

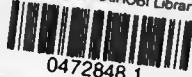
**ABORTION AS A BASIC RIGHT: ITS ASSUMPTIONS,
IMPLICATIONS AND CHALLENGES**

BY

CHIRCHIR PAUL KIPSANG

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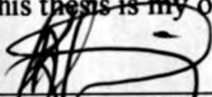
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**A THESIS PRESENTED IN FULFILMENT FOR THE DEGREE OF
DOCTOR OF PHILOSOPHY IN PHILOSOPHY OF THE
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July 2006

Declaration

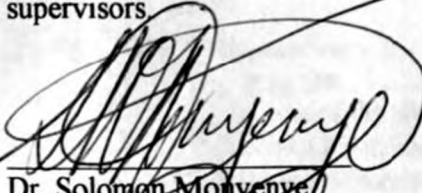
This thesis is my original work and has not been submitted for a degree in any university.



Chirchir Paul Kipsang


19/07/06
Date

This thesis has been submitted for examination with our approval as university supervisors.



Dr. Solomon Monyenye

July 25, 2006
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31/08/2006
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Operational definitions

(i) **Fetus**

The term fetus is used in this study to refer to a developing organism in the womb in the context of a human person, a young human person. The usage here is with regard to the stage or location in life's continuum and hence is used to refer to the unborn in all stages of development.

(ii) **Abortion**

The term is used here to refer to the intentional termination of pregnancy.

(iii) **Human rights**

The term human right is used in this study in the broader sense of the 1948 UN Geneva Declaration of Human Rights. It refers to those issues, claims or rights that apply to all members of the human race across the globe regardless of colour, race, sex, or status in life.

(iv) **Women's rights**

The term women's rights is understood in this thesis to be those claims, issues or rights touching on women on the ground of gender or on the fact that they are women

(vi) **Pro-choice**

This term is used to refer to those proponents of abortion who hold the position that the decision whether to abort or not lies with the woman since at all stages of pregnancy the rights of the woman overrides that of the fetus.

(v) **Pro-life**

This term is used to refer to the opponents of abortion who hold the position that the fetus at all stages of pregnancy has full moral standing and therefore its right to life is not different from that of an adult.

(vi) **Radical Feminists**

This term is used here to refer to that section of persons sympathetic to the woman cause and who espoused the view that abortion is a woman's primary right requiring no justification of any kind.

The main argument among this group is that, women, as they are now in the traditional systems and structures are marginalized and hence the need to have them chart their own destiny.

Dedication

To all those men and women, who have, unswervingly stood above sectarian interests and have instead endeavored to uphold the sanctity of human life and dignity of humanity.

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Last but not least, my family – wife Seline and our daughters Grace, Mercy and Joy for their moral support and understanding about my failure to be there for them the many hours and days when I was deeply engaged in my studies.

May the almighty God abundantly bless you all.

ABSTRACT

The current debate on abortion has given rise to a group of feminists who hold that unrestricted access to abortion and complete reproductive freedom is a woman's *basic right*. This study is premised on the understanding that the issue of abortion is complex and multifaceted. The issue is profound because it touches on our value systems and affects human relations, especially between men and women, children and parents and between siblings. Abortion is an issue, which significantly affects the future of humanity and the value that one attributes to human life.

It is as a result of this complexity that the issue has polarized the human society into various groupings, namely: the conservatives, the moderates and the liberalists. Our major concern in this study is the extreme liberalist position that abortion is a woman's basic right. Among the proponents of this position are the radical feminists. This group of feminists is generally referred to as radical pro-choice feminists.

This study set out to critically examine the underlying assumptions, implications and challenges of holding this position of unrestricted access to abortion and complete reproductive freedom as a woman's *basic right*. The study found out the following:

- i) The woman's decision to abort affects not only the woman's self-image but also her health and life.
- ii) By denying the partner right to participate in decision-making, the claim will impact negatively on the woman, as the partner will have reason to run away from his social and financial obligations.
- iii) The recourse to abortion does not only affect the society's attitudes towards the unborn children but also to the other sections of humanity who may fall under the same category.
- iv) The pro-choice feminist's demand, if granted, could tear the family set up apart as it impacts negatively on the mutual cooperation between family members that is a vital ingredient of a healthy family life.
- v) The claim assist women to deny procreation of the human race which nature has bestowed upon them.
- vi) That there are other viable options to the abortion decision.

Consequently, the study concluded, in the light of the findings that the woman's demand on unrestricted access to abortion and complete reproductive freedom as a woman's primary right; contrary to the claims of its proponents is detrimental to the advancement of the women cause and by extension the entire humanity.

In response to the findings of this study, and in an attempt to reverse the current trend and thus save women and the entire human society from further denigration, this study has called for a re-examination and re-evaluation of the radical feminist's standpoint and the society's attitude towards life and the well being of women and children.

It is believed that this study will make some modest contributions to the world of scholarship, more particularly, it is hoped that it will provide useful material and information to individuals, families, organizations, academic institutions of higher learning and government policy makers, in areas pertaining to the advancement of the women cause and other disadvantaged members of the human society.

Finally it is hoped that this study shall help bring about major attitudinal changes among members of the human society towards life, and that in the process women shall pick up the broken pieces of their destiny and confidently acknowledge and assert themselves in their unique role as the primary agents of procreation and custodians of human life.

CHAPTER ONE

INTRODUCTION

1.0 Introduction

Abortion is one of the most contentious moral and legal issues of our day. It is now a subject of the most sustained public debate on a worldwide scale both in the “developed” and the “developing” countries. ¹

As Luke T. Lee observes, despite continued strong opposition to abortion on various grounds, the general trend points unmistakably towards legalization so long as the forces working towards it remain unabated. The situation is further compounded by the fact that five of the world’s most populous countries comprising a majority of the world’s total population – United States, Japan, Soviet Union, India and China – now have laws which virtually allow abortion on request. ²

According to Hans Lostra the sudden and drastic change in legal policies towards abortion has been attributed to, among others, the following developments in social and moral attitudes:

- i. An increasing awareness of the threat of over population, and of the need to control man’s environment through rational planning;
- ii. A rejection of traditional moral codes with a new emphasis on the personal liberty of women which should not be hampered by unwanted pregnancies and unwanted children;
- iii. A rejection of traditional sexual codes, as well as new attitudes to procreation which is no longer considered a divinely ordained aftermath of the act of love; ³

The complexity surrounding the abortion debate is such that no single remedy can resolve it. As Lostra, observes, “if there is anything that is clear about the issue of abortion, it is

that it is a multi-dimensional, complex, and anguishing. Indeed, there is no single causality nor are there any simple solutions.”⁴

At the individual level, the woman is faced with a moral dilemma, which has communicational, legal, medical, economic, social, psychological, environmental, ethical and religious aspects. In addition, within her set up are other members of the society to whom she might go for consultation or cooperation; her family and friends, physicians, psychiatrists, social workers, lawyers and others. In that kind of situation, the expectant mother is bound to consider not only her own situation, but also the mental attitudes and ethical thinking of the people she might ask for help and even those she may not.⁵

As a social phenomenon, the subject of abortion is a matter of interest and concern to demographers, family planning administrations, physicians, politicians, judges, psychiatrists, psychologists, feminists, and economists, among others. Emily C. Moore Cavar, quoted by Lostra has indicated some of the delicate and highly controversial issues, which the various disciplines have to face:

Some particular issues of interest, for example, are the demographic effects of births averted by abortion with or without the combined effects of contraception; legal and governmental questions regarding laws designed to protect the pregnant woman or the fetus, the formulation of pro-natalist policies, and the protection of the individual and group rights...medical issues regarding mortality and morbidity associated with legal and illegal abortion and children born to women unable to obtain legal abortions; social matters such as the cultural acceptability – promotion or prohibition – of abortion as a means of fertility controls as evidenced indirectly by public opinion polls or directly by incidence of legal and illegal abortion or differential class access to medically safe abortion facilities and contraceptives services, etc. Thus there is both research interest and argument over controversial aspects for persons of a variety of disciplines.⁶

While emphasizing on the fact that abortion is a multidimensional problem that can not be reduced to a one-dimensional thinking Daniel Callahan unveils some further aspects of the problem thus:

It is a medical problem because the doctor is the person normally called upon to perform an abortion; both his conscience and his medical skills come into play. More broadly, the question is raised of the use of technological

developments for the purported improvement of human life. It is a legal problem because it raises the questions of the extent to which society should concern itself with unborn life, with motherhood, with family life, with public control of the medical profession. It is a sociological problem because, as Edwin M. Schur has pointed out, it touches on "woman's role in our social system, family organisation and disorganisation, national demographic policy, and the role of informal and formal sanctions."...It is a psychological problem because, in one way or the other, the attitude of human beings towards conception, pregnancy, birth, and child rearing touches deep-rooted drives, instincts, emotions and taboos.⁷

It is apparently clear from the content of the foregoing that abortion is a complex issue involving various factors and perspectives. The problem of abortion does not end just with its legalization for with that are attendant concerns, which must of necessity be addressed if any actualization of any code or policy calling for liberalization of the abortion laws is to be realized. Any government/institution seeking to legalize abortion must grapple with the following:

- i. the freedom of conscience of individual doctors and paramedical personnel as well as medical institutions;
- ii. the right of the husband whose pregnant wife requests an abortion;
- iii. the right of the parents of an unmarried minor who desires an abortion;
- iv. the legitimate limits of fetal research in connection with abortion;
- v. the question of public promotion and public funding of abortions.⁸

Abortion, therefore, is not just a woman's affair, or another legal issue or just a simple medically "safe" procedure or intervention, as some of its proponents claim. The abortion act has far reaching implications and perspectives so much so that any attempts to define its morality will be as varied as there are variant conceptions on the nature of human life and its beginnings.

The moral complexity surrounding the abortion act arises from the fact that it is a human act and the outcome of the agents' free value judgment concerning the nature and control of incipient human life. Consequently any definition of the morality of abortion depends largely on fundamental insights into the nature of human life, its beginning and the basic

attitude men would adopt towards the lives of others.⁹ In that regard the critical moral question can be formulated as follows:

- i. If the fetus is human, and even represents human life, in what sense, if any can we say that it is a human individual, or a human person?
- ii. In what way does the fetus enjoy a claim, or right, to life.¹⁰

The abortion debate is further complicated by both the pro-abortionists and anti-abortionist's cultural ideologies. The nature and quality of fetal life is not the only issue at stake. Each side has incorporated its particular fetal anthropology into a wider social and moral outlook. Consequently, any ethical analysis has to look beyond the level of proposed ideologies.¹¹

1.1 Statement of the problem

Traditionally the abortion debate has been dominated by three commonly held views: The conservative, liberal and moderate views.

i. The Conservative view

The conservative view which supports the "pro-life" position on abortion contends that the fetus at every stage of pregnancy has full moral standing no different from that of an adult human being. It follows from this premise, that since killing an adult human being is murder, abortion is murder. The proponents of this view hold the position that abortion is never morally justifiable.

ii. The Liberal view

On the other hand the liberal view supports the "pro-choice" position on abortion. According to this view, the fetus at every stage of pregnancy has no moral standing. Abortion is therefore possible at all stages in pregnancy. And the decision whether to abort or not is with the woman.

iii. The moderate view

The moderate view considers abortion morally acceptable up to a certain point in fetal development. The proponents of this view also claim that some reasons such as incest, rape, health of the mother among others, provide a sufficient justification for abortion.

It is important to note here that all the above responses are determined by one's view of what sort of entities fetuses are and whether such entities have rights. These two issues are usually referred to as the ontological and moral status of the fetus respectively. And it is to these that we shall briefly turn to for a brief explanation of matters of concern under each of them.

The grounds commonly presented for abortion are:

- i. Therapeutic (risk to the life and health of the mother)
- ii. Eugenic (risk of fetal deformity)
- iii. Humanitarian (pregnancy due to rape, incest etc)
- iv. Socio economic (e.g. poverty, desertion by partner or husband, family size)

Whereas abortion has persistently been an item of debate in the bio ethical realm, in the recent past the debate has polarized. At the forefront are two strongly held convictions: the pro-life and the pro-choice? The pro-life view sees abortion as the slaughter of the innocent. Those women who have access to "abortion-on-demand" put their own selfish whims ahead of the child's right to life. On the other hand, the pro-choice view sees abortion as an option that must be available to women if they are to control their own reproductive lives. Although the pro-choice proponents claim that women have the right to choose to have an abortion especially on the grounds of prevention of the birth of a child with severe genetic defect or one conceived as a result of rape or incest, it is noteworthy that the pro-abortion movement has already moved beyond the need for any reason for the practice.¹²

At the heart of the abortion debate are two complex questions:

- i. Does the fetus have a moral status that entitles it to life and liberty?
- ii. And if it does, does a woman's right to the same freedoms outweigh those of the fetus?

John I. Murphy illustrates graphically the trend/process that the change in the ethic of abortion from the restrictive laws to liberal laws has taken thus:

In recent years the number of countries which have introduced laws permitting the termination of pregnancy, has increased and in almost all these countries there have been subsequent efforts to repeal or modify such legislation. At the beginning of any campaign to liberalize laws concerning abortion the promoters have strongly advanced their cause primarily on medical grounds. Tragic case histories of women dying because of a continuing pregnancy were cited, eliciting much public and consequently, political sympathy. Abortion was portrayed as a "life saving" and therapeutic procedure. The next phase was usually the extension of the concept of health to include adverse psychological and social consequences to the mother or indeed to the whole family. Liberal abortion was depicted as a social boon, protecting women and families from the ravages of overcrowding, poor opportunities, depression etc. The next phase was often the advocacy of abortion when a child prior to birth was known to be deformed or when it was judged that if a child was born it would be at high risk of having or transmitting some disease (e.g. haemophilia). In consequence of this, huge efforts have been put into antenatal diagnosis with many millions of pounds extended over the past decade on efforts to diagnose certain, usually very rare, congenital disorders.¹³

As Reidy asserts, all this has led to abortion on demand. The directions of arguments in favour of abortion have usually moved from medical to ideological and to questions of social justice and individual rights, which in this case do not include those of the fetus. From this has evolved a concept, that a woman has an absolute right and freedom to dispose of her individual pregnancy without reference to the wishes of the father of the child or to other children, or to the community in general.

As highlighted above, the abortion debate, especially from the perspective of the liberal position, has lately taken a new direction. The radical feminists look at the abortion issue as one of the issues that must be dealt with if the broader goal of social, economic and political liberation of women is to be realized. It is seen as a veto by women against the oppressive patriarchal authority predominant in most parts of the world and under which women have been subjected to untold suffering and subordination. From this perspective abortion is seen as a woman's primary right. The proponents of this radical position argue

that the traditional ground for abortion listed above notwithstanding, the woman's decision to abort is paramount. Therefore, any attempt to treat the fetus as a person or to give it moral status with the sole aim of shielding it from the woman's decision is inevitably a severe violation of women's basic rights to personal autonomy and physical security. Abortion, for this view, is imperative if the woman is to have full control over her body and reproductive freedom.

This study concerns itself with issues arising from this radical pro-choice position on abortion. Especially the fact that apart from the impact of abortion on our personal lives and conveniences, more importantly the abortion issue touches basic levels at which people's fundamental beliefs and assumptions about human life, human rights, moral values, and the function of law exist.¹⁴

In her article, "Defense of abortion", Professor Judith J. Thomson, rather than attempt to refute the premises that the fetus is a person and that every person has a right to life, argues that abortion may be morally permissible even if these premises are true. Using the analogy of an ailing famous violinist, Thomson asks us to picture ourselves waking up one day in bed with a famous ailing violinist. Imagine that you have been kidnapped and your bloodstream hooked up to that of the violinist, who happens to have an ailment, which will certainly kill him unless he is permitted to share your kidneys for a period of nine months. In this scenario you are the only hope of the violinist and he can only live if you co-operated. The right to cooperate is yours and it is up to you to decide how and when to exercise that right. You are not bound to cooperate.

Thomson concludes from this illustration, that abortion is permissible regardless of the status of the fetus. For the woman is under no obligation at all to allow the fetus to use her own body for survival or to be a Good Samaritan in anyway.¹⁵

The shortcoming in Thomson's analogy notwithstanding- the inappropriate comparison between the sick violinist and the fetus who in this case does not suffer from any ailment, Thomson's conclusion goes a long way to illustrate the import of this new abortion ethic.

According to Mary Warren, the granting of moral status to the fetus, which implies the fetus' right to life, means that the woman must not abort it at her own convenience. This according to her is a direct violation of the woman's basic rights to personal autonomy and security. She writes:

It is impossible to treat fetuses in *utero* as if they were persons without treating women as if they were less than persons ... the extension of equal rights to sentient fetuses would inevitably license severe violations of women's basic rights to personal autonomy and physical security.... Such an approach to the protection of fetuses authorizes the legal regulation of virtually every aspect of women's public and private lives and thus is incompatible with even the most minimal right to autonomy¹⁶

It is Warren's contention that a woman's right to control her own body and reproductive freedom overrides fetal interest at all times and in all situations. It is on this understanding that she detests any move or attempt that would seem to show that the fetus has any right to be treated otherwise.

While appreciating Thomson's boldness in attacking the premise that the fetus cannot be aborted because of its personhood status, Warren, nonetheless, attacked Thomson's choice of analogy due to its variant interpretation and consequent implications which the pro-abortionist may not be able to handle comfortably. She observes thus:

This argument is initially quite plausible, and in the extreme case due to rape is probably conclusive. So far so good; but what are we to say about the woman who becomes pregnant not through rape but as a result of her own carelessness or because of contraceptive failure or who gets pregnant intentionally and then changes her mind about wanting a child? With respect to such cases, the violinist analogy is of much less use to the defender of the woman's right to obtain an abortion.... This is an extremely unsatisfactory outcome from the view point of the opponents of restrictive abortion laws most of whom are convinced that a woman has a right to obtain an abortion regardless of how and why she got pregnant. ... the basis of the conviction, I believe is the realization that a fetus is not a person and thus does not have a full-fledged right to life.¹⁷

Looking at the arguments above, one thing comes out very strikingly; the pro-choice proponent's determination to press for access to unrestricted abortion and complete reproductive freedom. The pro-choice feminists believe that the fundamental causes of

women's oppression are sexual. It is the women's reproductive role and/or their sexual role, which cause(s) their subordination. In the light of this, they insist that, unless women set their own goals and their own sexual agendas, they will still remain less than free.

Without the ability to control their reproductive capacity, women and couples are largely unable to control determinative aspect of their lives and marriages. If the concept of fundamental rights means anything, it must surely include the right to determine when and under what circumstances to have children.¹⁸

It is often presumed that people have access to and are able to use highly effective contraceptives, and are themselves at fault in cases of unwanted or unplanned pregnancy. This assumption could not be further from medical reality. First, there still is no such thing as a contraceptive device that is a hundred percent safe and effective. Second, there are still those who financially do not have access to medical care and contraceptives.

The pro-choice feminists see abortion as a woman's primary right: an unconditional right, requiring no legal, social or medical justification. The right to freely obtained abortion, to them, is essential to individual freedom, sexual liberation and gender equality.⁹ Janet Smith, in her article "Abortion and women," recounts an experience she had with a woman she met at a university, thus:

.... she was certainly very different from the usual characterization that pro-abortionists provide of the women seeking abortion. Attractive, healthy, college educated, about 20, she approached me one day (at a university) to argue that women had a "right" to abortion. I countered as usual, with information about prenatal life, to demonstrate that the fetus is in fact a living human being. I chose this line of argument because I like to believe that people who support abortion do not believe that it is the taking of human life- thus perhaps a demonstration of the humanity of the unborn would be sufficient to change their views. But this girl cut me short; she readily agreed that the fetus was a human being; she demanded the right to abort anyway. Such an admission, sad to say, seems common now among those who argue for abortion.¹⁹

This study set out to critically examine the radical pro-choice feminist's demand for unrestricted abortion and complete reproductive freedom as a basic woman's right.

It sought to reflect on the underlying assumptions, implications and challenges of these demands from the perspectives of the woman herself, the fetus (regardless of its status), the partner/husband (their responsibilities and obligations in society and family set up), children (both sibling and others), family unit and the state and the society as a whole.

1.1.1 Scope and limitations of the Study

The literature on abortion is so vast that only part of it could be dealt with. We have concentrated on the more professional efforts, thus discarding a vast amount of writing at the popular level.

The abortion debate has many a facet among which is the religious perspective. We have strived to conduct our arguments and analysis of the subject of our study from a philosophical rather than a theological basis. However, we have made attempts where applicable to collate all relevant clues or pieces of evidence from the religious and scientific realms and incorporated them into our discussion on the nature and status of the fetus.

Whilst there are three main positions on the question of abortion namely: the conservative, moderate and liberal, we have in this study zeroed in on the extreme liberalist position that hold that abortion is a woman's basic right. This was done with a view to finding out and examining the underlying assumptions, their explicit and implicit implications and resultant challenges.

Whereas our discussion in this study is at the conceptual level there are issues that may require a practical approach in terms of field research especially those that have to do with the physical and spiritual impact of the abortion act on the woman. The scope of our study and the resource implications, however, could not allow us to go further than what we have managed to accomplish in this study.

1.2 Objectives of the study

The objectives of the study were:

- i. To critically examine the pro-choice feminists' demand for an restricted abortion and complete reproductive freedom as a woman's basic right;
- ii. To determine just what conditions are sufficient, necessary and contributory for allowing the woman's right to abort to override the fetus's right to life, if any;
- iii. To find out the implications and challenges of the demand for unrestricted access to abortion as a woman's basic right on the women cause and society at large as a basis for determining the appropriate course of action.

1.3 Justification and significance of the study

Induced abortion is a worldwide massive enterprise. A United Nation's estimate cites a conservative figure of fifty million per year with the highly industrialized nations of Japan and USA accounting for more than a million legal abortions in each nation per year.²⁰ In Kenya the debate on whether to legalize abortion or not has gained momentum in the recent past .The ongoing constitutional review process aroused some debate in sexuality and reproductive health with abortion being one of the key issues raised by the women fraternity. The debate was further boosted with the discovery of fifteen dead fetuses dumped into a river within the city of Nairobi. The doctor from whose premises the waste is suspected to have originated was immediately arrested and charged with murder. Hence the new challenge facing philosophers to make sense of human life beginnings.

