suggesting that killing infants is of no moral consequence; they are only contending that it is not wrong intrinsically, that killing an infant does not violate the infant's right to life. And why are growing numbers of commentators on the abortion debate even interested in denying that infants have a right to life? In part because they want to establish the acceptability of abortion, and they have done so by arguing that fetuses have no right to life; but these arguments are equally effective in showing that newborn infants have no right to life either. Such individuals have simply been tough-minded enough to accept the implications for infanticide inherent in their arguments for abortion.

Peter Singer acknowledges the implications of this sort of argumentation when he states, "I have argued that the life of a fetus is of no greater value than the life of a nonhuman animal at a similar level of rationality, self-consciousness, awareness, capacity to feel etc., and that since no fetus is a person no fetus has the same claim to life as a person. Now it must be admitted that these arguments apply to the newborn baby as much as to the fetus." He does not disguise his
position; with words many will find both blunt and offensive, he proceeds to say, "If the fetus does not have the same claim to life as a person, it appears that the newborn baby does not either, and the life of a newborn baby is of less value than the life of a pig, a dog, or a chimpanzee."\textsuperscript{4} The reason he gives for this latter conclusion is that the newborn is at a lower level of rationality, self-consciousness, awareness, capacity to feel and so forth than is a (grown) pig, dog, or chimpanzee, and Singer denies that the potential for rationality and the like (which the infant does have) counts for anything at all. Of course, to admit that a potential for personal existence invests one with a strong claim to life would be to give the fetus (as well as the infant) a right to life, and that would render abortion morally problematic. It turns out, then, that the difficulty with liberal theories on abortion is that they have implications for infanticide that most of us find difficult to accept: the very reasons that deny any special protection to the life of the unborn also serve to deny that special protection to the newly born. Even advocates of the actuality principle are in large part uncomfortable with these implications. Many have sought to reduce the moral embarrassment attaching to their denial that infants have a right to life by arguing that there are still good reasons (other than possessing a right to life) for protecting the lives of infants--reasons that do not in turn call for protecting fetuses (at least not all fetuses). And, of course, it is critical (from their perspective) that the reasons that serve to protect the lives of infants not also apply to fetuses, lest abortion be rendered as unacceptable as infanticide.

The Evil of Infanticide:

ACCOUNTS BY BENN, WARREN, AND ENGELHARDT

S. I. Benn has argued that infanticide ought to be viewed with far more seriousness than abortion despite the fact that infants, like fetuses, lack a right to life.\textsuperscript{5} He reasons that acceptance of the practice of infanticide and the attendant attitude that infants are expendable will lead to harsher and less loving treatment of those infants that we do intend to bring to adulthood, which in turn will have effects on the kind of persons that they will eventually become (perhaps leading to emotional impairment or stunting). Benn admits that this has implications for abortion. At the earlier stages of fetal development, when we don't think of the fetus as a "baby in the womb," abortion would have no brutalizing effects on society, he suggests, but at a later stage it might very well have this kind of effect and be, in this regard, very similar to infanticide in its moral gravity. However, it needs to be underscored that, according to Benn, infanticide does not harm the infant who is killed (assuming the killing is done painlessly), nor does it constitute an evil in and of itself. He holds that killing infants is evil only because of the harm it will do indirectly to those other infants who become persons in a society brutalized by the practice of infanticide.

Mary Ann Warren denies that infants have a right to life but maintains that there are good reasons to prohibit acts of infanticide--reasons that do not also serve to prohibit abortion.\textsuperscript{6} Her reasoning is that there are people who want infants (if not the parents themselves, then others), and that to destroy the infant is to deny these people the pleasure of having an infant son or daughter. Further, there are people who value infants and wish to keep them alive (even if not for themselves), who are willing to provide the necessary financial support to do so. It would then be wrong, all else being equal to deny them this opportunity to care for such infants.