The fact that abortion has become almost endemic in so many parts of the world, mostly 'developed' ones, and because in most of these countries a sizeable group remains utterly

opposed to it, the whole development of the agitation for easy abortion and the opposition to it are worthy of detailed examinations.²¹

The current debate, on whether or not human life begins at conception and therefore the need to protect it until natural death and the implication of this position in regard to the rights of the woman and the current attempts to close out of the circle of personhood the unborn through use of subjective criteria, underscores the need for a distinctive philosophical contribution to the issue itself.²²

This study is an attempt to put the issue of personhood and conception into their proper perspectives. By so doing philosophers are being challenged to represent, clarify and deepen our understanding of the value of the person in himself or herself. Otherwise as Joyce puts it, “quality of life” ethics becomes the “survival of the fittest” of the most functional; and the ethic itself becomes a non ethic.”²³

Another issue of much concern to the author is the worrying shifting of goal posts in the presentation of the grounds for abortion from a humane case to an approach that demands its way regardless of the circumstances and reasons leading to and surrounding the abortion case at hand. This stand, in particular the pro-choice feminist’s demand for unrestrictive abortion laws and policies, and the demand for complete reproductive freedom, calls for an urgent re-examination and re-evaluation.

The abortion problem requires urgent attention not only because of its statistical and geographical proportion and its complexity, especially in the face of conflicting ideologies, but also because abortion is a deeply human problem. In a large majority of cases the decision for or against abortion is still considered and experienced – with varying degrees of intensity – as a decision for or against life. Whichever way the decision goes it will have consequence for the individual and for society at large.

New ethical approaches and attitudes towards abortion will sooner or later be reflected in other fields of ethical interest, and trends in the abortion debate may well be indicative of

future trends in ethics as a whole. Hence the need to search for and build a sure foundation and direction upon which the handling of other related issues will derive their bearings. For as McCormick rightly observes” Abortion is a severer testing ground for moral reflection. It is transparent of the vigor, fullness and balance (or lack thereof) that one brings to moral problems and is probably a parading of the way we will face the human problems in the future”²⁴ It is worth noting, however, that the many issues that are at stake in the abortion debate are not exclusive to it nor are they exclusive concerns of ethical science. Other areas of ethical concern will be affected by it either directly or indirectly. Therefore, there is a need for their examination in regard to their assumptions, implications and challenges.

The study also seeks to promote an ethics/a belief and an understanding sensitive to a deeper and richer vision of our dignity even as adults, who are dependently developing persons in this spatial temporal environment. This belief and understanding is important in the sense that without appreciable insight into the inexhaustible process of personhood development, we will not be prepared to respect and protect the pre-natal person, which we all were at one time in our biological growth.²⁵

It is believed that the insight put into understanding the complexities and characteristics of the unborn will shed some light into the ongoing and the current attempts to understand the meaning of human existence in the light of other related ethical concerns in the areas of stem cell research, Human cloning, Invitro-fertilisation, euthanasia and infanticide, among others.

The significance of this study also lies in the fact that it does not only aim at critically examining the radical feminist position on abortion and reproductive freedom, but also in its endeavor to come up with informed and sound findings and recommendations that will be a vital resource to the “pro-choice” abortion advocates and women in particular, the family unit, relevant institutions, bodies and agencies, institutions of higher learning, the general public, the legislature and government policy makers.

1.4 Literature Review

In his book, *Humanhood: Essays in Biomedical Ethics*, Fletcher emphasizes the essential human quality of reasoned choice as basic to morality. To follow a rule no matter what the result, is according to him, immoral and is an abdication of one's human responsibility. "The fundamental ethical question is whether we are to live and act by rules or by reason. What I have tried to say in this book is that it is wiser to be guided by moral principles than by moral rules".²⁶

While acknowledging that long term consequences are often imponderable and man cannot be trusted to appraise each situation adequately, what is needed according to him are guidelines not rules. For if we are to become truly human we must accept the uncertainty and assume the responsibility for our moral choices.

According to Fletcher, man's destiny is in his hands. Man has the responsibility of shaping himself and future. And in assessment of Ortega Gasset and Ashley Montague respectively, Fletcher contends that man has no future, only a history and that babies are not born with human nature, but only with more or less capacity to become human.²⁷

It is Fletcher's contention that the discussion about what is human need be converted in its form to, what is a person. With regard to the termination of pregnancy, the critical question is not whether the fetus has a right to life, or even whether it is a human life, the critical question, according to him, is whether we may assign personal status to fetal life.

In this regard, such lives as deformed fetuses, deformed newborn babies and the likes, are, according to Fletcher sub personal on qualitative grounds. A man, he contends, is not just human, he is a person. There are, as physicians know so well, some human beings who either will never or have ceased to be persons. What has the first order value in ethics is what is personal and not what is natural.²⁸

Fletcher lists fifteen positive and five negative criteria which a human being must meet in order to qualify as a person.

Positive criteria:

1. Minimum intelligence
2. Self awareness
3. Self-control;
4. A sense of time
5. A sense of futurity
6. A sense of the past
7. The capacity to relate to others
8. Concern for others
9. Communication
10. Control of existence
11. Curiosity
12. Change and changeability
13. Balance of rationality and feeling
14. Idiosyncrasy
15. Neo cortical function

Negative:

1. Man is not non or anti-artificial
2. Man is not essentially parental
3. Man is not essentially sexual
4. Man is not a bundle of rights
5. Man is not a worshipper

While acknowledging the importance of the concept of human rights, Fletcher is of the opinion that it is a source of moral confusion and conflicting rhetoric. All rights according to him are only normative: none is fundamental in the sense of undisplaceable. The general or social interest, according to him, prevails over the private interest when

they conflict and that in ethical terms (and in legal language) rights are relative, not absolute.²⁹

Fletcher sees rights and duties as being ethically correlative with the former focusing on the self and the latter on the claims of others. Such rights as are the ethical norms of right conduct in non absolutistic ethics are generally but not invariably valid. And in determining the right cause of action we can either follow a rule of conscience, which is the *apriori* or the prejudicial approach or we can look at the facts with an open mind and calculate the consequences, the human costs and benefits. Fletcher's position explains the second cause of action above. Whereby, unlike the rule ethics which is in effect an adherence to an existing rule, the relative moral judgment or decision making ethics as he calls it, will vary according to variables in situations and values are balanced off against values. The ultimate goal, according to him, is to choose the most instructive cause or the most proportionate good.³⁰

According to Fletcher, the core ethical issue in abortion is whether an embryo or fetus is a human being, and if so, in what sense we call it so. Another question with far reaching implications to other forms of life, such as the terminally ill, the comatose, among others, according to Fletcher, is whether we can use the terms a "human life" and a "human person" interchangeably?

As for the membership of the fetus in the species of the *Homo sapiens*, Fletcher sees no problem at all in that its membership is clearly recognizable biologically, and that its life is made evident by the proceeding/ongoing cell division.³¹

The most basic issue then is whether a fetus is a person or not. Our assessment of the morality of abortion will be determined by how we answer this question. For if in our view every fetal organism is a person and if we think it is immoral to end such form of life, we will consequently look at abortion on demand as immoral. Whereas if we do not regard uterine life as human in the sense of a personal being, then, we will not see abortion as murder.

The question on the status of the fetus- whether is a person or not, arouses another question about the essence of a person. And along with this is the question about when this essential element emerges. The problem according to Fletcher is how to identify the essential thing or the *sine qua non* without which there is no person. In an attempt to answer this question, Fletcher examines three positions / attempts made:

First is the argument that life is the essential element in a person's being; whenever and as long as we are alive, as long as life is present, it is argued, a human organism is a person. This would mean that a person exists at fertilization, when growth gets started, and continues to exist through the complex biological continuum. The person here is identified with life, making the two co-exist or even one and the same. This position according to Fletcher is "a radical and sad consequence of an absolute sanctity of life ethics.

The second notion holds that the soul and not the life make a person. Here there are two positions in this camp in regard to when the soul enters the living tissue/organism. While both camps agree that the soul enters sometime before birth, one group takes the time of entry at conception (immediate animation) while others believe that the soul (animus) enters probably in the second trimester (delayed animation).

According to Fletcher the absurdity in the position of immediate animation is that it means the soul and person of identical twins has been split in two, then after fertilization they separated from a common cell mass or single fertilized ovum.

The third option, which Fletcher himself supports holds that the essence of a person is reason. In this view everything depends on the mental capacity of the individual. According to this view, in the absence of the synthesizing or thinking function of the cerebral cortex the person is non existent. That is the life which is functioning biologically is non person which conditions is present in the protoplasm at the start of life and in the "human vegetable" at the end of life.³²

Fletcher sees in those humans without some minimum of intelligence nothing more than an *its* regardless of how many of their organs are active. He writes:

At whatever stage of its growth, Humans without some minimum of intelligence or mental capacity are not persons, No matter how spontaneous their living processes are. If the cerebrum is gone due to disease or accident, and only the mid-brain or brainstem is keeping autonomic functions going, they are only objects, not subjects – they are *its* not *thous*. Just because heart, lungs, and the neurological and vascular systems persist we cannot say a person exists. Non cerebral organisms are not personal. The minimum baseline for personal status should be a score of twenty on the Binet scale of I.Q. And the fetus cannot meet this test nor have any other traits that make for the full human or personal quality such as affection, conscience, self awareness it is a non person.³³

Fletcher's assertion to the effect that the first position above (fetus is a person) is the most argumentative in that it defends an arbitrary assertion and that the non-personal view is under no such strain since it asserts nothing not in evidence and therefore does not have to be defended is misguided/misplaced. In the same category is his assertion based on Thomas Aquinas's distinction between human life in potential status, that is the argument that there is potential in the fetus for all criteria listed as features of a person, is like saying an acorn is an oak tree or a blue print is a house. According to him, the "as if" argument wipes out the vital difference between what is and what could be.³⁴

Fletcher's claims above are wanting if not misguided also. The arguments against the personhood of the fetus are challenging the status quo- what is generally believed. It is expected therefore that the most argumentative of the position should be the one seeking to prove the contrary. The fetus is also no ordinary blue print for unlike the architectural blue print of a building which has to be actualized by the architect or a builder separate from the blue print itself, the fetus case is different. The fetus has within itself, save the nourishment derived from the mother, the power to develop it self to maturity. Not so with the blue print of a building.

Fletcher's admission/assertion that there is no litmus paper test for the presence of a person and that the question of when the person comes into existence in regard to the timing, has never found any general agreement of any convincing evidence favoring one

opinion over others is no litmus test ground for him either to conclude that Plato's position, that a fetus becomes a person at birth, after it is expelled from the womb, its umbilical cord severed, and its lungs start to work, is the most sensible option.

What makes presence after birth different from before birth? As it has often been asked what is it that makes a fetus one minute before birth and one minute after birth substantially different?

The suggestion that the utilitarian principle, whereby two contradicting opinions can be decided or chosen morally in terms of their consequences, if they are followed out logically in practice with the one which results in greater good for people being the correct one, is faulty. This is so because it is for the benefit of others at the expense of the individual.

Fletcher's position that we should oppose any and all forms of pregnancy, making the ending of pregnancies like their beginning, a private or personal matter is wanting in many ways. Without pregnancy, whether through in-vitro fertilization or natural sexual contact, the human race will cease to be. Furthermore, very often than not, pregnancy is willingly and widely sought by many, save in the case of rape or incest. His claim that pregnancy when not wanted is a disease- a venereal disease, for that matter, is saddening. Contrary to Fletcher's assertion that the truly ethical position is not whether we can justify abortion, but whether we can justify compulsory pregnancy, the true ethical position is whether we can justify abortion. The claim about pregnancy being a venereal disease is far from natural reality.³⁵ Pregnancy is part of nature's wonders and avenues through which humanity and other animals come to be.

Furthermore, what litmus test grounds are there to support his claim of the sensibility of the fetus not being a person? What in effect is sensible about this position?³⁶

In addition, which among the Fletcher's fifteen positive criteria and five negative criteria are the criteria *per se* upon which all others hinge? Is the neo-cortical function the

cardinal or hominizng trait as he suggests? How different (substantially) is it from self-consciousness, relational ability or the other remaining traits which he refers to as optimal traits or indications?

Richard McCormick arguing more or less in support of Fletcher's position about the uselessness of some forms of life argues that the meaning, substance and consummation of life are found in human relationships. According to him, "human life" is a value to be preserved only in so far as it contains some potentiality for human relationships. If that potential for personal relationships is non-existent then McCormick sees no need for prolongation of such a life which has in effect achieved its potential.³⁷ But what about situations where one may have all what it takes to be a normal human being but he or she is hated or unwelcome by those around him or is captured in war front by enemy forces? Shall we say then that such a life has achieved its potential and therefore non-existent?

Peter Singer, argues that the term human being can be understood in two ways: first to refer to a member of the species *homo sapiens* which in this case is a biological fact, and, secondly, a being in higher level characterized by the possession of such qualities as self awareness, self control, a sense of the future, the capacity to relate to others, communication among others. And since the fetus, "the grossly retarded human vegetable," as singer calls it, and "even the newborn infant, lacks the above qualities such as self awareness, a sense of the future and capacity to relate to others, they can only claim their place in the first usage – members of the species *homo-sapiens* and nothing else."³⁸

It is singer's contention that we accord the life of a fetus no greater value than the life of a non-human animal at a similar level of rationality, self-consciousness and awareness. And since the fetus posses no such qualities it cannot, therefore, have the same claim to life as a person.

In his scathing attack against the right to life movement, singer writes:

It now becomes apparent that the "Right to life" movement is misnamed. Far from having concern for all life, or a scale of concern impartially based on the nature of the life in question, those who protest against abortion but dine regularly on the bodies of chickens, pigs and calves, show only a biased concern for the lives of members of our own species. For any fair comparison of morally relevant characteristics like rationality, self-consciousness, awareness, autonomy... the calf, the pig and the much-derided chicken come out well ahead of the fetus at any stage of pregnancy.³⁹

Even during the later stage of abortion, between eighteen weeks and birth when the fetus may have developed some of the characteristics unique to personhood such as consciousness, and hence deserving some serious consideration, singer argues that a woman's serious interest would normally override the rudimentary interests of the fetus.⁴⁰

It is the position in this study, that, Singer's attempt to categorize humanity into two levels, and more especially his referral to the fetus as a grossly retarded vegetable, robs humanity of its inherent value and denigrates its very humble beginnings. Furthermore, while the fetus's level of intelligence at this level may be compared to that of some form of animals, the unique thing is that this fetus never grows to become one of such animals nor does it remain at that level for the rest of its lifetime, save in the case of extreme defects or sickness.

The interests of the fetus may be rudimentary as Singer claims, but that rudimentarity is in line with its rudimentary form of life at this stage in the life's continuum. However, the rudimentarity referred to here, does not imply lack of seriousness in any way or crudeness in the sense that it is of less value.

McCloskey seems to be in agreement with Singer and others of the likes of Mary Warren and Michael Tooley who contend that for any being, the fetus included, to be counted among "persons", it must satisfy some particular criteria. In her observation concerning the phrase in the American Declaration of Independence to the effect that a right to life is a right that is self-evident, she contends that she doesn't see anything self-evident in the claim. She comments thus:

It is commonly claimed for example, as in the American declaration of independence that the right to life is a right that is self-evident. It is not self-evident to me that all born of human parents, and only such possess the right to life. Further if they possess it, they must possess it in virtue of some feature, trait, capacity as humans.⁴¹

Charlotte Bunch took the abortion debate even to a higher notch in her claim that the abortion demand is a women's right and, therefore, any attempt to restrict it or deny women the opportunity to do it is a harm done to human rights as women rights ought to be human rights. Furthermore, she argues, such attempts to deny women their rights are usually done on the basis of male defined norms. She argues, therefore, that:

The human rights community must move beyond its male defined norms in order to respond to brutal and systematic violation of women globally. This does not mean that every human rights group must alter the focus of its work. However it does require examining Patriarchal biases and acknowledging the rights of women as human rights. Governments must seek to end the politically and culturally constructed war on women rather than continue to perpetuate it. Every state has the responsibility to intervene in the abuse of women's rights within its borders and to end its collusion with the forces that perpetuate such violations in other countries.⁴²

Bunch continues to argue that the classification of human rights is more than a semantics problem as it has practical policy consequences. The unfortunate thing according to her is that human rights are still considered as more important than women rights hence the perpetuation of the idea that women rights are of a lesser order than the rights of men, resulting from this unfortunate distinction.⁴³

Contrary to Bunch's argument, the denial of abortion decision to the women, is not a discrimination against the woman herself, but rather, a broader consideration of the larger family of humanity, to which the woman belongs and is obligated just like other members of the species to uphold and work towards its continuation. Human rights are not about elevating one group above the other but about putting all on equal footing.

Further more the call for the respect of women's rights as human rights cannot be solely achieved through the formulation and enforcement of laws by the states. Its effective execution also calls for a change in attitude on both sides of the divide. All members of

the human race, the offender and the offended alike must first internalize and appreciate the need for change. It is only then, and only then, can we be able to realize a meaningful and sustainable change, both in words and deeds.

But, supposing that through the formulation and enforcement of laws seeking to protect the welfare of women the said call by Bunch would be achieved, the pro-choice advocates still have one hurdle to overcome. It cannot convincingly be maintained that the abortion act is designed solely to promote the life or well being of the mother. This is so because right from the outset, the causal connections are much too clear and explicit: that one intends to take care of the interests of the mother exclusively by taking the life of the fetus. Right from the start the fate of the fetus is sealed: it has to go.⁴⁴

Whereas, As Margolis rightly observes, the abortion decision can sometimes on the account of the mother's health or life be successfully defended, arbitrary or unrestricted abortion as is claimed by the pro-choice feminists cannot be justified. On such kind of cases, Margolis argues that:

In any case, it is an extraordinary thesis that holds that a woman's right to her body alone justifies the taking of the life of the fetus, for there is every reason to think that even if ending the life of the fetus is sometimes justified (for instance, where the life of the mother is endangered), it need not be always and unconditionally justified (for instance, where a mother arbitrarily decides, perhaps even closer to term – assuming no danger to her own life – that she does not want to bear her child. In short, the thesis, taken without qualification, authorizes a woman to decide in her own right whether or not or when or perhaps even how to dispose of the fetus "housed in her body".⁴⁵

Further more, given among others, objections that would come in the way of such arbitrary abortion decisions such as the argument that natural pregnancy is at the present time the exclusive means by which the race provides for its survival and also the fact that even if a woman had a right to defend her life and a right to the use of her body, there are arguable constraints on both the right to self-defense and on the use of her body – concerned with the bearing of relevant acts on the rights of the others.⁴⁶ The need to re-examine, rather than heed, the call for unrestricted abortion rights cannot be underscored.

Bonnie Steinbock, a supporter of the liberal stance on abortion (in her article, *Life before Birth*), believes that consideration of both the moral status of the fetus and a pregnant woman's right to bodily self-determinations are necessary to establish the moral status of abortion. Concerning her position, she writes:

Few writers on abortion have come to the topic with a fully open mind, and I am no exception. I believe that the decision to have an abortion is one that belongs to the pregnant woman – not the state, not her doctor, not her husband. My pro-choice position is based on two independent considerations: the moral status of the fetus and the pregnant woman's moral right to bodily self determination.⁴⁷

The above two considerations, upon which Steinbock bases her position, are according to her, very necessary for an adequate treatment of abortion. Hence any attempt to ignore one or the other or to emphasize one at the expense of the other is wanting. Such is the case with those opponents of abortion who, according to her, talk about fetal right to live without acknowledging the fact that a particular woman must carry and bear the fetus for it to have a future life. The same applies to those feminists who argue that the central question from a feminist's perspective is not about the abstract individual rights of fetuses but how to create the social conditions that make possible the fulfillment of reproductive responsibilities. According to her such questions are not important; as they do not go beneath the surface of the issue instead they only change the subject.⁴⁸

The issue *per se* according to her is whether abortion is a morally permissive choice. It is her contention that women are out to be recognized as fully autonomous choosers. The question is whether abortion is a choice that autonomous choosers are morally permitted to make. Such a question, she claims, can only be answered by responding to the claim that abortion is the killing of a human being, with a right to life.

In response to the above claim that abortion is the killing of a human being with a right to life, Steinbock writes;

The interest view responds to this claim by arguing that embryos and early fetuses lack moral status. We are not morally required to consider their

interest because, prior to becoming conscious and sentient, the fetuses do not have interests. The defense of this claim requires some tactical investigation as to when sentience occurs. More important I will need to explain why sentience is essential to moral status.⁴⁹

And in response to the modified conservative position of Baruch Brody, that a functioning brain is essential for being human and that the fetus comes into humanity when its brain begins to function in the same way a person dies and goes out of existence when it stops, Steinbock argues that even if this radical discontinuity were to be accepted it is not clear why this has to be marked by emergence of brain waves and not any other physiological occurrence in the life of the fetus.

Steinbock sees the significance of brain function not in its being the radical discontinuity in the life of the unborn, but rather, in its connection with mental states such as conscious awareness. While the fetus may have the capacity for conscious experience in the sense of the physiological ability of a being to have conscious experience at some point in its development, it certainly has no capacity in the sense of a being that has the capacity for an experience X, if X occurs, given the appropriate stimulus. She writes:

A frog has a capacity to feel pain if, on being subjected to certain kinds of stimuli, the frog feels pain. However, in this sense of "capacity", neither a zygote nor a 6-week old fetus has the capacity for conscious experience. The emergence of brain waves is only a necessary, not a sufficient, condition of conscious experience.⁵⁰

While admitting the difficulty involved in the evaluation of pain basically because it is a subjective experience and secondly because we do not have access to the fetus in *utero* to perform behavioral tests, Steinbock none the less concludes that from what we do know about the physiology of pain perception, it seems reasonable to conclude that the fetus during the first trimester, and probably well into the second trimester, is not sentient.

This is so because the neural pathway of a first trimester fetus is not scientifically developed to transmit pain messages until twenty two to twenty four weeks of gestation. And without sentience, Steinbock asserts, this early fetus is unlikely to have conscious awareness of any kind. A quick response to Steinbock, however, is that if we talk of the

question of capacity with regard to potentiality, what about the patient who is given an injection to make the body numb so as to go through an operation. Does it mean that he or she has no capacity to feel pain?

If the capacity of conscious experience is a necessary condition of humanity, the fetus does not become human until sometime towards the end of the second trimester. This criteria Steinbock argues, supports a liberal rather than a conservative stance on abortion.⁵¹

Unlike the non sentient beings, sentient beings – to which the new born and nearly born fetuses/late gestation fetus belongs, enjoy life that is good to him/her and his/her continuing to live is certainly in his/her interest, because of the value to him/her of his/her life right now. Hence, the right to life, Steinbock claims, protects his interest in his life. The late gestation fetus is included in this category on the grounds of the possibility of having pleasurable experience and hence a right to life can protect an interest.⁵²

Steinbock's call, however, for the rejection of the anti-abortion movement, on the ground that it is based on factual error and misrepresentation of facts, is negated by her usage of the comparison between plants, sperms and an embryo. The argument that embryos and pre-conscious fetuses do not have lives that they value, lives are a good to them and hence they are no different from a plant or a sperm is truly a factual error or at worse a deliberate misrepresentation of facts, and must be rejected outrightly. Ironically, Steinbock is no different from the anti-abortionists whom she accuses of the same factual misrepresentation. There is a substantial difference between the Mimosa plant and the fetus.

While it is true that the Mimosa plant shrinks from touch and no one claims that it feels pain, because it lacks the nervous system necessary for the experience of pain; and that it is also true that the fetal nervous system at twelve weeks is not sufficiently developed to carry and transmit pain messages, it is not true that the two are one and the same. The comparison between the two is awkward. Whereas the plant will not develop such

nervous systems at any point in its lifetime, the fetus will, and it is in fact, already developing, only that at this point in time it is at its formative stage. When we talk of “not sufficiently,” the issue is that of its crudeness at its present stage of development not its presence. In this regard, we are neither asking nor doubting, whether the substance that is developing is there or not. Shall we say of the plant, not sufficiently developed or not developing? Most likely, not developing!

Secondly, whereas Steinbock talks of the inclusion of the new born and the “nearly” born late gestation fetus in the category of the sentient beings on the grounds of the possibility of having pleasurable experience, why can not the same possibility apply in the case of the embryos and “pre-conscious fetus”? What radical discontinuity is there between the so called “pre conscious fetus” and late gestation conscious fetus?

Thirdly, Steinbock argues that the relevance of sentience is that a sentient being can have a life it values, and that on that basis, we can protect it for its own sake. But what about those suicide victims or those with suicidal tendencies who want to take away their lives because they no longer value them? If they no longer value their own lives, on what grounds shall we talk of protecting such a life for its own sake when the very “owner” has discarded it? Why arrest them or take them before a court of law for having attempted to take away that which is no longer of value to them?

Fourthly, while some argue that sentience is the most relevant criterion for being a fully-fledged member of the moral community, the mere addition of sentience cannot turn a non-person into a person. If there is no person before sentience, adding the feature will not transform it into a person. Furthermore sentience comes through physical development of the being that is there, before and after sentience is attained. Sentience, then, does not affect the being in question (whether person or not), but only a capacity of certain beings (persons, animals) to function as sentient beings, for example feel pain.⁵³

On the conservative argument that the unborn child/embryo possesses the potential to be a person, and hence we should treat such a potential human subject as if it were already an actual human subject, Steinbock asserts that such an argument from potentiality involves a logical mistake. "The mistake consists in thinking of a "potential person" as a kind of person and on this basis, ascribing to "potential persons" the rights of other persons." But potential persons are not persons; they do not now have the characteristics of persons. In this regard, then, it is a logical error to think that potential personhood implies possession of the rights of actual persons.⁵⁴

Steinbock concedes, however, that this position need not be based on a logical mistake for if the potentiality of the unborn can be understood, as making a normative proposal that potential persons ought to have the same rights as actual persons the argument is not based on a logical confusion but rather in need of a defense.⁵⁵

The point of contention, however, is, who possesses these characteristics? And what are they? Will the so-called potential beings become substantially different as they mature or grow? Or can they become something else other than what they are now upon acquiring/possession of such characteristics? Have we "arrived" as adult human beings or are we still on the move continuing to unwrap the potentialities entailed in us?

The response to all the above questions is in the negative. The organism that is now functionally wanting in one aspect or another is the same organism that will be said to functionally possess that which is now functionally lacking later in life. Hence the comparison with the so-called "actual" persons by Steinbock is not a logical mistake or error as Steinbock claims, for its logical conclusion in life's continuum confirms the same: that after all the adult human being was the fetus of yesterday. For unless its life is cut short by the abortion act or other causes, natural or man made, it shall surely not become otherwise.

In response to Don Marquis's position on abortion, that what makes killing wrong is the effect on the victim in that abortion deprives the fetus of its future, a future just like ours.

Hence abortion is *prima facie* seriously morally wrong, Steinbock argues that even though Marquis argues that this position is not based on the issue of personhood at all, but rather, the category of having a valuable future like ours, implicit in Marquis's account is the notion of personhood and special wrongs of killing a person. If we ask what it is that makes "a future like ours" valuable, she argues, the answer is likely to be in terms of our capacity to enjoy our lives and derive meaning from them to envisage a future and to make plans about it to have relationships with others. In other words, the very capacities that make us people are what enable us to have a reliable future. So the notion of personhood and the special wrongness of killing a person are implicit in Marquis's account. Steinbock's position is that, on the interest view, only beings that have already begun to experience their lives – that is sentient beings, can be harmed or wronged by being killed.

The strongest objection to the argument from potential is that if the objection to abortion is that it deprives the zygote of "a future like ours", why cannot the same complaint be made of contraception techniques that kill sperm or prevent fertilization or even the ova and sperm? Reason must then be given as to why a zygote, but not a sperm or ovum, is a potential person.⁵⁷

While the argument from potential must be defended on the ground that there is a high probability that the chances of any particular sperm becoming a person are remarkably low, Steinbock's position is that such differences in probabilities do not matter. She writes:

If we think of potential in terms of statistical likelihood, a zygote has greater potential than a gamete. But it is not clear that the odds mattered. Although the chances of any particular sperm becoming a person are infinitesimal, why should they prevent its being a potential person? Is not every entrant in a lottery a potential winner, even if the odds of winning are extremely low? Every gamete it may be said has the potential to develop into a person even though very few do...⁵⁸

Steinbock concedes, however, that given the attitude and impact of abortion on women, it is apparent that abortion and contraception cannot be after all equated. A view that equates abortion and contraception, she says, is far remote from the experiences of most

people. But while feelings may be dismissed as peoples' intuitions or felt convictions and therefore are of no moral significance, Steinbock asserts that:

I do not agree with this total rejection of moral feelings. It may be that a feeling is mere prejudice, incapable of being supported by good reasons. I think that this can fairly easily be shown of racist and sexist views. But from the fact that some strong convictions are indefensible, it does not follow that all are. A morality that is radically divorced from our deepest feelings, and disconnected from our experiences and emotions, cannot be practiced or action-guiding. For all the reasons I have given above, I think we are justified in regarding abortion as morally more serious than contraception, and for thinking that abortion is amoral issue in a way that contraception is not. ⁵⁹

Given that, Steinbock still believes that whereas abortion may be morally undesirable, in a way that contraception is not, it can still be performed without necessarily being a wrong to the unborn. In response to this, we may ask, on what ground then shall we talk of its moral undesirability if not on the ground that it harms the unborn, his life and future. If it cannot be a wrong to the unborn, can it be said to be a wrong to other people or a threat to the fabric of the society?

Whereas conscious fetuses may be said to have begun to have lives in the biological sense, and that death deprives them of their lives and so is a harm to them, the difference about them from the born babies is that they dwell inside pregnant women. This fact according to Steinbock is not just mere geography as some have claimed. Any attempt to protect the life of a fetus may conflict with, and even endanger the life and health of the mother. Consequently, Steinbock asserts, we cannot simply extend the right possessed by the born babies to sentient fetuses. Thus on the basis of their location, fetuses invade the pregnant woman's body, it is impossible to give them full protection without violating her right to privacy or bodily self-determination.

Consequently, drawing from Steinbock's argument, location denies the fetus the right to life. As for the pre sentient, it is the stage in life's continuum, which denies them the right to life. Their geographical location and their biological features have betrayed them. In response to Steinbock's argument, however, the current position of the fetus is nature's given. If it were to be elsewhere then it would be unnatural. Nature has so designed it that

the fetus and the mother coexist harmoniously. But if that natural location of the fetus has been used to turn against it, who then, even among the grown up members of the human race, shall escape from this trap? For disability, age and even tribe may as well be used as a basis for denial of one's right since these are natural processes and accidents associated with man's sojourning on planet earth.

Steinbock further asserts that, while embryos are preconscious fetuses, as potential persons they do not have interests, and therefore cannot be considered in making decision to abort. It is Steinbock's position that a pregnant woman who wishes to be responsible and conscientious in making a decision about abortion is not required to consider the child who might have been born, or to justify nor claim that her children would be miserable.⁶⁰

On Judith Jarvis Thomson's arguments from bodily self-determination, Steinbock observes: Thomson's analysis apparently justifies abortion only in a relatively narrow range of cases. Many unwanted pregnancies occur because contraception was not used at all, or only occasionally. In such cases, the woman is (partly) to blame and so the resulting fetus may be said to have been given the right to use her body. If so, then abortion violates its right to life and is impermissible.⁶¹

Citing Mary Anne Warren, Steinbock laments that Judith Thomson's argument from bodily self determination is wanting in that it holds those women who fail to use contraception responsible for their pregnancies and hence impermissibility of abortion. She asserts that this is an extremely unsatisfactory outcome especially on the part of the opponents of restrictive abortion laws who hold the position that a woman has a right to abort regardless of how and why she got pregnant.⁶²

Steinbock in her lament about the implication of Thomson's analogy on the cause of the pro-choice feminists' clearly unveils the real intent behind the feminists call for the recognition of women's rights as human rights. The main aim is to enable women do that which they seem fit regardless of the attendant circumstances or its consequences. This

indifferent attitude will not augur well for the society. For if its member's cannot be held responsible for their actions or at least to account for them, then its unity and continuity are at risk.

According to Whitehead, the abortion debate may not be won merely by showing that an unborn child is a human being for there are many who in response to the modern abortion imperative, are prepared to sacrifice the unborn child whether or not he can be shown to be fully human. "At the same time", Whitehead acknowledges, "it is obviously essential to the case against abortion that the humanity of fetus be established if wholly because the people as a whole will show greater respect for unborn than certain elites in society have done"⁶³

From the time of conception, the new human person takes only nourishment, and after birth, respiration from his environment. We shall continue to do the same throughout our lives. Consequently, Whitehead asserts, the adult human being is no more "viable" outside the highly specialized environment or the womb; all the elaborate paraphernalia which astronauts have to take with them into outer space in order to survive there have dramatically brought this fact home to us. To talk of "viability" outside the mother as a condition for humanity, as some of the liberalized abortion laws do, is as absurd as denying humanity to adults who temporarily require oxygen or any other form of external assistance in order to survive.⁶⁴

Whitehead continues to argue, to assert in the face of available scientific evidence that the fetus is not a living human being would be comparable to asserting that the earth was flat or that the same components of matter were fire, air and water. The human zygote is no sedimentary or simple life. It is as complex and marvelous as a single cell, as the human organism is at any subsequent stage of its natural development.⁶⁵

Citing Professor Ashley Montague and Professor Garrett Hardin both of whom are supporters of the legalization of abortion, Whitehead informs us "Life begins, not at birth, but at conception." This means that a developing child is alive not only in the sense that

he is composed of living tissue, but also in the sense that from the moment of conception, things happen to him, even though he may be only two weeks old, and more like a creature from another world than a human being. In spite of his newness and his appearance he is a living, striving being from the beginning.⁶⁶

Contrary to his admission above on when human life begins, Montague asserts that the embryo, fetus and newborn of the human species do not really become functionally human until humanized in the human socialization process. And in that regard, he states his continued support for legalization of abortion.

It is noteworthy that Montague does not deny any of the scientific evidence concerning the beginning of human life; rather he merely gives his philosophical interpretation of the scientific data. His belief that human beings must be “humanized” by society, as Whitehead observes, would seem to suggest that human rights are conferred only by society, meaning that there are no inherent human rights. His inclusion of “new born” children in the same category as “unborn children” affirms his belief that infanticide is as permissible as abortion. The unfortunate thing though is that the crippled, paralytic and the comatose seemingly will not qualify as functionally human by his definition.⁶⁷

While calling for unrestricted abortions, Hardin, nevertheless writes in his college biology textbook: “.... We may say that the life of a new individual begins when two haploid gametes (an egg and a sperm) unite, forming a fertilized egg or zygote, which is diploid. The zygote, by successive mitoses (division), produces the approximately 1014 cells that constitute the adult body”.⁶⁸

According to Hardin, life is one giant process; it never begins. The new individual is neither less nor more than the sperm and ova which apparently are alive before they unite to form a new individual which is neither part or less part of the same life process than any other collection of cells.⁶⁹

It is the contention of the author that considering life as a process just as Hardin has done, in no way removes the distinctions between individual living beings nor the moral value inherent in each individual human being. For even from a strictly scientific point of view it would seem highly questionable to equate the “life” of living cells with the “life” of an integral unique living organism – which a zygote is, but a sperm or egg cell by itself is not.

Further more, components of individuals, however “alive” they may be, do not have “life” in the same sense that individual living beings are, as ones’ self and his/her hands, legs or eyes. We can not claim that the head is the same as the entire body nor the body is equivalent to the toes. Neither can we say that wheat flour is the same as baked cakes. The zygote is a formed living organism in the process of unfolding its potential as it progresses along life’s continuum. On the other hand, the sperm and the ova are just but living cells.

The fallacy of Hardin’s concept, as Whitehead notes, lies in his assumptions that all life is essentially on the same level and indistinguishable. The haploid gametes – sperm or ova cannot grow as the zygote or embryo does. What worse scientific absurdity can these result in than the attempts to blur the distinctions between living beings by amalgamating them in the process by which they are all conceived, born, grow, decay, and die and then as if that is not enough pretend that the individuals themselves do not count and that it is all nothing but a process?⁷⁰

The position held by Montague and Garret, not only apply with regard to the life of the unborn, but also other similar group of beings. It also has an adverse effect on societal norms and attitude touching on human dignity. Man has no unfettered control over human life contrary to their assertion about the role of society in bestowing life to its members. Whitehead captures the implication and the nature of their ethical assertions thus:

Most human cultures... have denied that man has control over human life in the moral sense; human life has been protected with strict legal sanctions, and

the talking of it circumscribed carefully by all societies. Only in our day have enlightened thinkers appeared to assert that man actually derives his self humanity from society and its "humanizing" process, as professor Montague has tyled it. If this is so, it really does follow that there are no moral precepts or rules, independent of society, which might forbid resorting to abortion for convenience, for utilitarian motives, for population control or whatever; it is purely a question of what cause of action society determines upon. But it would also follow, if this were true, that there are no moral rules, independent of human decisions, which would forbid *anything*.

This is nothing less than a new morality. Man cannot escape the fact that there is a moral dimension to his life. The "ought" is universal in human experience. Ironically, the abortion imperative ("we ought to have abortion") is itself an illustration of this. This new morality is prepared to sanction the killing of human beings with the full knowledge that they are human beings...No morality based on the idea that moral values exist independently of the human will could ever sanction the tenets of this new morality.... Nor is it likely that any community could in fact long endure on the basis of such a morality; its logic leads to the denial of any rights, not merely the rights of the unborn could. If moral values are simply a product of the human mind, then any values the individual might declare are equally valid with those proclaimed by "society". This is moral anarchy. Ultimately, it leads to coercion by those who turn out to be the strongest: might make right.⁷¹

Sadly this is the logical conclusion of an ethic that does not value human life for what it is: just mere human life. The author is fully in agreement with Whitehead with regard to the fact that if the society depends upon the whims and feelings of its members for continuity, it shall not progress. For in such a society there are no binding norms that bring its inhabitants together and harmoniously guide their operations. In such a society where only the fittest survives, the helpless lot- the poor, the terminally ill, the cripple, the comatose, the senile, and the unborn, apparently, have no place. The dignity of man as expounded on by Immanuel Kant in his categorical imperatives will not be upheld. In such a society human life is taken not as an end in itself but as a means to an end. Man has to functionally prove his worth before being allowed to join the privileged class of Humans: the "Human persons".

The need then for the examination of the underlying ethic of this new morality, its assumptions, challenges and implications cannot be underscored. Perhaps a look at the Kantian categorical imperatives could give us a hint on the framework upon and within which our study will be based and guided.

Thomas E. Hill, Jr. contends in his article, "humanity as an end in itself"⁷² that, "A review of Kant's repeated use of humanity in person" in his *metaphysics of morals* and elsewhere strongly suggests that contrary to the usual reading, Kant thought of humanity as a characteristic, or set of characteristics of persons". To corroborate his interpretation Hill makes reference to Kant's usage of the term such as contemplation of a rogue worth pleasure when his humanity and the man himself are distinguished; his contrast of humanity with our animality and Kant's presentation of the power to set ends as a distinguishing feature of our humanity and also the fact that, according to Kant, this humanity is supposed to be respected even in those who make themselves unworthy of it.⁷³ Hill further observes: "Thus, though Kant probably intended "person are ends" and "humanity in persons is an end" to be equivalent for all practical purposes, I suggest that the former is best construed as an abbreviation for the latter rather than the reverse (as the usual reading has it)".⁷⁴

According to Hill, "humanity" should best be seen as constituting or including only those powers necessarily associated with rationality and the power to set ends which in Kant's view would entail the following:

- i. The capacity and the disposition to act on principles or maxims, at least in the broad sense which encompasses all acting for reasons;
- ii. The capacity and disposition to follow rational principles of prudence and efficiency;
- iii. Ability to foresee future consequences and adopt long range goals among others;
- iv. Acceptance of certain unconditional principles of conduct, that is, categorical imperatives, independently of fear of punishment and promise of reward;
- v. Some ability to understand the world and to reason abstractly.

As to whether all members of the human race are equally endowed with the capacity to exhibit all the above-mentioned characteristics, Hill points out that since there is a possibility of one's rationality being imperfect or being counteracted by other features there is bound to be some differences. These differences, however, are not fatal in the

sense of depriving one of his humanity as Kant attributes humanity even to the most deprived and rationally wanting persons. Hill succinctly observes that:

Although he (Kant) sometimes writes as if certain acts amount to “throwing away” one’s humanity, he repeatedly implies that a person’s humanity remains, and so must be respected even though he defile, abases, violates, dishonors, or reject it⁷⁵

The two components of Kant’s formula namely: (i) Act in such a way that you never treat humanity simply as a means; and (ii) Act in such a way that you always treat humanity as an end, are of crucial importance in our discussion in this thesis. Our intention here is not to delve into detailed analysis of Kant’s understanding and exposition of the above formula but to highlight some key aspects that illuminate our study.

Whereas various interpretations as to the meaning of Kant’s usage of the term “as end” have been given e.g. taking everyone’s interests into account,⁷⁶ the complexity of this usage is brought to the fore by Hill:

The crucial question is what is it to treat humanity as end? The question is especially puzzling because “humanity”, as a set of rational capacities and dispositions, is not the sort of thing, which is an end or goal in the ordinary sense.⁷⁷

Furthermore, the injunction not to use humanity merely as a means as Hill continues to observe, seems to condemn not just selfish disregard of others’ interests but also utilitarian manipulations of individuals for the general welfare.⁷⁸

Among the many things that Kant says about ends in the sense in which humanity is regarded as an end, we shall for the purpose of this study highlight the following three:

- i. Humanity is not a “relative end” but an “objective end” or an end in itself”;
- ii. Humanity is a “self existent” end, not an end to be produced;
- iii. Humanity as an objective end is one “such that in its place one can put no other end to which it should serve simply as a means.

We shall now examine each of these contentions individually as they relate to the subject matter of this study.

First, as Kant explains, humanity is not a relative end, but an “objective end” or an “end in itself”. And that relative ends are ends which individuals have “because they like, want, and hope for various things as sensuous beings. Objective ends, or ends in themselves on the other hand are ends valid for rational beings.”⁷⁹

Apart from the inbuilt desire and the natural provision for childbirth, no other member of the human race should be allowed on the basis of selfish interests or even for altruistic reasons to take ransom or indiscriminately cut short the life of another fellow human being - born or unborn. Many of the unborn are aborted probably because their parents do not like them, because of their sex- in most cases this negative attitude is directed towards girls, or because they are unwanted all in the name of being surprise visitors whose arrivals had not been planned for. It is a pity that in all such circumstances the unborn or even the “born” but physically challenged members of the human race are treated as relative ends and not ends in themselves.

Indeed as Kant contends, humanity as an objective end is one “such that in its place no substitution which should serve simply as a means can be put. On the sacrifice of humanity on altruistic grounds, Hill’s exposition of Kant’s humanity as an end rebuffs such attempts thus:

Construing “ends” in the broad sense of reasons for choosing” we may understand this as saying that when a person’s humanity gives one a reason for doing or refraining from something, whatever this may be, that reason takes precedence over other reasons; for example, even if neglecting, impairing or dishonoring a person’s humanity were to cause many people pleasure this would not be a rational exchange.⁸⁰

The crucial point, is, even if the abortion of one “unplanned” child will bring financial reprieve to the already congested household and that it will guarantee continued quality care to the other members of the household, that alleged quality life or care of other

members of the family, cannot take the place of the humanity of the unborn as an end. Neither can the legalization of abortion, in the name of population control, be a rational exchange either.

Whereas in this world, people live for one another, and hence the need for mutual co-existence and cooperation, our individuality, self-esteem and identity as separate entities should not be neglected or, be “swallowed” up in the many.

Second, Humanity is a “self-existent” end not an end to be produced. Hill sheds light on the meaning of this assertion succinctly thus:

... the first point apparently, is that whenever humanity exists it is an end by virtue of what it is and that to say that humanity is an end is not to say that something, which does not yet exist, should be produced or that the quantity of something desirable should be increased.¹¹

While the presence of a newborn baby may be a source of joy and happiness for some couples, it is also at the same time a source of inconvenience to some. Hence, for the sake of financial freedom or development of a career or enjoyment of one’s life, some parents have subjected, and continue to subject their unborn babies to untold suffering, which in almost all the cases result in death both within and without the womb. Many of the affected parents justify their actions on the grounds that the unborn child is not yet a person since many of the faculties or characteristics of a fully developed person such as rationality, self awareness and self consciousness among others, are not yet present in acceptable proportions. Such kinds of characteristics that are expected to make the unborn more of a man or woman are indeed crude and are not meant for the good of humanity. One’s lifetime consists of a series of stages of development. And at each of these stages we are complete in relation to our expectations and challenges. A child, teenager, youth, middle-aged man and old man are all the same save for the stage of life.