Of course, much the same thing can be said of fetuses. They too are valued and wanted, as the
enthusiastic commitment of large numbers of people to the Right to Life movement clearly demonstrates. Warren acknowledges all this, but maintains that the difference between abortion and infanticide is that denying a woman an abortion means denying her the freedom to determine what happens in and to her own body, perhaps imposing on her considerable hardship, whereas refusing people the opportunity to commit infanticide does not involve denying anyone the freedom to determine what happens in and to her body, nor does it impose grave hardship on anyone (at least in the great majority of cases). Thus, says Warren, "So long as the fetus is unborn, its preservation, contrary to the wishes of the pregnant woman, violates her rights to freedom, happiness, and self-determination. Her rights override the rights of those who would like the fetus preserved."7

But if it is the case that killing fetuses can be justified whereas killing infants cannot--and this is so despite the fact that fetuses might be wanted and valued almost as much if not equally as much as infants themselves--then presumably if there came a time when we did not want or value infants, we would be free to go ahead and kill them without moral compunction. Indeed, Warren is willing to accept such a conclusion. She holds that infants ought to be preserved for the same reason that natural resources or great works of art ought to be preserved: because people derive pleasure from them and are willing to support their preservation. But, should conditions alter so that they were no longer wanted and valued, then our obligations would also change--and in this case dissolve completely. Thus, the difference between killing kittens and killing infants is not in the least intrinsic to these acts; it is simply a matter of our getting more pleasure from infants than from kittens--a matter, if you will, of our willingness to spend more for orphanages than for animal shelters. But if our valuations were reversed, then it would be more seriously wrong to kill kittens than infants.

Tristram Engelhardt has argued that with birth the infant assumes a role within society that alters its status and makes infanticide a more serious offense than abortion. He notes that the mother-fetus relationship is automatic and biological, whereas the mother-infant relationship is active and social: "The newborn infant, unlike the fetus, can elicit a series of regular responses and activities from rational humans even though the infant is not itself rational. Even within primitive social contexts, its crying appears as a demand for food, etc., and initiates a series of activities directed to the infant as if it were a person."8 In contrast, the role of the fetus is not social in character, it having no opportunity for the type of interaction that exists between infant and family. Therein lies the seriousness that attaches to infanticide, according to Engelhardt: infanticide involves killing members of the human species who have begun to assume an explicit role within the structure of family and society--this even though infants have yet to achieve full personal life. And what's wrong with killing such individuals? "If nothing else," says Engelhardt, "such destruction would erode the status of the individual within society by undermining the status of a positive active role and relations."9

Engelhardt also holds that viability is a critical juncture because from that point on it is possible for the infant to exist outside the womb and thereafter play an active social role. To prohibit abortions from viability onward "has the virtue of preserving social values, such as the dignity and integrity of the role and office of human person."10 So, ultimately it is not that killing infants or fetal life from viability onward is an intrinsically objectionable activity; rather, it is simply a socially risky activity that might undermine respect for the lives of other individuals (ourselves
The Intrinsic Evil of Infanticide

In all of the accounts that we have just considered, the evil of infanticide is held to be derivative rather than intrinsic. These same accounts do hold that killing and harming persons is intrinsically objectionable, however, and that killing infants is wrong only because it jeopardizes the welfare of these persons by encouraging acts threatening to them. Benn holds that killing infants will hurt the persons who will develop from the infants we don't kill. Warren holds that killing infants will frustrate the desire of people to have and care for those infants. Engelhardt holds that killing infants threatens all persons by undermining the social role of the person. And all three hold that if there were a society in which no such bad consequences flowed from infanticide, then no objection could be raised to the practice. Historically there is reason to believe that just such a society did exist. As W. E. H. Lecky has observed,

Experience shows that it is possible for men to be perfectly indifferent to one particular section of human life, without this indifference extending to others. Among the ancient Greeks, the murder or exposition of the children of poor parents was continually practiced with the most absolute callousness, without exercising any appreciable influence upon the respect for adult life.11