One’s life is never complete till death. In life we go through a metamorphosis on a continuum. This therefore means that there is nothing unique about the period during

which the unborn is in the womb. It is just one of the many stages that one goes through in life and even after death as the once glittering body disintegrates in the grave.

Another important element in Kant's writing that is of great significance in the abortion and human rights debate is his attribution of dignity to all humanity. In his description of the "kingdom of ends", Kant distinguishes (relative) personal ends from ends in themselves by saying that personal ends have dignity whereas ends in themselves have only price.⁸²

According to Kant, humanity in each person has dignity no matter how immoral the person may be. Hence one does not lose one's humanity when one acts immorally. Whereas Kant is not trying to Condon immorality or to say that immorality is acceptable, he uses such case scenarios to stress the point that even the worst of things cannot robe humanity of its inherent dignity. Dignity according to Kant, is an unconditional and incomparable worth⁸³

Hill captures the gist of Kant's contention succinctly thus:

The first point, that dignity is an unconditional worth, is that it is a value not dependent upon contingency facts. Thus; for example, whatever has dignity has value independently of any effects, profit or advantage, which it might produce. In Kant's terms, it has value regardless of any market price which it may have, that is, regardless of what one would get from others in exchange for it on account of its ability to satisfy universal needs and inclinations. Its value is also independent of fancy price, that is, independent of what one could get in exchange for it on account of someone's happening to want it quite a part from its utility in satisfying universal human needs and inclinations... What has dignity has value whether in fact valued by anyone or not. Thus when Kant speaks of dignity as an "intrinsic value" he does not imply that as a matter of fact, people value what has dignity for its own sake. The point is rather that a perfectly rational person would so value it.⁸⁴

And on the second contention that dignity is an incomparable worth, Hills continues:

This means at least that whenever one must choose between something with dignity and something with mere price one should always choose the former. No amount of price, or value dependent on contingent needs and tastes, can justify or

compensate for sacrifice of dignity. We may express this by saying that what has dignity is priceless.⁸⁵

Kant's contention that humanity in persons has an unconditional and incomparable worth, as observed by Hill, has some practical implications. And if, as Kant argues, humanity is our rationality and capacity to set ends, then its special value would likely be acknowledged thus:

- i. One would refuse to do anything which damages or impairs a person's rational capacities whether the person is oneself or another;
- ii. One who sufficiently valued persons' rational capacities would presumably not want to destroy the persons themselves;
- iii. If rational capacities have an incomparable value, then one should try to develop them and improve them in oneself and others;
- iv. One should strive to exercise these capacities as far as possible;
- v. Since the exercise of rationality is something to be cherished, in trying to influence others one should appeal to their reason rather than try to manipulate them by non rational techniques;
- vi. Valuing highly the setting and rational pursuit of ends, even in other persons, one should give other humans the freedom to set and pursue their ends in a rational way, subject only to whatever further constraints reason imposes.

Finally, certain attitudes and symbolic gestures, and avoidance of others may be required. If humanity is of incomparable value, it should be honored and respected or at least not mocked, dishonored or degraded.⁸⁶

In relation to the subject of this study – abortion and women’s rights, the above demands, obligations and expectations will bear on the proponents of abortion thus:

First, attempts to cut short the life of the unborn child through crude methods such as saline abortion which sometimes end in live births, sometimes with damaged brain or even the death of the victim is itself not in line with Kant’s respect for humanity.

Second, since humanity has incomparable value or worth, the destruction of the same through abortion on the ground that it is the better option between losing or interfering with one’s career or guaranteeing quality life to siblings already born is itself not in tandem with Kant’s treatment of humanity as an end. We cannot say that the option of abortion carries more weight than the option of the life of the unborn.

Third, the taking away of the life of the unborn is in itself an undervaluation of humanity. The killing of the unborn at whatever stage of development and regardless of its physical status for selfish reasons or even on altruistic grounds is unjustifiable.

Fourth, the termination of the life of the unborn on the ground that their rights are secondary to those of the mother- in that the unborn are just potentials whereas the mother is already a reality and therefore with full rights, mutually exclusive with fetal rights, is unacceptable. This is so on the ground that the abortion decision should not be based on such considerations, as according to Kant’s contention, both the mother and the fetus have an incomparable worth. The unborn should never be condemned because they are still in that stage of development where they are supposedly of no use to the “born” members of the society, but rather are parasites or burdensome dependents.

Fifth, whereas humanity is of incomparable worth, there are, however, some situations in life where the taking way of the life of the unborn may be conceded albeit reluctantly. Such situations are tubal pregnancies (ectopic cases) or when the life of the mother is at great risk. The fundamental issue here, however, is that the underlying attitude during such incidences is not to deliberately take away life but rather an attempt to save life.

Therefore even during such operations, even though it is clear to the physician and the mother that the result of the operation will be fatal the entire process should be handled with a positive attitude and readiness to save life, however remote the possibility may be.

Sixth, the idea, manifest in Kant's discussion of the duty to respect others, that one should try to reason with others rather than manipulate them through non rational means is a timely advice to the proponents of abortion. This is, more especially so, due to the semantic twisting and use of euphemistic language by the proponents of abortion in an attempt to win support and lure other victims or to cover up the painful side of the abortion decision. To say that abortion is an easy and safe procedure is a deliberate attempt to cover up both the physical, psychological and spiritual effects of the abortion act during the operation and thereafter. Cases of failed abortions, ruptured uteruses, excessive bleeding and post abortion guilt and barrenness among others, abound.

Attempts to differentiate or distinguish between human beings and human persons in the hope of securing an excuse to terminate the life of the unborn - and sometimes unfortunately even the comatose and the terminally ill fall into this category, is an exercise done in bad faith.

Seventh, in line with Kant's universal principles of justice, which is the foundation of his treatment of rights and juridical duties, the woman's right to freedom (liberty) to pursue her own life plan should be reciprocated by according the same opportunity to the fetus. For, even though the fetus is in the mother's womb, the fetus and the woman are two independent entities, which in accordance with nature, the fetus at this stage is being accommodated by the mother. Whereas one may argue about the fetus being dependent on the mother, it is also clear that dependency is part and parcel of human life as even the grown up members of the human race live in reciprocal and dependent relationships. We eat the food grown by others, clothes made by others among other examples of the dependency nature of the human relationships. Hence the dependency property of the unborn is not something unique to them at all, but rather, an inherent factor of human relationships.

Therefore, whereas the concern for liberty is very crucial for women, they must acknowledge that the realization of that noble dream is limited in the reality of our day to day lives and relationships by the concern for the liberty and rational development of the other members of the society, the unborn included.

1.4 Hypotheses

- i. That the demand for abortion rights as a necessary prerequisite for a woman's reproductive freedom, for a woman's control over her own body, betrays a decidedly patriarchal rather than feminist understanding of both "freedom" and control;
- ii. That whereas our society is in many ways constructed on a model that erects and sustains patriarchal values at the expense of feminine values, the solution to this patriarchal bias does not lie in abortion either;
- iii. That abortion as a woman's basic right is not in the best interest of women nor the society/ humanity as a whole.

1.5 Theoretical Framework

We have in this study employed as our theoretical framework the Kantian notion of treating persons as ends – as autonomous agents in pursuit of morally legitimate interests

In the abortion debate and apparently in other ethical debates too, there are two major worldviews. On the one hand are those who view the world as a completely finished universe with human nature created perfect and complete in the beginning. On this view, human nature is an all or nothing absolute, a total entity without any grey zones. Associated with this worldview are varieties of ethical systems commonly referred to as duty oriented ethical systems or deontological ethical theories.

In addition, this worldview holds that the moral rightness or wrongness of an act depends on its intrinsic nature and that whatever makes the act right or wrong are intrinsically

inherent in the acts themselves. These elements inherent in the actors can be known intuitively and need to be weighed and balanced against each other before one can be certain the moral course of action. On the whole, the absoluteness of right and wrong can reside in rules and principles or in the intrinsic rightness or wrongness of particular acts known intuitively.⁸⁷

On the other hand are the consequences oriented ethical systems. On this view the outcome and wrongness of an act depends on the outcome of our actions or the consequences of such actions. Teleological, consequentiality, utilitarian and situation ethics fall under this category. An act is wrong or right depending on whether it provides the most good for the most people in particular circumstances (act-consequence oriented theories) or whether it promotes the greatest good for the most people (rule consequence oriented theories)

The consequence oriented ethical systems are based on a process view rather than an absolutist view of human nature, which emphasizes the development process from fertilization to death (extinction at end of life). It considers human nature in terms of its quality rather than as an all or nothing "quantity".

In this study we have adopted the duty-oriented ethical system as a framework of our study. Of the four main schools or ethical thoughts falling under this category namely; the Hebrew-Christian and Moslem ethics (these two conceive the ideal moral life as obedience to the will of God and the positive laws or rules that express the divine will); Kantian ethics (which focus on duty); and John Rawls ethical position which emphasizes the obligations of justice that bind every human in a contractual relationship, we chose the Kantian interpretation. Kant's ethics focuses on duty holding that the requirement of morality always overrides all other reasons for acting. In his exposition Kant spells out four themes:

1. The ideal life consists in submitting our judgment to certain universal imperatives that bind everyone without exception;

2. Moral imperatives are unconditional, absolute, supreme, and universal
3. The authority that the morally good person submits to is not an outside authority but the rational logic of one's own will; and
4. Certain liberal values must be respected including autonomy, freedom, dignity self respect and respect for individual rights.⁸⁸

To Kant, duty and responsibility presuppose freedom. One cannot act well or badly or heed a moral obligation nor be responsible without being free to decide. There may or may not be freedom but it has to be assumed in order to impute responsibility to human behavior.

According to Kant, it is only a good will that is good without exception. All other values, - intelligence, happiness, judgment, wit, courage, pride or charity are not good without exception, some could use them all for bad ends.

Kant distinguishes two kinds of imperatives/commands: the hypothetical and categorical. A hypothetical imperative consists of an "if – then" relation, in which a person decides which goal he or she wishes to achieve. The "if" part of the command, provides the condition for achieving his or her goal. But this kind of command is amoral, since it appeals to a person's inclination or desire as an end state, not his or her sense of obligation. For a hypothetical imperative a person decides his or her goal, and the facts determine the appropriate means.⁸⁹

The categorical imperative on the other hand, holds that one ought always to do that which everyone else also ought to do in the same or similar situation. Kant asserts, "Act only on that maxim (or rule) whereby thou canst at the same time will that it should become a universal law".⁹⁰

The categorical imperative or the universalizability principle, as is sometimes referred to, states that the right thing to do regardless of any one's inclination, impulse, convenience or even the general welfare, is to do what is rational, universal and desirable for the

whole human race, independent of anyone's pleasure and no matter what happens and without exception.

Kant cites the following four examples of the categorical imperative:

First, suicide should not be condoned on grounds that if everyone in a state of dissatisfaction did so, there would be no human race and the will "to impel to the improvement for life will contradict itself".⁹¹

A second example is the obligation to keep one's promises and never break a promise out of convenience or advantage to oneself. If making promises did not entail their being kept, the idea of promise keeping would, according to Kant, necessarily contradict itself.⁹²

A third example is that one ought not to will to squander one's talents. "For as a rational being, he necessarily wishes that his faculties be developed".⁹³

A fourth example is the requirement not to let avoidable misery go unattended. This imperative provides a basis for the right to assistance and is a source of altruistic motivation for humanity to rise up to the occasion and help those in need.

Humanity according to Kant ought to be treated not as a means to an end but as an end in itself. Hence his practical application of the categorical imperative: Treat humanity "whether in *thine* own person or in that of another as an end with all, never as means only".⁹⁴ And it is not only some members of humanity that ought to be treated that way, according to this principle one ought to respect every person as they are – that is regardless of the age, status or position in society

There is some confusion however, between Golden Rule and the Categorical Imperative. The Golden Rule says do unto others as would be done by/would like to be treated. The Categorical Imperative says do treat others as one and as everyone else in a similar situation ought to be treated. For example, while one may want to impose what one likes

on others on the ground of the Golden rule, that would not be possible on the rational grounds of Categorical Imperative. In addition other challenges arise especially in regard to the above principle of always standing by the truth. A familiar example is given of a situation where somebody being pursued by an enemy enters into your house. Knowing very well that any disclosure of his whereabouts to his pursuer will lead to his death, what step shall you take?

The decision by the pro abortion proponents to put the life of the unborn in great danger and risk in an attempt to secure the 'overriding/ serious' rights of the mother, as they put it, in this case there is no difference from a situation where one discloses the whereabouts of the pursued knowing very well that that disclosure will surely lead to his death or great harm to his life. While one may rightly argue that in the case of abortion, direct death may not be intended, the reality arising from the nature and impact of the abortion procedure leaves no doubt about the inevitability of death to the unborn.

1.7 Methodology

This study was based entirely on library research. Relevant books, articles and journals were consulted in the course of the research.

The abortion problem has a twofold dimension: the morality of the individual abortion act and the moral implications of state legislation regarding abortion.

We have in this study focused on the individual and social moral dimensions. First the abortion act has been studied from the point of view of private morality and considered from the level of the individual's private moral decision in Chapters two to five. In the subsequent chapters the analysis the right to abortion claim concerned itself with the social aspects of this decision from the point of view of public morality.

We have examined the assumptions and suppositions underlying the various positions held on this issue of abortion and their implications and challenges both at the individual and social and moral dimensions. We have made attempts to discern the rationale of the

traditional stand with regard to the nature of human life and its beginnings from the biological perspectives, as well as that of the new trends and approaches, which have subsequently developed within the philosophical arena. Evidence from the biological and psycho-social sources were collated and incorporated into this study where applicable.

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CHAPTER TWO

ABORTION AND HUMAN RIGHTS: AN OVERVIEW

2.0 Introduction

In this chapter we will discuss the concepts of rights and abortion spelling out what is involved in the view that a particular individual possesses a right to life and the different abortion procedures employed at various stages of the embryonic development.

2.1 The issues at stake in the discussion about the right to life

As Margaret Mead points out, a number of issues are involved in the discussion of the right to life namely:

- i. The question of whether it is ever right to kill, which include the questions of capital punishment and of war. The issue here revolves around whether it is ever right to condemn to death a citizen or to send personnel or bomb to kill the citizens of other countries.
- ii. The question of the right to life of those who for some reason are judged defective: the feeble minded, the crippled, the sufferers from birth defects or mutilation from accident and the aged and the senile. This question hinges on existence of some sort of hierarchy of rights and on the assumption that those who are list able have the fewest rights or no rights at all.
- iii. The Issue of the right of an individual to control his or her own body.
- iv. The question whether society should ever have the right to deny or command an abortion and whether this is not a matter for the individual woman and possibly her partner to decide. Added to this is the question of a man's role in the abortion decision over a child of which he is the father.
- v. Question of the right over not only one's body, but over one's life itself; this includes the right to commit suicide and the right to provide through a living will

– for the conditions under which one's life may be artificially prolonged, in spite of suffering, distortion of personality, imposition on others and society at large.

- vi. Question of competence. When are individuals competent to speak in their own right and when must surrogate parents, children, relatives and advocate appointed by the state, the church or the medical profession speak for them? ¹

The overriding question in all these, is, who has the absolute power of life and death over any individual life, whether just conceived or just ending? Whether healthy or not healthy? What is the place of the family, the advocate, the medical profession and the individual parents in case of a fetus or young child?²

2.1.1 When does life begin and end?

The questions about the beginning and the end of human life must be addressed in an attempt to clarify when that life that is supposed to be protected comes to be and when it comes to an end.

When does an individual come into being so that he or she can be found to have an individual life, and when does that life end, so that the individual can no longer be said to live? Both ends of the spectrum must be considered. This study has made an attempt to answer these questions in chapter three.

The key concerns here revolve around the following questions: Does an individual exist from the moment of the first union of sperm and ova, from implantation, from the stage of the shaping of the fetus into recognizable human form, from the moment prenatal diagnosis declares the fetus without descensible defect, from the moment of birth when the child is fully developed without extraordinary means, from the moment it is seen as having irremediable birth defects, from the moment the mother is able to feel the child is hers, from the moment the infant has demonstrated it is strong enough to live or from the moment the father acknowledges it legally if he has not done it before?³

2.1.2 Have the unconceived any rights

The key question here concerns whether the unconceived have any rights?

Does every individual who might be the result of a single sexual act between two persons or two persons declared by church or state to be in a particular condition of potential parenthood, have a right to be actualized now, regardless of whether this particular condition of birth will make the child defective, crippled, condemned to a life of poverty, born to parents who will reject and possibly harm her or him, born to a group that is starving or being subjected to genocide?

Such are the issues that come to the fore in a study of this kind and which, depending on the subject matter of the study, should be addressed. In this study we have attempted to address the said issues as it relates to the pro-choice position on abortion. It suffices here, just before we move on to the discussion of the underlying assumptions and implications and challenges of the woman's rights to life and liberty claims with regard to reproductive freedom, to look at what "rights" are and what they consist of, albeit in brief.

2.1.3. The nature and content of rights

What exactly is the nature of rights? The stoic philosophers, in the Hellenistic period formulated the doctrine of natural rights as something that belonged to all men at all times. They saw these rights not as particular privileges of citizens of particular cities but something to which every human being everywhere was entitled, by virtue of the simple fact of being human and rational.⁴

William Blackstone an English jurist of the 18th century cited by Golding defines rights thus:

The absolute rights of man, considered as a free agent, endowed with discernment to know good from evil, and with the power of choosing those measures which appear to him to be most desirable, are usually summed up in one general appellation, and denominated the natural liberty of mankind... The rights themselves... will appear from what has been premised to be no other, than that residuum of natural liberty, which is not required by the laws of society to be sacrificed to the public convenience; or else those civil pledges, which society has

engaged to provide in lieu of the natural liberties so given up by individuals.⁵

To some rights are best analyzed as entitlements while to others they are best analyzed as claims. Still some think that the best way to look at rights is to see them as both entitlements and as a legitimation for claims.⁶ Peter Williams writes thus about rights:

Rights are the basis for the legitimate demands that we can make on others. When we have a right to x we may require, not merely request x insist on not merely invite receipt of x, stipulates not merely supplicate that we receive x. I call this feature of rights their demand quality.⁷

The possession of rights automatically gives the moral standing to complain or have one's interests protected or taken care of. Not so with the people who lack such rights who then must request, or plead that their interests be taken into consideration. It is only those who have rights protects that are assured of their place in the moral community.⁸

On the function and assertion of rights in justifying acts, Williams observes ably thus:

In a nutshell, rights are prima facie justifications for acts in accordance with them. The assertion of a right is the assertion of a sufficient reason for action. The existence of a right sets up a presumption against what would in its essence, be relevant considerations in deciding whether an act were right or wrong. Consequently when one asserts a right, two things happen: a justification for a certain kind of action is claimed and certain other kinds of justifications are held to be superfluous.⁹

Rights bar any alternative considerations. In case of any abridgement of a right the onus of justification rests squarely on the person who has abridged the same. And even where there is a sufficient moral ground for abridging a right, an explanation is still due to the right's holder.¹⁰

In some philosophical and jurisprudential literature it is claimed that rights are correlative with duties "that whenever anyone has duties, another has rights".¹¹ In this kind of scenario the granting of a benefit to one by the law directly translates into an imposition of some burden on another. Further more, as some argue, it is not possible to create a

right in favor of one, except by creating a corresponding obligation imposed on another.

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John Mitchell Finnis affirms this correlation. He argues that reasonable talk about rights is talk about duties and responsibilities:

In short, every claim of right can be wholly translated into the languages of duty and to the extent that it cannot be translated it is empty, fraudulent, intellectually irresponsible. Remember, identifying duties means identifying people or categories of people who have those duties... we should make free use of the modern language of rights, remembering always that in the genuine logic of that language, my rights are nothing if they are not your duties and your rights are equally nothing if they are not my duties, my responsibilities.¹³

The exercise of a right directly or indirectly affects another party whose responsibility it is to respect the bearer of the said rights. The response on the part of the other depends on the nature of the rights in question. Whether they are affirmative or positive rights. Which in this case obligates the one who gives to see to it that the one to whom the promise is directed is granted what he or she has been promised. On the other hand, are negative rights, which unlike the affirmative or positive rights involve duties or specific negative performance or duties of non-interference e.g. right to privacy, property etc.¹⁴

According to Atkinson a definition of a right has two sides, the negative and the positive aspects. Such that If we define a right as a justified claim on someone's behavior, then a negative right is a justified claim on some one that he not act in a specified way, and a positive right is a justified claim that he does act in a specified way. This specific action or non action as Atkinson argues is what is sometimes referred to as the right's content which involves at least three distinguishable components: the right not to be deliberately killed or grievously harmed, the right not to have one's life or health recklessly endangered, and the right to some minimal assistance in preserving one's life.¹⁵

In addition to a right's content, every right also possesses a determinate strength, the conditions under which the right's claim may be overridden without wrong doing.¹⁶. In

the case of the fetus such determinate strengths vary according to the position one holds on the status of the fetus. The pro-choice position has as its conditions the right to liberty and the privacy of the woman and other conditions such as pregnancy due to rape and incest, among others

Rights are distinguished from privileges in that whereas whenever someone has a right to something others have a privilege, on the other hand a privilege does not involve such a duty for anyone else. However, there is also a relationship between the two arising from the fact that whenever we have a right to do something, we also have a privilege or liberty or license to do that thing.¹⁷

In sum, it suffices to say that the issue of rights is a very touchy one since rights protect some of our most important interests and on the other hand enable us to make special kinds of claims on one another. Because of the unique moral strength of rights and claims of rights, advocates protecting certain interests readily seek to place protection of that interest in the domain of rights.¹⁸

2.1.4. The basis of the right to life

There are two grounds upon which the right to life can be based namely the fact that the human individual merits that right on account of his very being his intrinsic worth and the granting of rights on the basis of the individual's extrinsic worth. In this study we have taken the former position that a human being is worthy of his right by virtue of who he is and not what he can be or what value he can add on the basis of the possession of such rights. The later position, which is usually referred to as the utilitarian position holds that if we accord certain individuals rights to certain things, then doing so will maximize net expected utility. In that case in order to arrive at our decision we have to consider all possible sets of rights we could recognize, consider the consequences of the recognition of each, discern which set of rights is likely to produce the most good by its recognition, and thereby justify that set of rights.¹⁹

The possession of the right to life would be defended on the ground that the recognition of our possession of that right belongs to the set of rights whose joint recognition can be expected to maximize total net utility as measured by pleasure or happiness or any other standard that we have put in place. This position is wanting in some ways:

In the first place, the truth upon which the utilitarian answer rests, if there is any, is only a contingent truth. While it may be true that the way to maximize total utility is to recognize our right to life, that in itself, is not a necessary truth. This is so, because it has to be argued for on the basis of actual consequences in this our actual situation. In that regard, "if our situation were different recognizing our right to life might not in fact maximize social utility, and then we would not under those circumstances possess the right to life."²⁰

Secondly, the contingent nature of the right to life in a utilitarian theory shows that the right to life is not accorded to the individual for his own sake. For if indeed that was the case, the right to life were possessed by the individual for the sake of that individual's own good, then the issue of conditioning the possession of a right to life on its maximizing net social utility would not arise in the first place.

The other thing worth noting in regard to this position is that, whereas the collective of such individuals (as the beneficiaries of the rights) might be valued for its own sake, the same may not be applicable to the individual members, for, as the fallacy of division states, what is true of the whole collective is not necessarily true of any of its parts.²¹

The position taken in this study is that as members of the human race we possess value for our own sakes. We are neither instruments nor vehicles for achieving certain goods or ends; instead we are ends in ourselves. While it may be useful to others that your right and my right to life be recognized, that is not the most basic reason why you and I should be granted a right to life. We are entitled to that right on the account of the basic reason that we are worth it.²²

2.1.5. The scope of the right to life

The key question in this section as Atkinson asks, is, if you and I are the subjects of the justified claim of the right to life, who else do we recognize as the rights' subjects?²³

Going by the logical principle, that if we adopt some feature X as the basis for any particular right, then, we are committed as a matter of logic to recognizing as possessors of that right anyone who shares feature X. If the basis of the right to life is the capacity for self-awareness as some claim, then we must recognize all other beings with this capacity as possessing the right to life.

The adverse logical implication of this position though is that some category of other human beings other than the intended fetus will fail this test, hence the loss of the right to life. For what shall become of the mentally retarded and the irreversibly comatose who will never possess the developed capacity for self-awareness?²⁴

The position in this study on the status of “non-thinghood”, as Atkinson calls it, is such that once acquired it cannot be lost as long as the individual continues to exist. The permanency of this status of “non-thinghood” can only be cut short by the ceasing to exist of its subjects. For the status that we possess- the special status of having the right to life is a status of not being a mere thing to be dominated by killing. That status, which we possess, cannot be lost, is not temporary, is not a matter of luck or accident, and is not something someone could have prevented us from acquiring. It is also argued in this study that since the unborn are members of the human race albeit in *utero* they too possess that right, that special status.²⁵

Norman Gillespie, in his essay explicating some of the principles that determine the distributions of human rights asks: if an early abortion is morally permissible, why not late abortion or even infanticide?²⁶

The above reasoning is based on the principle of universalizability (u), which states “if an act is morally right for one person, then it is morally right for all relevantly similar persons.”²⁷ Gillespie, quoting Alan Gerwith, explicates this principle further:

According to the universalizability thesis, a singular moral judgment, which says that some individual subject S has some moral predicate P, is based on a reason according to which (a) S has some non-moral property Q and (b) having Q is a sufficient justifying condition for having P, so that if one accepts the judgment and the reason then one must accept the generalization that every subject that has Q has P”

Gillespie continues:

In all the cases, these justifying (non moral) properties in question (may) involve an important comparative element.... The point is that even when a reason for a right or duty directly applies only to one person, where that reason logically involves a comparative element; it applies in a comparative or proportional way to other persons. The logical form of that proportionality is (L) if x units of some property Q justify that one have x units of some right or duty E, then Y units of Q justify that one have Y units of E. Such proportionality is a pervasive feature of traditional doctrines of distributive justice.²⁸

In dealing with cases whose attempt to draw a definite line lead to paradoxical remarks for example, when one says it is not true that a fetus is not a human being, one can also say but it is not false either, Gillespie says that the best way to deal with such cases is to treat them on a comparative basis. His position is that precision is possible without drawing any lines and in that in determining the rights of a being we can proceed in the sense that given our awareness of the spectrum from poverty to riches, from baldness to full head of hair, and from conception to adulthood, we can specify quite precisely where an individual falls along any of the spectrums.²⁹

According to Gillespie, it is this reasoning that influences our moral thinking about abortion and explains why:

- i. No one favors infanticide, as there is no comparable conflict of rights with infants;
- ii. We think one should save the life of the mother if one has to choose between her life and that of the fetus;
- iii. We find it impossible to draw a line and to insist that abortion a few minutes after that line is significantly morally different;

- iv. We are more reluctant as we go back in the life of a fetus to say that it is a human being;
- v. The use of the morning after pill seems to so many people not to be morally objectionable.³⁰

On this reasoning, Gillespie argues, a fetus has a right to life but that right is less than that of its mother. A fetus, according to him is, “less than a full person” which implies that its rights are less than full – not that it has no rights at all.³¹

According to him, looking at abortion as a “line drawing problem” is a serious distortion that affects moral discussion about it. He observes that “if one thinks he must be able to draw a line” in order to defend early abortions, no wonder the status of the unborn problem seems insoluble.³² His position is that instead of the pro-abortionists struggling to draw the line:

Anyone who favors early abortions can emphasize the very facts of human development that are crucial for the anti-abortionist position, and in doing so, maintain that the right of a conceptus or zygote are minimal, while those of infants and about to be born babies are considerable. Once one sees this possibility, the “line-drawing problem” and the intellectual burden it imposes disappear.³³

In his assessment of some positions held by some philosophers on the status of the fetus, Gillespie observes the kind of reasoning or justification among various philosophers of different persuasions in their attempts to define the key characteristics of personhood ends in nothing but fallacious argumentation and conclusions. Accordingly as Gillespie correctly observes:

In other philosophic discussions of abortion, one finds such remarks as “what properties must something have to be a person, i.e. to have serious right to life? Here, the mistake is: (g) if something is not a person, it does not have a serious right to life. And, in another discussion the claim is made that “to stabilize his position (on abortion) the moderate would have to invent a new set of moral categories and principles ... because our principles of justice apply solely to the relations between persons. Here the fallacy is: (h) if something is not a person, our principles of justice do not apply to it. Position (g) is fallacious because being a person is a sufficient, but not a necessary condition, for having rights; and

(h) is false because as (l) which is a principle of justice, makes plain less than full person have rights and these can be unjustly violated.³⁴

Though Gillespie holds the position that fetuses are less than full persons, a position we do not support, we are in agreement with him on his argumentation that even in that state of less than full person, the fetus does have rights which can be violated.

.According to Roger Wertheimer, the fetus occupies a special intermediate place in our moral thinking and has separate moral status as animals do. And since our principles of justice apply solely to relations between persons, fetuses are excluded from that bracket of beneficiaries.³⁵ In his response, Gillespie terms Wertheimer's argument as simply fallacious. For according to him (L) is a principle of justice, which Wertheimer ignores, and it makes it plain that fetuses as well as animals can be treated unjustly.³⁶

In response to Judith Thomson's supposition that the right to life of the fetus is the same as that of its mother, Gillespie contends that many women would reject the supposition that their rights are at par with those of a fetus and resent anti abortionists who make that supposition the cornerstone of their position. Since that supposition is mistaken according to (L) their rejection of it is well founded. Yet, in Thomson's cases, the conclusion that the rights of a fetus are less than those of a normal adult only strengthen her conclusion that some abortions are morally permissible. Gillespie's contention is that if it is sometimes morally permissible that an innocent person die, or to cause his death, then the reasons required to do so with a being that is less than a full person are proportionally less.³⁷

There are, however, objections to Gillespie's position namely:

The first is that while (L) requires proportionality in our moral assessments based on claims of human rights, unless one knows for certain what the non-moral or natural characteristics are for determining human rights, one cannot be certain that fetuses and infants possess such characteristics in any proportional or comparative degree.³⁸

In his response Gillespie admits the accuracy of the criticisms thus “we do not know for certain that a fetus is a full person in a morally significant sense unless we know those characteristics upon which we base the attribution of human rights. He argues, however, that the only way to establish what those natural characteristics are is by analyzing our moral thinking about human beings and why we think that persons have rights. If proved in that way, he concludes, “... it is evident, or at least extremely likely that fetuses will be found to occupy the “in-between” status I have attributed to them.”³⁹

However, Gillespie’s idea of partial rights or less than full rights is objected to on the ground that the argument here is that a right is not something that grows or diminishes. Or something you can have more or less of it. You either have or do not have it.

Our objection to Gillespie’s position that if there is a certain symmetry between being a person and having rights, then if persons can grow and develop, why should not their rights do the same, is that we cannot talk about rights growing or increasing, more so, the right to life. We cannot gamble on it. Furthermore, it is not the rights that grow or increase, but the opportunities for the enjoyments of such rights that continue to open up as the individual moves from one stage of life to the other.⁴⁰

2.1.7 The Geneva Declaration of Human Rights

In regard to the question whether human rights are some kind of positive right (by this is meant that right that is necessarily enforceable and can be found out by reading laws which have been enacted or looking up law books) some kind of moral right (not necessarily enforced), Cranston observes that the intention of the sponsors of the Geneva Universal Declaration of human rights proclaimed by United Nations in 1948 was to specify something that everyone ought to have. Hence the rights they named were moral rights.⁴¹

However, to say that human rights are moral rights, Cranston argues, is not to deny that they are for many people positive rights as well as moral rights. For where human rights are upheld by positive law – that is where people have what they ought to have, human

rights are both moral rights and positive rights. Cranston asserts, however, that the distinction between what is and what ought to be, between the empirical and the normative, between the realm of fact and that of morality must be kept in mind.⁴²

Human rights as moral rights are different from other kinds of moral rights in that they are universal. They are not derived from a particular station or position or status in life; they are rights which belong to a man simply because he is a man (generic usage).

Cranston quoting Jacques Maritain observes:

The human person possess rights because of the very fact that it is a person, a whole, master of itself and of its acts, and which consequently is not merely a means to an end but an end, which must be treated as such. The dignity of the human person? The expression means nothing if it does not signify that by virtue of natural law, the human person has the right to be respected, is the subject of rights, possess rights. These are things, which are owed to man because of the very fact that he is man.⁴³

The Geneva United Nations Universal Declaration of human rights adopted in 1948 defines human rights broadly and calls upon all nations and peoples of the world to uphold the same.

Article 2 of the universal declarations states that “every one is entitled to all the rights and freedoms set forth in this declaration, without distinction of any kind, such as race, colour, sex, language religion, political or other opinion, national or social origin, property, birth or other status”.

Since 1948 the world community has continuously debated varying interpretations of human rights in response to global developments. According to Charlotte Bunch, these continued discussions, have further been necessitated by the fact that “the concept of human rights, like all other vibrant visions is not static or the property of any one group, rather, its meaning expands as people conceive of their needs and hopes in relation to it.”⁴⁴

Whereas there are many issues that have been discussed since 1948, ranging from social, economic to political spheres our concern in this study is on matters touching on

sexuality and reproductive freedom. Within the universal human rights systems there are two institutions that are concerned exclusively with women rights. The UN commission on the status of women – the body charged with the primary responsibility for monitoring and encouraging the implementation of international law on women’s rights and; second, the committee formed on the Elimination of Discrimination Against women (CEDAW).⁴⁵

Among the specific recommendations of CEDAW are:

- (i) States’ parties should establish or support services for victims of family violence, rape, sex assault and other forms of gender – based violence;
- (ii) States’ parties should ensure that measures are taken to prevent coercion in regard to fertility and reproduction, and to ensure that women are not forced to seek unsafe medical procedures such as illegal abortion because of lack of appropriate services in regard to fertility control.⁴⁶

On the distinction of the private and public spheres by the States, Elizabeth Schneider, contends that although a dichotomous view of the public sphere and the private sphere has some heuristic value and considerable rhetorical power, the dichotomy is overdrawn. She argues that there is no realm of personal and family life that exists totally separate from the reach of the state for the “private” and “public” exist on a continuum.⁴⁷

Schneider’s fear is that in the so called private sphere of domestic and family life, which is purportedly immune from law there is always the selective application of law that invokes “privacy” as a rationale for immunity in order to protect male domination.⁴⁸

Unfortunately, Schneider laments, the rhetoric of privacy that has insulated the female world from the legal order sends an important message to the rest of the society. It devalues women and their functions and says that women are not important enough to merit legal regulation.⁴⁹

It is ironical, however, that whereas Schneider is lamenting here about the use of the public-privacy distinction to the detriment of the women lot, this same appeal to privacy in the so called right to privacy claim is used by many feminists and other women rights advocates as a ground for women's reproductive freedom or the right to control their own bodies.

In her article "after the collapse of the public/private distinction: strategizing women's rights, Karen Engle, writes concerning the critics of the private-public distinction:

The critiques of the private-public distinction make us think of the unregulated private as something that is necessarily bad for women. We rarely look at the ways in which privacy (even if only because it seems the best available paradigm) is seen by at least some women to offer them protection. A number of examples immediately come to mind, each of which centers on women's bodies and not surprisingly, on women's sexuality. The language of privacy, and sketching out zones of privacy, many would argue, is our best shot at legally theorizing women's sexuality.... Example of where 'the private' is sometimes seen to have liberating potential for women is abortion (which is most obvious in the United States)⁵⁰

Charlotte Bunch criticizes the western conception of human rights, as being largely out of the picture. She questions why women's rights and human rights are viewed as distinct and laments the fact that women's rights are being violated with impunity in all corners of the world. All these violations, she argues are distinctly connected to being female – that is women are discriminated against and abused on the basis of gender.⁵¹

Bunch laments the fact that few governments exhibit more than token commitment to women's equality with men as a basic human right in domestic or foreign policy. On the contrary, she argues, wherever governments or the other human rights agents are challenged to respond to women's issues as concerns that deserve such attention they give excuses which seem to suggest the following:

First, sex discrimination is too trivial, or not as important, or will come after larger issues of survival that require more serious attention; second, abuse of women, while regrettable, is a cultural, private, or individual issue and not a political matter requiring state action; Third, while appropriate for other action, women's rights are not human

rights *per se*; or, fourth, when the abuse of women is recognized, it is considered inevitable or so persuasive that any consideration of it is futile or will overwhelm other human rights' questions.⁵²

In her response, Bunch contends that the narrow definition of human rights, recognized by many in the West as solely a matter of state violation of civil and political liberties, impedes consideration of women's rights. Second, some aspects of women's rights, she argues, do fit into a Civil liberties framework, but much of the abuse against women is part of a larger socio economic web that entraps women, making them vulnerable to abuses which cannot be delineated as exclusively political or solely caused by states. Third, Bunch calls the claim that women rights are trivial or secondary to the concerns of life and death, the most insidious myth. According to her, sexism kills.⁵³

To back up her claim about the threat posed by sexism to women, Bunch cites the cases of (i) use of amniocentesis for sex selection purposes which has been used to the detriment of girls in India and China among others; (ii) the WHO reports indicating that in many countries girls are given less attention in terms of care and food and; (iii) the case of the denial of women's rights to control their bodies in reproduction. She sees this as a threat to women's lives especially in places with rampant poverty and poor health services.⁵⁴

According to Bunch, female subordination in all aspects of life runs so deep that it is still viewed as inevitable or natural, rather than a politically constructed reality maintained by patriarchal interest, ideology and institutions.⁵⁵

The sad thing, however, Bunch argues is that the arena on which this struggle over human rights is taking place is women's bodies. Resistance to laws and social changes that put control of women's rights such as reproductive rights, freedom of sexuality whether heterosexual or lesbian, laws that criminalize rape in marriage, is, according to Bunch, a clear indicator of the determination of the powers that be to maintain the status quo.⁵⁶

On the issue of the state's responsibility for protecting women's human rights, Bunch expresses the feminists concern about the manipulation of the dichotomy between private and public spheres to justify female subordination. Beyond this manipulation, she argues the real questions are: who decides what are legitimate human rights, and when should the state become involved and for what purposes? 57 The issue, however, is that far from the question of manipulation of the dichotomy between the private and public spheres, it is the so called women liberators who in their attempt to separate and hopefully protect women rights, have in the final analysis isolated women to the extent that what would have been a human right's issue has now been isolated and tagged private. How then can women complain of manipulation or call for support or general recognition from other members of the society in an area whose response will inevitably involve the violation of their private affairs? How can public resources be used on private matters? How can a doctor be called upon to execute a private decision that is being said not to have anything to do with his duty to the public? Is he also not entitled to his right to privately decide whether he/she can perform an abortion or not? Quoting Riane Eisler, Bunch asserts that:

... the issue is what types of private acts are and are not protected by the right to privacy and/or the principle of family autonomy. (i) The underlying problem for human rights theory, as for most other fields of theory, is that the yardstick that has been developed for defining and measuring human rights has been based on the male as the norm.⁵⁸

Bunch, therefore, urges all those involved in this debate to move beyond these male defined norms and seek to bring about change through examination of the patriarchal biases and acknowledgement of the rights of women. In response to Bunch's claim about the need for the society and women in particular to free themselves from the male defined norms and patriarchal biases, it is worth noting that the claims themselves and the proposed means of achieving them, are loaded with patriarchal baggage such as the domineering spirit and ruthlessness and violence as exhibited in the abortion procedures.

When we examine Charlotte Bunch and other feminist's claims about the need to consider women's rights as human rights in the light of the criteria (discussed above) upon which human rights as moral rights are based not on sex, race, colour or station or

status in one's life, we are left with some questions about the biasness of the feminists' claims and demands pertaining to human rights. The debate has now become subjective, trivialized and narrowed down to a semantic battle. Women rights seem to have been compartmentalized and isolated from the universal human rights applicable to all members of the human race regardless of race, sex, color and religion. Women are now being said to be greatly endangered and marginalized. Their rights have been denied and trampled on. The rallying call is that unless such women rights as the right to privacy and reproductive freedom and the right to quality life, among others are granted and guaranteed then the women folk would be greatly disadvantaged. The underlying assumption in all these demands, it seems, is the belief that women rights supersede the rights of the unborn and those of the very male partner who jointly contributed into the coming into being of that life. John Mitchel Finis words', in his article "the foundations of human rights" capture the nature of this worry and confusion succinctly:

If we stop for a moment and listen to what we and our contemporaries are actually saying about human rights what do we hear? We hear, first, a common vocabulary; talk about human rights translates smoothly into countless modern languages and is readily understood, not only in Europe (where the vocabulary has its origins) but also in Russia, china, everywhere. (So it was possible, by 1949, to make a universal declaration of human rights). But then, if we listen with our intelligence we hear such a luxuriant multiplicity of claims of rights that we can start to feel confined, disoriented, and then suspicious or even repelled at the very mention of "human rights" We are surrounded and sometimes deferred by claims of right in which the very reference to right seems somehow wrong or at least distracting and unhelpful. We hear of a right to success, a right to good health, a right to privacy which means a right to control one's own body which means a right not to step aside from one's path to rescue a baby drowning in ten centimeters of water, or means (as the supreme court of the United States proclaimed) a right to dispose at will of the unborn child growing within one. In all these and countless other uses of the word 'rights' or 'human rights' we can, if we listen, hear another aspect, another resonance: not the unique and thus, equal status of each and every human being, but my status, my interest. A claim of right, as we saw before, prevails over convenience. So the language of rights is supremely suited to expressing, persuasively, the egoisms by which I treat other people's interests as mere matters of convenience, to be overridden by or subordinated and redirected to favor my interests. After all, from my point of view, my status and my interests are unique – they alone are mine.⁵⁹

Bandman asserts that contrary to the following positions on the concept of rights- that:

(i) the concept of rights presuppose freedom and that without freedom there are no rights; (ii) freedom is desirable for an adequate account of rights, which are identified as

option rights, but that freedom based rights or option rights are not essential- they argue that there are also other kinds of rights that those who are not free may nevertheless have, namely, “rights of recipients” or welfare rights; (iii) freedom is not only a necessary condition of rights but also is a sufficient condition and that there are no rights other than those rights based on freedom, that freedom, is a necessary condition of any right but that contrary to position i & iii above, freedom does not provide a sufficiently enriched basis for rights. And that contrary to position ii & iii, however, freedom is not only desirable but essential to any rights, but so are subsistence rights of well-being or welfare rights. According to Bandman, welfare rights (or subsistence rights) or rights of social and economic justice limit the scope of options as presupposed in option rights; that is, there is no freedom without well-being. The fulfillment of subsistence rights is essential to the exercise of option rights.⁶⁰

Martin Golding calls rights based on freedom “option rights” and argues that some human beings, including infants, the mentally incompetent, the comatose and the aging who are no longer capable of choice, nevertheless have rights of another kind. These rights are sometimes called rights to receive assistance, rights of recipience or welfare rights.⁶¹

Golding acknowledges that the right to be free is part of an adequate and desirable theory of rights, but that freedom is not a necessary condition for having a right. To Golding there are two kinds of rights, option rights and welfare rights. People who may not have option rights may nevertheless have rights of another kind, namely rights of recipience or welfare rights.⁶²

In support of Golding’s contention that option rights are not indispensable, there are rights that people who are not free are nevertheless said to have, such as the right to live. Slaves have been known to have rights, including the right not to be killed and even the right to revolt. If slaves, prisoners, the unconscious, and the aged who are incapable of choice have rights; it would seem that one does not have to be free to have rights.

In defense of the view that rights presuppose freedom, as Hart contends, there is a distinction between freedom applied to a class of beings and freedom applied to the members of that class. This difference is sometimes known as the collective distributive distinction. To attribute freedom to the class of beings having rights does not entail that each and every member of the class of the right's holders has to be free in order to have rights. As a matter of fact, rights can be exercised on behalf of others in the form of advocacy. One can extend some sort of rights to individuals who are not free as long as those who exercise rights on behalf of others are free to do so. An adult member of a family or even government authority can stand surety or trustee for underage beneficiaries of estates left behind by their departed parents or guardians. There is no unique difference between such members of the society and the unborn save the difference in location. Therefore, the requirement that only those individuals "capable of choice" have rights imposes unnecessary restriction on having rights.⁶³

2.2 The Notion of Abortion

There are two types of abortion, the deliberate or direct abortion and the spontaneous abortion. The direct abortion is an intentional act on the part of the mother alone or with the partner or other assistants, which is aimed at ending the life of the fetus through a forceful removal from the mother's womb by using any of the procedures below. This is sometimes referred to as criminal abortion. In case this procedure results in the birth of a live fetus the child is killed as part of the process. The spontaneous abortion on the other hand results from natural causes such as loose cervix, accidental fall or any other related physical or medical condition outside the control of the mother. The concern in this study is on the first type of abortion mentioned above, the direct abortion, whose aim is the death of the developing organism in the mother's womb. Whereas it may be argued by some pro-choice proponents, that it is not always the case that the death of the organism

in the womb is directly intended, the abortion procedures as will be seen later in the following chapters, leave no doubt as to the outcome of such acts: that death, is, in most cases inevitable.