If infanticide is not intrinsically objectionable, say the proponents of the actuality principle, we must accept the practice with equanimity; if we could transfer the Greek practice into our own culture with no bad side-effects, we should find no moral fault with it. Most of us find such a conclusion impossible to accept, however. Indeed, the denial that there is anything inherently wrong with killing infants has been characterized by one philosopher (Roger Wertheimer), in words that depart from the usual reserve that characterizes philosophical discussions, as an "assault on the conscience and intellect of civilized people" that is "brutal and blundering."12 The deeply held moral convictions of most people would be in agreement.

The implications of the actuality principle for infanticide not only clash with our common moral consciousness but are also at odds with certain fundamental emphases that characterize the Judeo-Christian tradition. First, there is the doctrine of creation--this being not merely the affirmation that God brought the universe into existence at one time by the free exercise of his power, but also that his creative will continues to be expressed in the ongoing procreative process. The Christian faith holds that the infant is biological human life on the way of becoming personal human life--on the way, that is, to thinking, loving, willing, and worshiping--and that all this is God's intention and purpose for that life. Indeed,

Thou didst form my inward parts,

thou didst knit me together in my mother's womb....

Thy eyes beheld my unformed substance;

in thy book were written, every one of them,
the days that were formed for me,

when as yet there was none of them. (Ps. 139:13,16)

Further, there is in the Judeo-Christian tradition a profound sense of gratitude for life as a gift of a loving and gracious God, a gift that is intrinsically good, whatever the burdens that might have to be borne to preserve and protect it. Such a gift is not to be spurned or repudiated but prized and therefore preserved and protected. And beyond this, for those who are part of communions that recognize the sacrament of infant baptism, the low value that the actuality principle places on infant life will be especially troublesome. How different is the spirit that animates these words from the Presbyterian Book of Common Worship:

Dearly beloved, the Sacrament of Baptism is of divine ordinance. God our Father, who has redeemed us by the sacrifice of Christ, is also the God and Father of our children. They belong with us who believe, to the membership of the Church through the covenant made in Christ, and confirmed to us by God in this Sacrament, which is a sign and seal of our cleansing, of our engrafting into Christ, and of our welcome in the household of God.

According to such a perspective God's grace not only precedes our response but even precedes our capacity to respond. This is to acknowledge the profound sense of respect for future possibilities and for latent capacities that characterizes the Christian tradition. The actuality principle, it would seem, will not readily find a congenial home in such a tradition. The tradition can, of course, be qualified or reinterpreted in order to provide that home, but among the principles we are considering, the actuality principle requires the most extensive reconstruction of the Judeo-Christian tradition.

The Argument That Infants Have No Right To Life

The denial that infants have a right to life has typically been supported by arguments that claim to show that infants lack the characteristics logically necessary for one to have a right to life, and although we may feel that only the claim that infants have a right to life will do justice to our deeply held moral and religious convictions about infant life, still if the claim itself is not a sensible one, our moral and theological protestations may be in vain. We have to give this matter close consideration.