2.2.1. The developmental stages of the fetus and the abortion procedures

It will suffice here to give an outline of the developmental stages of the unborn child and the abortion methods/procedures employed at each of these stages.⁶⁴

- (i) Zygote: first through third day
- (ii) Blastocyst: second day through second week
- (iii) Embryo: third week through eight week
- (iv) Fetus: ninth week until birth

The abortion procedures employed at each of the stages above are as follows:

i. Drug e.g. “morning after pill”:

This method is employed immediately following intercourse and is effective only within 24 hours following intercourse. The morning after pill is also used in cases of rape to prevent any pregnancy from taking place. The debate, however, is whether it is only a matter of prevention especially, if by the time it is being taken the pregnancy has already taken place.

iii. Vacuum aspiration

This technique, also known as the suction aspiration, is also used in the 1st trimester abortions. Whereas the principle is the same as D&C, in vacuum abortion the body of the developing child is not dismembered, but instead it is vacuumed out. The body of the developing child and placenta are sucked into a jar, where smaller parts of the child's body are often still recognizable.

iii. Dilation and curettage

This technique is most commonly used in the first trimester abortions. The cervical muscle ring is first paralyzed and then stretched open. A curette and loop – shaped steel knife, is inserted into the uterus. The surgeon then scrapes the uterine wall, dismembering the developing child and scraping the placenta from its attachment on the wall of the uterus.

iv. Saline injection

This technique also referred to as salt poisoning is often used in second and even third trimester abortions. In saline abortion a concentrated salt solution is injected into the amniotic sac surrounding the baby. This solution burns the skin of the fetus and slowly poisons its system resulting in vaso dilation, edema, congestion, hemorrhage, shock and death. This process takes from one to three hours, during which the distressed unborn kicks, thrusts, and writhes in its attempts to escape. Twelve to forty eight hours after the child dies, the mother's hormonal system shifts in recognition of this fact and she goes into natural labor

v. Hysterectomy

Hysterectomy as an abortion technique is not common and is usually employed after the sixteenth week. The techniques for hysterectomy abortion are similar to that of a caesarian section. The difference, however, is that in a caesarian section the operation is usually performed to save the life of the baby, whereas a hysterectomy is performed to kill the baby. Having been removed from the uterus the child is laid aside to die from neglect. Alternatively the child or the abortus is deliberately killed.

vi. Prostaglandin

These drugs artificially induce labor and may be administered orally, intravenously, by vaginal suppositories, or by direct injection into the amniotic sac. Usually the child dies during the trauma of premature labor, but sometimes it does not.

Each of the above procedures has its own complications both in the short and the long term. Such complications range from infection, excessive bleeding, chronic abdominal pain, accidental injection of saline solution into the circulatory system, incomplete abortions and retained placentas, cervical lacerations, accidental rupture during subsequent pregnancies, prolonged hospitalization among others.

The long term complications include the following among others: Sepsis, abscess, mental and psychological complications, recurrent hemorrhages, repeated operations, infertility and repeated miscarriages, uterine and cervical trauma perforation and lacerations and menstrual dysfunction.⁶⁵

2.3 Conclusion

From the foregoing discussions on the concepts of the notions of rights and abortion one thing has come out clearly: that there are variant perspectives and understanding these two notions such that to talk of abortion being a women's right one has to take for granted certain assumptions. This claim presupposes the following:

- i. The supremacy of the women's rights over fetal rights;
- ii. The fetus lacks personhood and that even if it were to have such status it would not be of any consequence in as far as claims to rights are concerned;
- iii. The husband or male partner has no say at all in the destiny of the very offspring whose coming into being indispensably depends on his

contribution either directly through the physical act of sexual intercourse with the woman or through the utilization of his seed in the invitro fertilization process;

- iv. That the abortion act has no adverse effects or minimal effects if any- either physically or spiritually on the part of the woman;
- v. That abortion as a basic women's right positively advances the women's cause;
- vi. That the state has an obligation to support women in the realization of this claim since the woman as a citizen of the state has a right to receive support that will guarantee her a quality life and sustenance of the same;
- vii. That the society as a whole will not be affected adversely by the granting of the woman's claim to abortion on demand and reproductive freedom.

The meaning, implications and challenges arising and inherent in these underlying assumptions shall become clearer in our discussion in the following chapters.

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CHAPTER THREE

ABORTION AND THE ONTOLOGICAL STATUS OF THE FETUS

3.1 Introduction

The purpose of this chapter is to answer those questions with regard to what sort of entities fetuses are and whether such entities have rights on the basis of authoritative scientific findings and careful philosophical analysis. The central thesis of this chapter is that all members of the human species possess the right to life

In section I we will present the arguments for the position that human life begins at fertilization/conception and in subsequent sub-section section we will discuss opposing views.

The thesis of this chapter is that the life of a human person is a single continuum, where first phase begins in the womb at the conception – fertilization stage. In order to firmly establish our position that the conception-fertilization forms the radical break in the coming into being of human life, the scientific facts about the child in the womb have been considered.

3.2 When does human life begin?

In this section we will argue that the human organism comes to be at conception/fertilization. Most embryologists support this position because of the following considerations:

The idea that this new organism is the same organism as the one, which exists in the womb three weeks later, and then three months later, and so on, is a simple interpretation of the data. To say that the zygote is not the same organism as the one which exists in the womb months later requires one to point significant changes in addition to what this interpretation requires one to hold.¹

Secondly, the actual coming to be of a new organism cannot be a gradual process. There are no degrees of being a substance or concrete thing; one either is or is not one thing or another. Even if the changes, which lead to the coming to be of a new organism, may be gradual, the transition to being one must be instantaneous, and therefore involves a discontinuity.²

Thirdly, the information, which will guide the development of this being, is already present within the DNA in the nucleus of the zygote, and the zygote is actively growing. After the fusion of the sperm and the ovum to produce the zygote, the activities of this new organism are organized and directed from within – it grows according to the master plan contained within its genetic code. Given suitable nourishment the new organism has within itself the complete capacity to develop itself to the state of a mature human organism.³

According to Dr. Bradley M. Pattern, “it is the penetration of the ovum by the spermatozoon and the resultant mingling of the nuclear material that each brings to the union that constitutes the culmination of the process of fertilization and marks the initiation of the life of the new individual”.⁴ F.R Lillie writes: The elements that unite are single cells, each on the point of death, but by their union a rejuvenated individual is formed.⁵ As already explained above scientific evidence have been mobilized here in order to help resolve the dilemma with regard to where to draw the line between what is merely a preparation for a human being and that human being himself. According to scientific evidence sperm and ovum are each merely preparations for a human being, which preparations cease to exist at the point of their interaction (the penetration of the ovum by the sperm) and subsequent transformation into something new, a new individual human being at the beginning of his existence.⁶

Whereas the sperm and the ovum comes to exist as independent entities or as the entities they were before the coming together, there is at least some aspects of biological continuity between the sperm and the ovum on the one side and the new organism, the

zygote on the other hand. This continuity is realized in the sense that the father's sperm and the mother's ovum each contribute one half of the final gene complement, as well as other cellular materials to the new human being. There is however, a radical break between these two modes of existence. This radical break, which takes place at conception, is such that before this event there are two things: the father's sperm and the mother's ovum, but after conception, there is one being: the new human person. Both the sperm and the ovum lose their own identities and existence. Schwarz captures this striking graphic change very clearly:

The change of identity is expressed, in a striking way, by the fact that the ovum that comes down from the ovary is at the point of maturity. It is at the end of its life, "on the point of death." It dies if it remains unfertilized, and it dies in fertilization because it ceases to exist. The zygote is, on the contrary at the beginning of his life, at the point farthest removed from maturity and death. A more radical break can hardly be imagined than that break between a being at the end of its existence and another being that somehow comes from it, but is at the beginning of his existence.⁷

The new being that comes into existence at conception has a new genetic code different from that of the sperm (and the father) and that of the ovum (and the mother). But the question that one may ask is about what this ceasing to exist of the sperm and the ovum entails. As discussed above, the sperm and the ovum are merely carriers of human life. None of these is a human being but are only parts of the body of either the father or the mother. These parts of the father's and mother's bodies contribute equally towards a new human being who emanates from them, through the union of their bodies but absolutely distinct from both of them. Upon coming into being the child, in line with predetermined nature's arrangements, spends the initial phase of his/her life in the mother's womb, its temporary home for now.

The question still remains to be answered. Do the sperm and ovum unite? If the sperm and the ovum contribute equally towards the coming into being of the human being, how about the talk about the sperm fertilizing the ovum? On the nature of the interaction between the sperm and the ovum and their relationship with the resultant being, Schwarz quoting Joyce Robert, E, writes:

The nuclei, of the sperm and ovum dynamically interact and in so doing they cease to be one might say they die together, but one really should not say that they unite. That notion suggests they remain and form a larger whole. But the new single cell individual is not a continuing partnership of the two parent sex cells. In their interaction and mutual causation of the new being, the sperm and ovum are self-sacrificial. Their nuclei are the subject of the fertilization process; the zygote is the result of this process. There is neither sperm nor ovum, once the process of interaction is completed, even though cytoplasmic matter from the ovum remains. It is really a misleading figure of speech to say that the ovum is fertilized by the sperm, fertilized as passively as a farmer's field. It is proper rather to speak of the sperm-ovum interaction process.⁸

Arising from the above contention from Joyce, that it is a misleading figure of speech to talk of a fertilized ovum, it appears then that we cannot therefore talk about a fertilized egg. This is so because what results from the conception, after the cessation of the ovum and the sperm the preparations of the new being, is not a certain kind of an egg, a fertilized one for that matter, but rather a new human person. The fertilized and the unfertilized eggs are not variations of the same thing, "but two realities that are radically different: One is a mere preparation for a person, and the other is that person himself".⁹

In this regard, therefore, the talk about the fertilized and unfertilized eggs obscures the radical difference between the ovum or egg, and the person as it makes it appear as if there is simply a mere gradual transition from one state (unfertilized) to another state (fertilized), when in fact, as Schwarz contends, there is a radical break between non person and person. This distinction explains why we do not accord such reverence to sperm and ovum as we do with the fetus or child in the womb.¹⁰

Contrary to the pro-abortion proponent's claim that the child in the womb is a part of the gestating mother, the child is not a part of the mother's body. Though the child is in the mother's body, and dependant on it he/she is a distinct being. He is as much his own person as he will be later in life. Concerning this uniqueness and distinctness of the being in the womb, Dr. Bernard Nathanson observes:

I have encountered the pro-abortion slogan, "it is a woman's right to control her own body," by pointing out that the modern science of immunology has shown us that the unborn child is not part of a woman's body in the same sense that her kidney or her heart is.

Immunologic studies have demonstrated beyond doubt that when a pregnancy implants itself into the wall of the uterus at the eight day following conception the defense mechanism of the body, principally the white blood cells, sense that this creature now settling down for a lengthy stay is an intruder, an alien and must be expelled. Therefore an intense immunological attack is mounted on the pregnancy by the white blood cell elements, and through an ingenuous and extraordinarily efficient defense system the unborn child succeeds in repelling the attack. In ten percent or so of cases the defensive system fails and the pregnancy is lost as a spontaneous abortion or miscarriage.¹¹

The imports of the foregoing arguments are that the growing organism in the woman's body is a separate entity from the hosting mother to be. And that human life is a single continuum, from conception to death. The organism in the womb is human life already in one of the phases in the single life continuum. This being in the womb is a person already, requiring nothing more to make him a person save the nourishment derived from the mother's food intake and an opportunity to finish its term in the uterine phase in the life continuum.

The growing fetal organism in the womb, is the same person as the born child he will become, as well as the teenager, the adult, he will become later. It is not so that there is something in the womb – “a blob of tissue” or a mere biological organism – that turns into a child. The child is already there, the same child, the same person all the way through. There are, however, significant developmental changes as the person progresses in life, but these occur in the life of one and the same being who is present throughout; and who is the being to whom these changes occur.¹²

It is worth noting here that the life continuum does not merely refer to biological continuum of a single organism, but, the identity of a person through various phases of his existence. Whereas the biological continuum is an integral part of the continuum of the person, it is not the whole of it or its essence. The argument that the life of the unborn child is no different from the life of the born child is not hinged on the claim that one cannot find a clear cut off point in the life of a human being from conception to birth and beyond a point marking line between non-person and person or merely potential person and actual person. Rather, it is hinged on the premise that uterine life and life outside the womb is just but phases of the continuum of a person. The fetus becomes the

born child, and he is a fetus no longer. The child becomes an adult, and he is a child no longer. The stages zygote, embryo, fetus among others, cease to be, but the person going through these continues as the same person.¹³

There are, however, some differences between the pre-born and post-born persons namely: the size, levels of development, living environment, degree of dependency and social interaction. Our position in this study, however, is that these differences do not constitute a sufficient and necessary justification for the discrimination and denial of the basic right to life and other rights due to the born members of the human race.

3.2. Objections and replies

The following are objections to conception-fertilization as the radical break that marks the beginning of a person's existence. We will group the objections into two categories: those from Biology and Philosophy.

3.2.1 Objections from biology

Those who oppose the placing of the beginning of human life at fertilization on the basis of disputable biological data, present the following objections:

i. Conception/Fertilization as a process

The argument here is that there is no such thing as the moment of conception since conception according to this theory is a process that takes time and therefore there is no definite time which we can pinpoint.

Our response, however, is that while it is true that fertilization is a process that takes time, it is also true that as a process, it has a definite conclusion. The moment, at which the process culminates, in the resulting zygote can be called conception. So there is a moment of conception: the culmination of the process of fertilization.¹⁴ Therefore the process of embryonic development commences with fertilization. Perhaps a descriptive

explanation of the conception process by Robert Joyce could help us understand clearly the intricacies involved in this complex process.¹⁵

Conception, as Robert Joyce explains, is the moment when the so-called “fertilization” process is complete. From this point and onwards, a genetically and physically unique individual is present and growing.

Before a sperm penetrates an ovum, these two cells are clearly individual’s cells and are parts of the bodies of the man and woman respectively. They are not whole body cells as is the zygote cell, which they crucially help to cause, but are body-part-cells. And as body parts, the sperm and ovum are not potential life, rather, are instead potential *causes* of individual human life. In this regard, therefore, in the fertilization process the two entities do not, even together, become a new human being; they become causes of the new human life.

While, it is true that fertilization is a process, which may take twenty minutes or several hours, it is also true as Joyce explains that it has a definite conclusion. The moment at which this process terminates in the resulting zygote can be called the conception event. The places of each of the four entities involved in this process are as follows: The sperm and the ovum are scientific, instrumental causes of the new human being. The man and woman are the main agents of this procreative effect. What this means is that while parental bodily matter (the sperm and ovum) is a crucial element of procreative materials on behalf of the new being, it is not in itself the stuff (the material cause) out of which this unique bodily being is adequately constituted. The bodily matter of the zygote comes into existence by means of the bodily matter of the parents but does not come from their bodies.¹⁶

Moreover, as Joyce continues to explain, the fertilization process is not as passive as the terminology would suggest. The nucleus of the sperm and ovum dynamically interact and in the course of their interaction and causation of the new being, the sperm and ovum are self-sacrificial in the sense that they become self extinct. Their nuclei are the

quasi-subject of the fertilization process; the zygote is the result of this process. There is neither the sperm nor ovum once the process of interaction is completed, even though cytoplasmic matter from the ovum remains. So, as Joyce observes, “it is really a misleading figure of speech to say of the ovum that it is “fertilized” by the sperm, passively as a farmer’s field is fertilized. It is proper rather, she asserts, to speak of the sperm – ovum interaction process”.¹⁷

While the new individual’s growth is ever a process, neither is its coming into existence nor its final exit a process. At any given moment, a whole living substance – be it a rabbit, or a human person – either is or is not. “Once a living substance such as there is, it is wholly there as this particular actual being – even though it is only partially there as a developed actuality. There is no such thing as a potentially living organism. Every living thing is thoroughly actual, with more or less potential: actually itself; potentially more or less expressive of itself. This being the case then, we can say as Joyce asserts, that a one-celled person at conception is an actual person with great potential for development and self-expression. That single-celled individual is just as actually a person as you and I, though the actual personhood and personality of the new individual are as yet, much less functionally expressed.¹⁸ Consequently, no individual living body can “become” a person unless it already is a person. No living being can become anything other than what it already essentially is. From the perspective of the beginning of a living thing, for such a being to become something essentially other say, for example a “sub-primal human animal”– it would have to be a person before it was a person so that it could be said to become or have become or come to be.¹⁹

It is argued, by the proponents of delayed hominization, however, that the human conceptus is not necessarily an individual and yet individuality is essential to personhood. Therefore the conceptus cannot reasonably be regarded as a person especially in the light of the cases of twinning and the possibility of recombination into single individuals.

The evidence provided, however, would seem to indicate not that there is no individual present at conception, but that there is at least one and possibly more. Citing geneticist

Jerome Lejeune, Joyce claims, individuality may be fully existent at the point of fertilization, but that thus far we do not have the technical capacity to discern how many individuals are present at that point.²⁰

The position taken here in the light of the foregoing exposition of the nature of the fertilization process is that the individuality of the human person must be affirmed on the basis of scientific evidence and a philosophy of reflective common sense. In determining the individuality of human personhood at conception, just because we do not know the number of individuals at that point, it would be irrational to conclude that there is not at least one. From not knowing how many, we cannot conclude that there are not any.²¹

ii. Why not protect unfertilized eggs and sperms.

The point of contention here is that if we can protect the fertilized eggs why not the unfertilized eggs and sperms?

Our response to this objection is that unfertilized eggs and sperms are not persons: each is merely a preparation for the coming to be of a person. “A fertilized egg” is not really an egg, but rather a small new person, a zygote who should be respected for just this reason. This “fertilized egg” is in the initial phase of the single life continuum, which phase is located in the uterine environment.

iii. Incomplete fertilization and wastage

Sometimes, abnormal fertilizations result in hydatidiform mole, without the potentiality to develop into a more mature, whole human being. Some entities that stem from the union of sperm and egg are not human beings and never will develop into them, for example, hydatidiform mole, chorioncarcinoma-(conophin cancer), the blighted ovum (only placenta lacks embryonic plate). One might object that this occurrence shows that a human person does not begin at conception, but at some later moment in time.

However, the fact that the fertilization process can fail, does not show that even when it succeeds a new human being has not yet been formed. A hydatidiform mole does not have, and never did, have the epigenetic primordial of a human body with the capacities of a mature human (at least some intellectual act). Rather, the hydatidiform mole has within itself something which pre determines it to develop only into organized tissues. Thus, in successful fertilization the new individual is a whole, although immature, human being. In an unsuccessful fertilization process resulting in hydatidiform mole, the resulting individual is not a whole human being. The conceptual situation, as Grisez argues, is like that of a man's heart which is kept beating after he has died or a number of human cells in a Petri dish.²²

Furthermore, the fact that some entities may stem from the sperm and egg union does nothing to show that those entities that are human beings do not begin their existence with the sperm-egg union. All that the objection can show is that all cases of biological fertilization represent the conception of a new person.

In addition, some persons are conceived who are too weak, fragile, and handicapped to survive and thus are "washed away". This happens later in life as well; not all human beings survive to maturity. This does nothing to show that they were not real human beings before their death.

iv. Case of cloning.

The objection in regard to cloning is that some beings are not results of a union between the sperm and egg. The response, however, is that even if cloning were possible that would simply mean that there is another way in which human beings come into existence. Beyond that it does nothing to show that the first way – normal fertilization is not a way in which human beings come into existence; or that this process does not represent the being of a person. Therefore the fact that there is another way or option does not mean that the initial way ceases to be.

v. The zygote as a blue print

The objection here is that the zygote is only a blue print for a human being, not an actual human being. In this regard the zygote is seen merely as an information code for a human being, a guide for the development of that being and not the being himself.²³ In addition the fetus is said to lack a structure present for us to be able to speak of a person. Consequently, at this point in time, it is said to be merely an ovum changed by the infusion of the sperm.

Our response is that the zygote, like every other human being, contains, in every cell, a blue print for his development and structure and information code, namely DNA. Although he contains this DNA information code, he is not the information code itself.

Moreover the zygote at this initial stage of development entails the structure that constitutes the individual person, at that stage of his development. Unlike the structure of an animal zygote it is specifically human structure and it cannot be otherwise now and later. This beginning is crucial for were he not there his/her unfolding as a person, could not begin. So the structure that the fetus has at this point in time is befitting the current circumstances.

VI Familiar human form

This is the argument that the line between non-person and person may be drawn at the development of a familiar human form. It is said that the zygote is not a human person because it does not look like a human person. The essence of this objection is that the zygote does not look like a familiar human person. That says nothing about her being, and it is the status of her being that matters.

Before certain developments are completed the child in the womb lacks familiar human form. But he does have human form; he does look human; that is how we looked like

when we were at that stage of our existence. Familiar human form does not designate a characteristic of the being in the womb, but rather something about us. Since it is not a characteristic of the being in the womb, it cannot mark the time when he becomes a person.

Furthermore, looking like a familiar human person is a function of genetic endowment, level of development and environment. We cannot expect a newborn baby to look like a fifty-year-old adult with beard and white hair. It would, in fact be a very strange phenomenon if a human person at the very beginning of her development did look like the more developed human beings we are used to seeing outside the womb.

It is not how the child looks like, or if he is familiar to us that is important; what is important is his/her own status, what he really is. He/she is essentially the same being before and after acquiring familiar human form; if he is a person after, he cannot be a non-person before merely because he looks unfamiliar to us. Hence, familiar human form cannot be the place to draw the line. It is merely an aspect of the development of the child in the womb, the same child all the way through the various phases of development.²⁴

(vi) Twinning and other phenomena

The argument here is that the zygote cannot be considered an individual person since it is divisible. Apparently, twinning can occur up to the stage that the "primitive streak" appears in the embryo, a sign that its cells have specialized sufficiently so that no longer does each have the potentiality to become an entire embryo. Because of the potentiality of the cells sub-dividing before then, it is argued that an individual human being cannot be in existence until after the primitive streak. The following are arguments that stem from such considerations that hold that the embryo is not a human individual after fertilization.