The denial that infants have a right to life is specifically predicated on the contention that in order for something or someone to have a right of any kind it must have desires and/or interests. It is argued that a stone, for example, cannot intelligibly be said to have a right to be protected from being split in half because a stone has no interest in not being split in half. The reason it makes no sense to attribute rights to that which has no interests, it is argued, is that rights are a protective moral covering for the interests of individuals that they may invoke or that others may invoke on their behalf in order to avoid the sacrifice of those interests--and where there are no interests, there can be no place for a protective moral covering for those interests. It is a conceptual requirement that in order to sensibly say 'Jones has a right to X” one must also be able to sensibly say "Having X is in Jones's interest" or 'Jones will be harmed if denied X.” A right to X then, is a right to protection from having one's interests violated and being harmed by being
deprived of X. So, if we are to successfully contend that infants have a right to life, it is crucial to make sense of the claim that infants are harmed and their interests seriously violated when they are denied the prospect of personal life. This is not the easy task that it at first might appear to be; a good number of moral philosophers have denied it and along with it the claim that infants have a right to life. We ought to note that in all this talk of rights, no one is equating the rights of an infant with the rights of a stone; that is, no one is suggesting that an infant has no interests or desires in any sense. The argument is not that infants have no rights but only that they do not have a right to life. Most proponents of the actuality principle would agree that infants have a right to be protected from torture, for example, because torture is clearly contrary to their interests, frustrating as it does a desire (in some sense) to avoid pain. On these grounds, torturing an infant would grossly violate its rights. But the fact that it has that right doesn't entail that it also has a right to life or that it has any of a great many other rights (e.g., the right to vote, the right to free speech, the right to have children). In essence, the argument is that individuals are harmed only when their interests are violated and that their interests are violated only when their desires are thwarted. In the case of a right to life, the desire in question is a desire to continue to live, and it is argued that since we know that infants have no such desire, it follows that they can have no interest in continuing to live and hence that they are not harmed when killed, and consequently it follows that talk of infants having a right to life makes no sense.

The reason infants have no desire to continue to live is that they lack the concept of a continuing self, a self that endures through time. An infant has no desire to exist in the future because it does not possess those concepts logically necessary for having such a desire--namely, the concept of time (past, present, future) and the concept of a continuing identical self. Thus, we won't thwart any of an infant's desires if we kill it painlessly. Or, put it this way: to kill a newborn infant painlessly, or to abort a nonviable fetus painlessly, or even to exercise effective birth control measures is in each instance simply to prevent a person from emerging, and this does not harm anyone (i.e., it does not hurt anyone with hopes, aspirations, and desires for the future). To be sure, the individuals who grow to adulthood will be glad that they were not killed in infancy, but then again they will be equally glad that they were not aborted and that their conception was not prevented by contraceptive devices. However, none of these practices--contraception, abortion, and infanticide--harm persons; they simply prevent a person from coming into existence. And the actuality principle specifies that persons do not have a right to come into existence but only a right to continue to exist once they do exist. And as Mary Ann Warren has commented, "The very notion of acting wrongly toward a merely potential person, that is, one which will never become a person, is incoherent. For who is it that is being wronged when a potential person is prevented from becoming a person? Absolutely no one."13 To some considerable extent, the valuation of infant life outlined by the actuality principle is a reflection of more crucial attitudes toward fetal life. I think James Humber is correct when he suggests that most advocates of liberal abortion policies adopt that position because they are unable to empathize, sympathize, or identify with a fetus, whereas they are able to empathize, sympathize, and identify with the suffering and anguish of a pregnant woman.14 They simply "feel" that abortion is a morally acceptable activity and simply "feel" that the fetus does not have a serious claim to life. Those who defend the actuality principle merely suggest that we go one step further and concede that sympathetic concern for infants is also misplaced. Certainly the infant is cute and cuddly, but so are kittens and puppies. The death of an infant, we are told, harms the infant no more than the
death of a zygote harms a zygote. In neither case are hopes dreams, and aspirations for the future
 dashed.

**Conclusion**

The actuality principle leads to the conclusion that infants have no right to life, that killing
infants is, in and of itself, of no moral consequence. This indicates, I submit, that there is
something seriously wrong with this principle. Attempts at reducing the moral embarrassment of
the conclusion have not proved successful nor is it conceivable how they ever could be, seeking
as they must to ground the wrongness of infanticide (in one way or another) in its effect on others
rather than on the infant. This offends both the biblical tradition and common moral sense.
Nevertheless, even if we take issue with the actuality principle, we still have to deal with the
argument that it makes no sense to attribute a right to life to infants and fetuses. We will do so as
we consider the potentiality principle in the next chapter. In taking leave of the actuality
principle, we might just note that it does have the virtue (if one can call it that) of rendering
abortion morally unproblematic. It holds, after all, that neither killing fetuses nor killing infants is
intrinsically objectionable, and that one can therefore proceed to have an abortion free from any
moral reservations about the nature of the act itself. Indeed, the only way to have a morally
permissive position on abortion is to deny that infants have a right to life, for as soon as one
holds that infanticide is intrinsically objectionable, abortion will inevitably be rendered
problematic and morally risky. If I concede that infants possess a right to life and thus an
inviolable status, then how can I be sure that fetuses, which are not so very different from infants,
don't also have a right to life? If I want to have this assurance, then I must look for features that I
can with confidence point to and say "This feature gives all beings who possess it a right to life,
and it is possessed by infants but not by fetuses." That is not an easy assignment to fulfil. Until it
is fulfilled, I don't see how anyone can with an easy conscience proceed to endorse abortion. The
actuality principle at least serves to focus our attention on the fact that the moral status of
thenewborn is crucial to the abortion debate.

**Wennberg's Notes for Chapter 5**

1. Among Tooley's publications are the following: "A Defense of Abortion and Infanticide," in
The Problem of Abortion, ed. Joel Feinberg (Belmont, Cal.: Wadsworth, 1973), pp. 51-91; "Is
Abortion Murder?" (cowritten with Laura Purdy), in Abortion: Pro and Con, ed. Robert Perkins
(Cambridge, Mass.: Schenkman, 1974), pp. 129-49; and Abortion and Infanticide (New York:
Oxford University Press, 1983). Other proponents of this position include Mary Ann Warren
[New York: Macmillan, 1975], pp. 120-36), Joel Feinberg ("Abortion," in Matters of Life and
Death, ed. Tom Regan [New York: Random House, 1980], pp. 183-216), and Jonathan Glover

2. Glover, p. 127.

3. We might be tempted to think that infants do not have rights of any kind because they cannot
invoke rights, protest the abuse of their rights, forego the exercise of a right should they choose,
or in general do the sorts of things that persons do with their rights. It might be argued that in
order to have a right one must be able to wield that right. But it is more plausible to believe that if there were some sort of proxy who could invoke the rights on behalf of a given individual (whether or not that proxy actually chose to do so), then that would be sufficient to ensure that the given individual did indeed possess rights as, for instance, parents and other members of society might invoke rights of behalf of fetuses, infants, and the comatose.

4. Singer, Practical Ethics (New York: Cambridge University Press, 1979),
7. Warren, p. 136

Possible Test Questions for Reading Number 8

With regard to judging the moment of conception as the moment at which an individual should be regarded as having as strong a right to life as an adult . . .

1. What is the argument from genetic endowment?
2. What is the argument form potential? and what are identified as two difficulties that this argument must respond to?
3. What is the benefit of the doubt argument? How can the premises of this argument be used to also support a "liberal" position on abortion?
4. Identify three biblical passages sometimes used to support conception as the decisive moment?
5. How does Harold O. J. Brown conclude from these passages that the fetus should be regarded as a person from the moment of conception?

6. What does Wennberg raise as objections to this argument?

7. What conclusion with regard to fetal life does Wennberg contend is supported by these texts?

8. What does Exodus 21-22-23 identify as the punishment for an accidentally induced miscarriage? What conclusions regarding abortion, if any, does Wennberg think can be based on this passage?

9. What does Wennberg identify as the major difficulties with accepting the moment of conception as the point at which a strong right to life is present?

**The Actuality Principle**

10. What does the actuality principle contend is necessary in order to have a right to life?

11. Under this theory, what groups do, and what groups do not have a right to life?

12. What are two of the arguments, by those who uphold the actuality principle, that killing infants is still an evil even though infants do not have a right to life?

13. Briefly state the basis for having a right as understood by advocates of the actuality principle.