It is argued that before gastrulation (differentiation into layers or folds, at the third week) or before the development of the primitive streak, as long as twinning can still occur, what exists is not yet an individual, but only a mass of cells. Shannon and Wolter, write:

Because of the possibility of twinning, recombination, and the potency of any cell up to gastrulation to become a complete entity, this particular zygote cannot necessarily be said to be the beginning of a specific, genetically unique individual human being. While the zygote is the beginning of genetically distinct life, it is neither an ontological individual nor necessarily the immediate precursor of one.²⁵

According to Lee, this argument is based on confusion between two different senses of the word “individual” or “undivided”. When a person is defined as a type of individual the word means logically undivided as opposed to a universal or a class, where the property or nature is divided among many.²⁶

The division of the embryo shows only that he or she is physically divisible. Before splitting, the zygote or the two or more celled embryo is an individual, not a universal. Even the fact that A can split into B and C, does not simply follow, nor suggest, that A was not an individual before the division. It may be that A ceases to be and B and C come to be from the constituents that once went into A or that A is identical with B or C. But the facts simply do not suggest that A did not exist or was not yet individual. All of us are physically divisible, but that does nothing to call into question our present individuality in the relevant sense. Our hands or legs can be chopped off and that will not mean that our individuality has been taken away or we have lost it.²⁷

A second objection presented by Norman Ford and discussed by Lee asserts that on account of the potentiality of the zygote to develop into more than one human individual the zygote could not be a human individual. Therefore, it is incoherent to hold that the very early embryo is an individual human being. He writes:

It would also be more coherent to hold that whilst admitting the zygote is a living individual being, it could not be a human individual on the simple grounds that, given the right conditions, it had the natural active potentiality to develop into an adult human being, given the right conditions, equally develop into two adult human individuals. It would

have to be both one, and more than one, human individual at the same time.²⁸

From our point of view, we can say that Ford's position would be right if the conditions in both cases were similar; however, as Lee correctly observes, they are clearly not. To say that an embryo has the active potentiality to develop into an adult human being, given the right conditions, is to say that given an appropriate environment he or she will develop himself or herself on that direction. The situation is, however, different in that for an embryo to split it requires more than the right environment. Some agent must break down the intercellular bonds connecting the cells of what to all appearances, is a multicellular organism. The embryo has in itself an inbuilt mechanism that drives and directs the internal changes take place in its development towards maturity.²⁹

If a flatworm is cut in two (in the right place) the result is two flatworms. The decision does not result in death because the parts of the flatworm have the capacity to re-differentiate. This fact does not in any way imply that prior to the division the flatworm is merely an aggregate of cells or tissues. It simply means that the parts of the flatworm have the potential to become a whole flatworm when isolated from the present, whole of which they are parts. Likewise at the early stages of development of the human embryo the cells seem to be as yet relatively unspecialized and therefore cannot become whole organism if they are divided and have appropriate environment after the division. But that fact does not in the least indicate that prior to such an extrinsic division the embryo is an aggregate rather than a single, multicellular organism.³⁰

The third objection focuses on the totipotency of the cells before gastrulation. By totipotency it is meant the ability of a cell, when isolated from other cells, to develop into a whole, mature organism. According to Ford a distinct individuation process cannot take place prior to the early blastocyst stage because it is only then that differentiation occurs amongst the cluster of homogeneous cells of the compacted morula.

The response to this assertion, however, is that the possibility of twinning is not itself significant, but seems to be only because it shows that at that stage the cells are not so specialized that they are no longer totipotent.

But why should the totipotency of the cells be thought to suggest that there is not a single entity? How about the flatworm that can be divided into two flatworms, and yet is clearly a single organism before that division. This fact in itself shows that the proximate potency of the parts to become a separate whole upon physical division is not incompatible with the present substantial unity of the whole.³¹ Otherwise if it were incompatible the division and the continued survival of the flat worm and the separated part would not have been possible.

Moreover, this position ignores the decisive evidence of unity and organization in the embryo prior to implantation. There is the fact that none of these cells grows, but all of them use their nutrients to supply the energy needs for cell division. Second, contrary to Ford's claims the fact that they are contained within the zona pellucida does not just "give the appearance of unity," but is itself an important piece of evidence for substantial unity.³² Another important aspect is that there is considerable evidence that the cells are in fact functioning in distinct ways even from the two-cell stage. Compaction occurs very early, at the eight-cell stage, which is on the third day. But as Ashley points out, it is unlikely that this event could occur without some prior genetic decoding and communication between the cells, since the cell divisions continue to take place in the orderly species specific sequence or pattern.³³

Finally, a fourth objection, proposed by Shannon and Wolter and discussed by Lee, claims that the zygote does not have full informational determination, but receives it only later from maternal molecules. Citing C.A Bedate and R.C. Cefalo, they write, "Note also that the zygote does not possess sufficient genetic information within its chromosomes to develop into an embryo that will be the precursor of an individual member of the human species."³⁴

A major argument for this position is their belief that a biologically complete zygote could still give rise to a hydatidiform mole. The zygote can give rise to a biological entity that is not a person, e.g. a hydatidiform mole. Therefore an individual zygote, even when biologically perfect, does not possess in itself all the necessary and surely not sufficient, information to become a human person.³⁵ However, hydatidiform moles do not arise from complete zygotes but rather from defects in the fertilization process. Complete hydatidiform moles arise from the formation of androgenetic eggs with two paternal nuclei.³⁶ This falsifies the claim of Bedate and Cefalo, repeated by others, that a biologically complete zygote might still give rise to a hydatidiform mole. A normal zygote does not subsequently become a hydatidiform mole. Rather, such a growth is simply the result of an incomplete fertilization.

As for the claim that the embryo receives information from the mother, Shwarz asserts, "The pre implantation embryo does not receive any message or information from the mother able to control the mechanisms of development. The biological identity of the human embryo is not determined by the influence of maternal environment but depends basically on the information capacity of the embryo itself."³⁷

However, even if it were true that some information is received from maternal molecules, this in itself would not show that the pre-implantation embryo was not a complete human individual. There is no reason to expect that all of the future features of the developing organism should be already determined by its internal genetic make-up. Environmental conditions, which could include maternal molecules within the uterus, can determine many of the future characteristics of the developing organism. Indeed throughout his or her life, many of this organism's important characteristics will arise from interaction within/between his or her own internal power and the environment. If informational factors are received from maternal molecules, still, how this information fits within the overall development of this mechanism is determined from within by the organism's own directed growth. Thus, if any information is received from maternal molecules, it does not determine the primary organization and direction of the multitude of cell

differentiations and acquisitions and uses of nutrition occurring in this organic system. That primary organization, comes from within the embryo itself.³⁸

Finally, Ford's *et al* thesis to the effect that, first the unitary single-celled zygote is formed by the fusion of the sperm and ovum, then it splits into several independent organism, only to be reunited some three weeks later to form a multicellular organism is flawed. This is so because no explanation is given as to what guides this process. Nothing seems to happen at the point of the appearance of the primitive streak (the point Ford proposes as the initiation of the individual) that might account for the sudden appearance of unity among the previously manifold cells. Only at fertilization, with the fusion of sperm and ovum, is there any event which could be counted as imposing unity on what was previously manifold. The available evidence indicates that prior to the primitive streak stage there is already a regularly occurring, predictable, orderly sequence of events of division, differentiation, and growth, beginning with the one-celled organism and leading to an organism with a clear precursor of the brain.³⁹

(vii). Viability and dependence

First, viability is often claimed to be the dividing line between the new human individual and that, which is not a human individual.

It is sometimes argued that if the fetus is not viable, then it is not an independent human being, and only independent human life has intrinsic value or basic rights.⁴⁰

This argument, rules out all other sections of humanity, such as the bed ridden accident victims or the comatose who are dependent on others. The idea that viability is a significant dividing line, according to Lee, seems based on a confusion of independence with distinctness. It is clear that the embryo is a distinct individual and member of the human species before viability.

As part of the justification for the non personhood of the fetus it is often argued that at this stage in life the fetus is part of the woman's life and therefore lacks independence. The main argument is that the pre-viability child is too intimately involved in the body of his mother to be his/her own person.

But, Contrary to the pro-abortion proponent's claim that the child in the womb is part of the gestating mother, the child is not a part of the mother's body. Though the child is in the mother's body, and dependant on it, he/she is a distinct being. He is as much his/her own person as he will be later in life.⁴¹

Further more, even if the fetus were truly dependent on the mother, the point, however, is that the degree of dependency is morally irrelevant for the question of the being of the fetus on the following grounds:-First, the degree of dependency is relative. All members of the human race are dependent on one another in one way or another for survival. For a man to live well he/she needs food, clothing, and shelter among others. Various sectors and individuals produce these items. Even if an individual were to claim that he could provide for himself he/she can only do so with the help of others whom he/she will either pay for their services or request for their voluntary contribution. The nature of the dependency also vary from the one who is mercifully depending on the donations arising from the efforts of others for survival to one who through tendency on others is making the lives of those others and their dependents better through the remuneration of their efforts. Second, physical dependency, as it applies to the child in the womb or to a person who is paralyzed, concerns a bodily dimension, and not the person as a person or his right to live. Schwarz, observes:

That the child in the womb is dependent on another person, while the prematurely born child is dependent on an incubator has nothing to with the status of the being who is thus dependent. If person A is being sustained by, and thus dependent on, a direct blood transfusion from another person, while person B is similarly being sustained by a blood transfusion through a machine, then both are equally sustained, equally dependent; both are persons nevertheless. That is, the kind of dependency, whether it is on another person or on a machine, has nothing to with the person's being and his moral status.⁴²

A further look at the following points puts further doubt on viability as a reliable criterion- just like dependence, as the drawing line for determining personhood: (i.) viability is not a definite line, because it is a constantly changing point; (ii.) Viability has to do with environment – previability child can live only in a certain environment: his mother's womb; (iii.) With the ever improving technological discoveries in the fields of embryology and fetoscopy the question of viability has continually been rendered more and more irrelevant; (iv.) A pre-viability child is simply one who has a greater need for his natural incubator, his mother's womb, than a post-viability child does; just as a fragile, premature baby has a greater need for an artificial incubator than a stronger baby does. Both are real babies, both are equally persons.⁴³

Furthermore, the modern contemporary pro-choice proponents have rejected the traditional pro-abortion argument on the basis of viability on the basis that that there is no significant moral difference whether abortion is performed before or after viability.

(viii). Brain functioning: Baruch Brody's argument

Baruch Brody, while arguing that a human being has a right to life from the moment he or she comes to be, and that the living human being comes to be long before birth, places the coming to be of the human being at the point at which he or she has a functioning brain, a point he estimates to be about six weeks into gestation.⁴⁴

Utilizing the metaphysical position of essentialism, according to which some properties or characteristics are essential while others are accidental, Brody cites the example of the tree and the leaves. The tree is an essential property in that its extinction means the ceasing to be of the tree itself, while the leaves are just accidental properties, which the tree can shed off and renew from time to time. Looked at from this perspective, Brody argues, that the central question in the abortion controversy is, what is the essential property for membership in the class of living human beings?⁴⁵

Brody, places the class of human beings in the flock of the natural kinds. He defines natural kind as a set of objects each of which has a property essentially with the provision

that nothing else has that property. And since humanity is a natural kind, the properties necessary for being human will be essential? That is, they will be properties such that to lose any of them is to go out of existence.⁴⁶

Brody defines death as the irreparable cessation of brain function. His position is that the absence of brain waves indicates the death of a person, his ceasing to exist as a human being. And that being the case then, it must be the presence of such waves that indicates his coming into existence. Before that, when he is in the embryo stage of his existence, he is, according to this argument, not a human person. His conclusion from this analysis of death is that if irreparable cessation of brain function marks the going out of existence of the living human being, then, brain function is an essential property.

We will raise the following arguments against Brody's position:

First, the six weeks estimate for the beginning of the presence of the brain is wanting. For while it is true that the brain is not complete in its general structure until the sixth week, there is no valid reason at all for requiring completeness in structure before saying that, basically, the brain is present?

According to Lee, one can only require the presence of a human brain only for one of two reasons namely; one might say that the brain is necessary because only then does one have the organic basis for the potentialities characteristic of human beings. The point here, however, is that while the gross structure of the brain is present six weeks into gestation, the brain only becomes structurally complete some time after birth, because the connection between the neurons, which makes possible the synaptic connections, are developed sometime about three or four months after birth. Consequently, Lee argues, it is quite impossible to hold that there is no human individual until three or four months after birth.⁴⁷

The second reason one might require the presence of the brain is that one argues that not until then is there a single organism. This reason again is wanting in that after the fusion

of the sperm and the ovum, the zygote manifests all the marks of unitary, organic actuality: its activities of nourishment and growth are as unified and intelligibly directed as are the activities of any other organism of that size.⁴⁸

Third, in an adult, the loss of certain brain waves, indicating the cessation of brain activity implies (or is taken to imply) death. But the absence of brain waves in an embryo obviously does not indicate he is dead. The reason for this asymmetry, as Schwarz observes, is that an adult needs a brain to live, embryo does not. The loss or absence of brain activity is not in itself crucial for deciding life or death, the presence or absence of a person. It is only crucial for certain human beings, namely those who have reached phases of development where the presence of brain activity is essential for life.⁴⁹

Fourth, in an embryo there is the mere absence of brain activity, while in an older person or an adult who no longer has brain activity, there is something essentially different; there is the death of the brain, the dying of an organ that had been alive. What semblance or symmetry is there between a dead brain and the absence of a brain, or between a brain that no longer functions because it has fatally deteriorated and the absence of a functioning brain that has not yet developed, because the time is not ripe?⁵⁰

Fifth, in an adult, the cessation of brain functioning is merely temporarily being out of order; its role perhaps taken over by machines. In this case, then, the patient is clearly not dead or has ceased to be. Consequently, if he still has the potential to function as a person, though incapable of functioning at present, then he is a person now. But this is precisely what the embryo has: the potential to function as a person, though incapable of this at present. The person with irreversible loss of his brain function has no future on this earth; the embryo indeed has a future in that whilst for the adult the journey is coming towards an end for the child its potential is just beginning to unfold.⁵¹

According to Lee, the reason why irreparable cessation of brain function constitutes death, is not because having a brain is at all stages of the human being's life a necessary property, but because in the mature human being the brain is the organ which organizes

all of the systems of the human organism. So when the brain ceases to function completely, in a mature human being, the venom tissues and organs cease to form an organism. And since a human being is essentially an organism, if he ceases to be such then he or she ceases to be:

But since being an organism expresses class specifically, what a human being is, it is impossible for an organism to come to be at one time and, remaining the same organism, become human at a later time. This would make humanity an accidental property of human beings, a position Brody rightly rejects. So if an organism at one time is the same organism as a human organism at a later time, then the organism at the earlier time is a human organism also, the same human organism as the one which exists at the later time⁵²

It should be noted that with the fetus the continuity consists in the fact that it is the same organism, before the development of the brain and after its development. There is therefore, no reason to think that the development of the brain causes the death of that earlier organism, to give way to a distinct organism. Rather, the development of the brain is a stage in the maturation process of the same organism. The potentiality of the bodily parts is a capacity to receive from unfolding the enlivening and organizing functions of a brain: the potentiality of the fetus is a capacity actively to develop, according to a design intrinsic to it.⁵³

Brody's second argument runs thus:

One of the characteristics essential to a human being is the capacity for conscious experience; at least at a primitive level since the embryo lacks this capacity, it is not a human being.

We will offer the following criticisms against this argument:

First, just as we have argued elsewhere in this study, an insentient person is as much a real person as one who is sentient. He/she temporarily lacks a capacity that the rest of us have. This does not change his nature as a person.

Second, in a broader sense we can say that the fetus at embryonic stage has the capacity for conscious experience for he/she is already the kind of being who normally has conscious experience. He has the capacity, but is still dormant, undeveloped. For he now already has what will become his brain; it must unfold, develop, grow, be nourished.

Third, for the brain to emerge as a functioning organ there must already be a human being in existence “only a human being can develop a human brain, a human brain cannot develop before a human being exists. For in this case, we are not talking about a ready made brain to be fitted into a waiting human structure as is the case with a car being fitted with an engine in the assembly line, but an organ that is part and parcel of the developing human organism in the womb.”⁵⁴

Finally, if Brody’s argument for drawing the line at functioning brain stage were successful, it would be of little help to the abortion cause. That line is about six weeks, and most surgical abortions take place after that time, beginning at about seven or eight weeks. This will therefore mean that all abortions in the second and third trimesters are illegal and/or immoral.⁵⁵

3.2.2 Objections from philosophy

i. An argument based on hylomorphism

Joseph Donceel holds the position that the Thomistic, or Scholastic theory of human beings as composed of matter and soul (or form), that is, hylomorphism, is a cogent theory, and that it still supports the conclusion (as Thomas himself thought it did) that the fetus is not a human being from the time of conception.⁵⁶

According to this theory, all living beings, including humans, are composed of matter and a principle, which informs or determines the matter to be one sort of thing, rather than another. This principle, which is called the soul in living things, is the substantial form, which only comes to be when the living thing itself comes to be. Donceel explains the position thus:

The main philosophical principle is as follows. The soul is the substantial form of man. A substantial form can exist only in matter capable of receiving it. In the case of man's soul this means: the human soul can exist only in a highly organized body... yet at the start there is not at once a highly organized body, a body with sense organs and a brain.⁵⁷

Donceel's conclusion is that if form and matter are strictly complementary as hylomorphism holds, there can be an actual human soul only in a body endowed with the organs required for the spiritual activities of man. And according to him, the brain and especially the cortex are the main organs of those highest sense activities without which no spiritual activity is possible. In this regard, Donceel argues, a fetus is not a human being until the cerebral cortex is present.⁵⁸

The crucial question, however, is how much organization is required: Donceel holds that the development of cerebral cortex is required. But what level of development and what appropriate tools shall be used to measure such level of development? Furthermore, when we take into consideration the fact that individuals vary in regard to their rate and nature of development, this parameter of a developed cerebral cortex becomes even more suspect.

Secondly, we will argue that the position itself is mistaken, and that the contrary position, namely, that the conceptus is a human organism from fertilization onwards is the only reasonable position in the light of empirical data.

If we grant that matter must always be proportioned to form and that the human soul can only come to be in an organized body, this very general point is far from the more specific claim that the organs necessary for the operational distinction of the species must be present before the matter is disposed to receive the soul or form.⁵⁹ The development and growth of the human body takes place gradually and as it does so the soul is engrafted or intertwined therein and not waiting out there for the opportune moment to enter therein as is presented in St Augustine's ensoulment theory.

Thirdly, the argument fails because it is based on too narrow a conception of the soul. The proponents of this argument view the soul in its synchronic function (its effect at a definite time) as the first act of the living thing's present operations and ignore its diachronic function (its effect on a sequence spread out in time). On this latter understanding the soul is present from the beginning of that intelligible series, not just its culmination.⁶⁰

In the embryo's case there is ample evidence that its development is intrinsically directed or guided, from fertilization onwards. The most reasonable conclusion, then, is that an organism already exists, that there is ample evidence that its development is intrinsically directed or guided, from fertilization onwards. Towards this end, Lee asserts:

That an organism already exists, that there is an actual unity, a soul from the moment those events occur which must be seen as fitting into the intelligible pattern of development of that organism. This moment occurs long before the presence of those organs which make possible the more mature functions of the living thing as a member of its species. Hence, the hylomorphic theory argument simply ignores one of the key functions of the soul and therefore does not establish its conclusion.⁶¹

Fourthly, the argument fails because there are several counter examples to its first premise, that matter must have the organs presupposed by the actions distinctive of the species of the organism before such an organism exists e.g. reproduction is one of the operations by which living things are distinguished from non-living and yet the reproductive organs in most animals are not mature and functional for many years e.g. tadpoles operate with one digestive set when young and another when mature. What then shall we say of the tadpoles and the different times in regard to the utilization of its digestive systems? The appropriateness of this question arises from the fact that if we were to apply this theory of hylomorphism as espoused by Donceel, the tadpoles can only be said to be mature from the time the use of the second set of the digestive system commences.⁶²

Fifth, Thomas Aquinas's position, the one upon which hylomorphic theory hinges on, is based on ignorance of empirical facts concerning conception, for example, (i.) the Male

parent as efficient cause of the soul; (ii.) Thomas thought the semen contained a vital spirit – the power of forming the material contributed by the mother to the point that it is disposed to achieve the human soul and that the menstrual flow (ovum) is a non living matter; (iii.) that semen, at least the vital spirit of the semen, remains a distinct agent throughout the whole process until the likeness of the generating parent was induced into the material.⁶³

Given this misinformation regarding the empirical biological facts, Thomas's position appears reasonable, and solves the problems presented by what he thought were the data. However in the face of current development in the fields of embryology and fetoscopy his position is misplaced for we now know that contribution of the mother does not consist in merely providing non-living menstrual blood rather, the ovum is a living, highly organized cell containing specific information in the genetic structure in its nucleus information which will, together with that of sperm, help specify the development of the new living organism

Furthermore, we now know that there is nothing in the sperm, which remains as a distinct agent in the process of the embryo's development. After fertilization neither the sperm nor the ovum remains.⁶⁴

Sixth, Moreover, Donceel's view disregards the fact that fetal development is a continuous process. Thus he does not explain why the fetus, which in his opinion cannot be a human body at the zygote stage, can be one after a few weeks.

Finally, as German Grizez points out, this theory has another equally serious inconsistency.⁶⁵ It's proponents do not wish to place "hominization" at a point after birth, for it is obvious to everyone that the newborn is at least a human organism. And yet were they consistent in their requirement that the biological supposition" for mental actions be present before there is a human being with a rational soul, that is where they would have to place it. It is not until after three months after birth, at the earliest, do the nerve cells in the cortex have the kind of connections needed to provide the biological basis for mental

or reflective actions.⁶⁶ As Grisez puts it, “this beginning of the brain’s development (where Donceel placed the biological presupposition of thought) is not the bodily basis for intellectual activities but only its precursor”.⁶⁷

3.3. Summary and Conclusion

In the foregoing discussion on the beginning of human life the following issues have been noted on the objections to the central thesis that life begins at conception

3.3.1. On twinning

Despite the facts about twinning and chimeras, most unborn babies with their accessory tissues develop from a single zygote and are alone in developing from that zygote. In most cases individuality will have to be admitted to appear to be continuous, unless the arguments from twinning, chimeras and so on by themselves plainly show that a substantial change is absolutely required.

But if the evidence were really in support of Ford’s contention, then according to Grisez, most biologists would not think: fertilization in mammals normally represents the beginning of life for a new individual.

The phenomena of twinning and chimera do not by themselves show that the ontological human individual comes to be by a substantial change at the primitive streak stage? For if all zygotes had an active potentiality to become twins they would do so unless some accident prevented it. “Thus contrary to what Ford asserts ----, in those zygotes which develop continuously as individuals, the facts do not evidence an active potentiality to develop otherwise. Rather, at most the facts show that all early embryos could passively undergo division or combination”.⁶⁸ These processes either lead to the formation of twins or chimeras.

It is not the evidence of substantial change that the zygote will develop not only into the embryo proper, but also into the accessory tissues, which will be discarded after birth. The accessory tissues are organs of the body, which identical twins can share until birth just as Siamese twins can share organs at birth.

A hydatidiform mole is a new organic individual, genetically both human and unique, but it is not a new human being. After fertilization the sperm and the ovum no longer exist as distinct entities; the activated ovum is a new biologically human individual. If it has in itself the epigenetic primordial of a human body normal enough to be the organic basis of at least one intellectual act, this new individual is a person. But the activated ovum lacks these epigenetic primordial if it includes in itself anything which pre determines it, genetically or otherwise, to develop only into accessory tissues. That is the case with the activated ovum, which develops into a hydatidiform mole.⁶⁹

3.3.2. On dependence on sense organs

“Brain death” means an irreversible loss of functionality. But the early embryo only temporarily lacks brain functions. So the cases are not alike

Second “brain death” has two meanings. In one sense, it refers to the irreversible loss of cerebral functions, in another it refers to the irreversible loss of all functioning of the whole brain. We can not, therefore, use this illustration to effectively illustrate the situation of the unborn child’s status in its early stages of development in the womb.

3.3.3. On the argument based on hylomorphism

Donceel’s argument for delayed hominization, is that since the soul is the substantial form of the body and a substantial form can exist only in matter able to receive it, the personal soul can exist only in a highly organized body. According to him, from a philosophical perspective, we can be certain that an organism is a human person only from its activities” In response, however, we take note of the fact that while substantial

changes are radical, and in typical instances – such as death, digestion of food and chemical reactions – their occurrence is clearly marked there is nothing in the nervous system's development that clearly marks any substantial change.

The beginning of the brain's development is not the bodily basis for intellectual activities but only its precursor. If this precursor satisfies the requirement of the hylomorphic theory, there is no reason why earlier precursors should fail to satisfy it. Every embryonic individual has from the onset its specific developmental tendency, which includes the epigenetic primordial of all its organs. Therefore, the hylomorphic theory does not preclude a human zygote's having a personal soul.

After having examined all the above objections and responses to the position that human life begins at conception, we conclude, in the knowledge that some of the objections indeed have some point to make especially the case of twinning and chimeras, that the more reasonable position is that the beginning of the life of the new individual human occurs at the fusion of the sperm and ovum.

In the next chapter we move on to discuss the objections to the central thesis that the right to life is possessed by all members of the human species, based on the question of distinction between the human person and human being as expounded by such authors as Michael Tooley, Joseph Fletcher, Peter Singer, and Mary Warren among others.

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CHAPTER 4

ABORTION AND THE MORAL STATUS OF THE FETUS

4.1 Introduction

In this chapter we will examine the theory that defends abortion on the grounds that the organism in the womb, though undoubtedly a human being, is not a person, and that it is only the killing of persons that is intrinsically and seriously wrong. The theory consists of two major theses: First, that killing human beings is not wrong; second, that the organisms (in the womb and for a time after birth) is human but not a person. I shall argue that these theses are based on wrong misconceptions and therefore are flawed.

Whereas the theory recognizes that abortion is the deliberate killing of an innocent human being, it, however, denies that it is wrong because it is wrong to deliberately kill human beings. What is wrong, according to this position, is killing human beings who are persons. Small infants, according to this theory, such as newborn babies or those still in the womb, though they are undoubtedly, human, are not persons. Hence their killing is not instinctually wrong. This theory therefore allows for abortion and infanticide alike.

The theory rejects the typical pro-abortion lines, such as viability and birth. It argues that there is no morally significant difference between “before” and “after” killing on both sides of the line is right or morally acceptable. The key proponents of this theory and whose works we shall examine include: Joseph Fletcher, Michael Tooley, Peter Singer and Mary Warren.

Our main argument in this chapter is that the right to life, possessed by members of the species *Homo sapiens* must be traced back in time as far as there are members of the species who are identical with the members of the human species we now are. We conclude by showing that any position that seeks to close out the prenatal beings from the circle of protection through the application of arbitrarily defined psychological criteria necessarily undermines respect for other members of the human race both directly and indirectly.

4.2. Is the being in the womb a human person?

4.2.1. The Argument of Mary Warren

In her examination of the traditional argument that since (i) it is wrong to kill innocent human beings, and (ii) fetuses are innocent human beings, then (iii) it is wrong to kill fetuses, Warren claims that this argument is fallacious on the ground that the term human has two distinct but not often distinguished senses: the genetic (biological) and moral senses.

According to Warren, the term human in the moral sense is used to refer to a full-fledged member of the moral community. This usage according to Warren may or may not be used to refer exclusively to members of the species *Homo sapiens*. In the second usage, the biological sense or the genetic sense as she calls it, the term human is used in the sense in which any member of the species is a human being, and no member of any other species could be.¹ Warren's claim is that mere membership in a biological species is morally irrelevant and thus does not confer on the being in question a right to life.

Warren's argument for abortion is that the mere humanity of the fetus in the genetic sense is morally irrelevant. According to her what is of moral significance is being human in the moral sense for that is what grants humanity personhood. In this regard the fetus is not a person since he satisfies none of the criteria she has outlined. Not being a person, he has no right to life, and abortion is morally permissible. The same applies to the child after birth. "Killing a new born isn't murder. Infanticide is wrong, according to Warren, only to the extent that the child is wanted, that there are couples who would like to adopt or keep him. "Thus infanticide is wrong for reasons analogous to those which make it wrong to wantingly destroy natural resources, or great works of art."²

The moral community, Warren argues, consists of all, and, only people, rather than all, and, only human beings. The fetus according to Warren is not human in the moral sense. She lists the following five criteria which an entity must fulfill to be a person:

- i. Consciousness (of objects and events external and/or internal to the being), and in particular the capacity to feel pain;
- ii. Reasoning (the developed capacity to solve new and relatively complex problems);
- iii. Self-motivated activity (activity which is relatively independent of either genetic or direct external control);
- iv. The capacity to communicate, by whatever means, messages of an indefinite variety of types, that is, not just with an indefinite number of possible constraint, but on indefinitely many possible topics;
- v. The presence of self-concepts, and self-awareness, either individual or racial or both;
- vi. Warren, however, does not justify, but merely asserts, that these characteristics belong to the concept of personhood. She admits, however that there are Complexities involved in formulating precise definitions of the criteria above in addition to the complication entailed in developing a universally valid behavioral criteria for deciding when they apply³ but that notwithstanding, she goes ahead and argue that the fetus is not a person since for it to be so it has to, together with all other beings, satisfy most, if not, all the five criteria listed above.⁴

We will respond to Warren's argument regarding the fetus's right to life as follows

4.2.1.1. Being a person and functioning as a person

First, the above criteria, as Warren herself admits, are not only faulty but also suspect. The issues involved are; the criteria she used in arriving at the above criteria and; second the criteria she used in arriving at what each of the criterion she has listed entails. The criteria are suspect because the standards are so high to warrant suspicion that her main aim is to lock out the fetus and deny it a right to life, because after all she has admitted that if the fetus is granted any opportunity, then, the woman's right to abort in the name

of freedom and privacy will not be realized, as it would not be possible to defend such a right before a fetus with full moral status.⁵

Secondly, Warren's attempt to distinguish between humanity in the genetic and the moral senses is based on her failure to distinguish between being a person and functioning as a person. A person in a deep sleep cannot be able to meet Warren's five characteristics of a person: consciousness, reasoning, self motivated activity, the capacity to communicate, and the presence of self-concepts. Though this person is not functioning as a person, Schwarz asserts, he/she retains fully his/her status of being a person, and killing him/her while asleep is just as wrong as killing him/her while he/she is awake and functioning as a person.⁶

The term function does not refer here to bodily functions, but rather to those of the mind, though certain bodily functions, especially those of the brain, are necessary conditions for functioning as a person. Hence the mental states are not the only functions necessary for functioning as a person. But even if they were, there is still a substantial difference between being a person and functioning as a person. Beingness does not depend wholly on the functionality of the bodily parts.

The fact that the fetus does not satisfy any of the five traits Warren mentions, only shows that the fetus does not function as a person, not that it lacks the being of a person, which is the crucial thing.

Concerning the capacity of the sleeping person to meet the above criteria, it may be argued that the sleeping person will soon wake up and function as a person, while the being in the womb will not be able to do so. In response, however, it should be noted, that even though the sleeping person will at one time wake up and perform his/her duties, at this point in time he/she possesses not that capacity just as is the case with the fetus. The point, however, is that with time both shall display such qualities. The difference, though, is that the fetus will take a slightly longer time. But why should one count as a real

person because the time is short while the other does not simply because in her case the time is longer?

The argument often offered to the effect that the sleeping adult was already self-conscious and had already solved some problems; therefore, she has a history of functioning as a person which the fetus does not have is wanting.⁷ For while it is true, that there is a difference in respect to past functioning, the difference is not morally relevant. The reason the fetus never functioned as a person is because his/her capacity to do so is not yet sufficiently developed. This is not surprising, for he/she is near the beginning of his/ her existence, in the first phase of his/her life. Schwarz captures this lack of substantial moral difference thus, "In short when it comes to functioning as a person, there is no moral difference between "did, but does not" (the sleeping adult) and "does not, but will" (the small child)."⁸

A similar argument to the one above, that the sleeping person has the capacity to function as a person and therefore counts as being a person, even though this capacity is not now actualized and that, in contrast, a child in the fetus lacks this capacity, so he does not count as being a person, is also wanting.⁹ Whereas it is true that the being in the womb lacks this capacity to function as a person, the kind of capacity which we are talking about here is not the capacity *per se* but rather the present immediate capacity where responses may be immediately elicited. Such a capacity, which is grounded in the basic inherent capacity to function, according to Schwarz, means the capability of functioning, where such a capability varies enormously among people, and normally develops and grows (as a result of learning and other experiences).¹⁰

The basic inherent capacity, upon which the present immediate capacity is grounded, can be manifested in various ways. It may be fully accessible, as in a normal sleeping adult. It then exists in its present immediate form. It may also exist in other forms where it is latent, as in a reversible coma where the capacity is present but temporarily damaged or blocked. In the fetus or a small child, the basic inherent capacity is there, but it is insufficiently developed for the child to function in the manner of a normal adult. The

fact that one's capabilities to function as a person change and grow as one goes through the different stages in life does not alter the absolute continuity of his/her essential being, that of a person. On the contrary, this variation in capabilities presupposes the continuity of his/her being as a person. It is as a person that one develops his/her capabilities to function as a person. It is because he/she is a person that he/she has these capabilities to whatever degree.¹¹

Thirdly, it is unfortunate that in her *zeal* to completely *seal* the fate of the fetus, Warren takes along with it the hopes of the other members of the human race; the mentally handicapped, the deformed infants, the senile and the comatose. Their rights too are *sealed* by her *zeal*.

Fourthly, Warren's attempt to distinguish between humans in the genetic and moral sense robs humanity of its intrinsic value. To say that there are some non humans who are at the same level with most of human beings in the moral sense, and higher than some other human beings far below in the genetic sense, is not only to rob the fetus alone of its value but also the value of the entire humanity. Her argument to the effect that the fetus is not different from a fish or a guppy is a clear show of Warren's determination to achieve her alleged goal- "woman's freedom" at whatever cost even if a member of the human race were to become no more than a mudfish along the way.

4.2.1.2. Consciousness and experience

With regard to Warren's first criterion of personhood, the argument that the zygote is not conscious and that he cannot think and communicate therefore he can not be a person, our responses are as follows:

Firstly, the fact that the fetus cannot think and communicate means merely that he cannot function as a person, not that he lacks the being of a person. Therefore his unconsciousness has nothing to say about his being. It means only that he is unable to function as a person

Secondly, in regard to capacity, we can not say that he lacks the capacity for consciousness for he does possess the essential structure for having this capacity. What he lacks, however, is the immediate capacity for consciousness, which is simply an aspect of his lack of development, something entirely appropriate for a being at the beginning of his development. "The zygote, as Schwarz puts it, is a person who is not yet conscious not a being who is simply not conscious like a stone".¹²

Thirdly, there is nothing unique about the state and existence of the fetus in the womb at this point in time and space. It is just a matter of locality though some pro-choice advocates hold that this is not just mere geography. The existence of a human being or any other being with a similar life pattern outside the womb, having reached a high level of human development is one way of being a human person; being a small person, a zygote inside his mother is another way.

Fourthly, warren's contention that the fetus should possess the capacity to feel pain in order to qualify as a person is flawed. While the fetus may not express in words its feelings when it has been established that even at the zygote stage the fetus is alive and responds to its environment. It reacts to touch after eight weeks and at least at that point is experiencing at a sensory level.¹³ In this regard sensitivity to pain can not be suggested as a place to draw a line between person and non-person on the ground that after this point the baby suffers pain in being subjected to abortion: before he does not. Further more what shall be said of someone who loses his/her sensitivity to pain through nerve damage? Is he therefore a non-person? How about one who is being operated on under anesthesia and one who is not? Are both persons? It goes without saying, therefore, that whether one feels the pain or not, has nothing to say about one's status as a person or his being.

4.2.1.3. Experience

The criteria of experience as a yardstick for determining personhood cannot be used effectively for determining personhood. To say that a being who has experience, has lived, and suffered, who possesses memory is more human than one who has not is to miss the point.¹⁴ Experience is relative to one's stage and/or station in life, job or sex. Every being at their respective stages have had their own specific experiences for example, the fetus's sense of touch and movement at its early stages in the mother's womb.

Following the same line of argument, if consciousness or certain central experiences such as learning or loving are necessary for one to qualify as a person, then those members of the human race who are unconscious or who have failed to love or to learn should logically be excluded from humanity: for example, the older fetus, the young child, the gravely retarded, the insane, the comatose.

Moreover, the experiential criterion becomes problematic in the event amnesia has erased adult memory. The big challenge is, has it also erased the humanity or the personhood of the individual concerned? If the answer is affirmative then this experiential criterion will have adverse implications on other forms of human life in the same category or similar circumstances as the fetus.¹⁵

As for the implication of Warren's claim to the other members of the human race who due to their condition fall in a similar category as the fetus, Warren's own words suffice:

Some human beings are not people and there may be people who are not human beings. A man or a human whose consciousness has been permanently obliterated but who remains alive is a human being which is no longer a person; defective human beings, with no appreciable mental capacity are not and presumably never will be people; and a fetus is a human being which is not yet a person, and which therefore cannot coherently be said to have full moral rights.¹⁶

In support of her argument that the fetus is not yet a person and cannot coherently be said to have full moral rights, Warren argues that, whereas it does seem reasonable to suggest

that the fetus's right to life should become stronger as it grows in its likeness to a person, and hence the need to take seriously the suggestion that in so far as the "human individual develops biologically in a continuous fashion the rights of a human person might develop in the same way, we must not lose sight of the fact that the attributes which are relevant in determining whether or not an entity is enough like a person to be regarded as having some of the same moral rights are no different from those which are relevant to determining whether or not it is fully a person.¹⁷

Warren's claim is that on the relevant respects, a fetus, even, a fully developed one is considerably less person like, than is the average mature mammal, indeed, the average fish. Hence if that was to be the basis of the right to life for the fetus then, Warren argues, it cannot be said to have any more right than let us say, a newborn, guppy.¹⁸ Consequently, according to her, such a kind of right could never override a woman's right to obtain an abortion at any stage of pregnancy.

While acknowledging the fact that the fetus due to its potential, if nurtured and allowed to develop naturally, will probably become a person, Warren, however, contends that we need not conclude from this that a potential person has a right to life, by virtue of that potential.¹⁹ Though there may be something important and immoral about the wanton destruction of potential people, Warren asserts, even then, the possession of *prima facie* right to life by some potential persons could not possibly outweigh the right of a woman to obtain abortion, on the ground that the rights of any actual person invariably outweigh those of any potential person, whenever the two conflict.²⁰ In sum, Warren asserts that:

Thus, neither a fetus's resemblance to a person, nor its potential for becoming a person provides any basis whatever for the claim that it has any significant right to life. Consequently, a woman's right to protect her health, happiness, freedom and even her life, by terminating an unwanted pregnancy, will always override whatever right to life may be appropriate to ascribe to a fetus, even a fully developed one. And thus, in the absence of any overwhelming social need for every possible child, the laws which restrict the right to obtain an abortion, or limit the period of pregnancy during which an abortion may be performed, are a wholly unjustified violation of a woman's most basic moral and constitutional rights.²¹

4.2.1.4. Potentiality

Warren's claim that the fetus is only a potential person and that even on the account of that potentiality and "person likeness" it still has no claim to a right to life is out of touch with known biological facts reflecting the growth and development of human beings. The question that Warren must answer is whether that potential human person can become otherwise along the way. Puppies have always been known to grow into mature dogs and piglets to mature pigs and not cows and fetuses to mature human beings and not any other.

We will offer the following criticisms against this potentiality claim:

First, the claim that the fetus is a potential human being, whereas the pregnant woman is an actual human being²² rests on a metaphysical distortion. The unborn child definitely exists and this existence is itself an actuality. Pure potency does not exist because potency needs an actualized substance.²³

Secondly while it is true that the unborn child undoubtedly has potentiality the kind of potentiality inherent in the unborn should be seen from a positive perspective in the sense that it will live outside the womb as an infant, an adolescent, and as an adult. All these stages represent future and unfulfilled potential but already at the embryo stage fetal life is real, actually existing, human life. Later developments will only further steps in a process of qualitative continuity, which began at conception, and they are not the result of any essential changes in the status of the individual.

The unborn child is not "inferior" any more than an infant in its mother's arms or a child in nursery school. If the unborn child is "immature," or "rudimentary," so are all infants, children and adolescents who need food, care and protection to reach adulthood. The fetus is a human individual in the process of living and developing. It is a human being *with potential*, not a *potential* human being.²⁴

The full meaning of being can only be understood if we give it a chance to unfold its value before us in time. One only understands the nature of fetal life if one considers the total biography of the unborn child from conception to natural death. The full spectrum of its life must be brought to the fore. By wholly confining its life and hence our judgment within the uterine environment we are closing out other aspects of its life that shall come to bear on its destiny. We should not reduce its lifetime to a few weeks and thus foreclose its future. It is not, in reality, simply a fetus. It is also a future adult.²⁵

Whereas Warren sees humanity in the biological sense or genetic sense, as being an inferior one as compared to humanity in the moral sense, as she puts it, it is the position of this study that this criterion lacks a sufficient ground for determining the humanity of a being. One's humanity is derived from the fact that human parents conceived him or her.²⁶ It is worth nothing that human beings change in body and status throughout their lifetime – fetus, baby – child-teenager, youth - mother/father-grandfather, single/married etc. But remember that in all these and throughout, it is the same human being going through different stages in life. Whether, we can argue successfully that one becomes more human or person like as he/she progresses in life through the above stages, is a matter that requires close scrutiny. For in the society of men (woman) there are those communities that regard one's marital status as a sign of manhood or personhood in society. Still there are other communities that treasure circumcision as a sign of maturity and would regard an eighty-year-old uncircumcised granny as a “nobody” in their society. All these are some of the traps we will get ourselves into, to the detriment of the human race as a whole, if we take wholesale some of these interpretations like that of Warren.

4.2.1.5. Independence

This criterion questions the humanity of the fetus on the ground that it depends on the mother for survival.²⁷ The criterion of independence as used by Warren and others to rule out the fetus's personhood and hence right to life, has problems especially in the light of

the ever improving technology e.g. artificial incubators and other life saving techniques that have rendered even the question of viability indecisive.²⁸

The fetus can now live independently of the mother at even a lower age than before. That aside, if this criterion of independence is stretched further, it will impact negatively on some other members of the society like the bedridden and terminally ill, the comatose and the disabled accident victims- some paraplegic who cannot survive without a third party assistance. Shall we then argue that such group of people have lost their personhood because they have lost their ability to survive or eke out a living independently? The implications entailed in these possibilities can now shed light on why infanticide and euthanasia are gaining inroads into an otherwise caring and civilized community of men (women).

Furthermore, even if the level of dependence were to decrease after the so called “viability” point, as Noonan asserts, that lessening on dependence does not seem to signify any special acquisition of humanity as that dependability will continue in one way or another throughout one’s lifetime. We cannot genuinely talk of complete independence from one another in our day-to-day lives. The clothing we have, the food we eat, the vehicles we drive were and are not being produced by us. We depend on nature for sustainability- air, fruits, among others.²⁹

Moreover, the unborn child is not dependent on the mother in a unique way. The viable fetus is independent to the same extent that a new born child is. With the recently registered technological advancement in the field of embryology and fetoscopy, as already highlighted above, for example the development of an artificial placenta, even the early conception will be potentially independent at any stage and could be saved at any time should the mother die.³⁰

Consequently, the appeal to the fetus’ dependence in order to justify abortion is, as Atkinson puts it, massive *non sequitor*. If any thing, the contrary should have been the case. The Fetus’s fragility and susceptibility hence his/her greater dependence requires

greater, not lesser, responsibility. What logical justification is there in mistreating one's child because it is an infant than when it is a teenager just because the infant is more dependent and therefore more vulnerable to harm? As a matter of fact the teenager is as dependent on the mother as is the infant only that the nature of dependency and potential harm facing the teenager are uniquely placed for that stage in life and therefore different.³¹

Further more, if dependence on the mother justifies abortion, it also justifies infanticide and the removal of those unfortunate cripples and terminally ill patients who depend on a mother or nurse or other members of the immediate or extended family for survival and sustenance.³²

4.2.1.6. Social acceptance

On Warren's argument to the effect that in the absence of social need for every possible child, the laws which restrict the right to obtain an abortion, or limit the period of pregnancy during which an abortion may be performed are unjustified violation of a woman's right, we offer the following criticisms:

First, we can not use feelings, sentiments of adults or sensations by parents, as Noonan has argued, as criteria for granting or not granting of personhood to the fetus.²⁶ If humanity were to depend on social recognition, individuals or whole groups may be dehumanized by being denied any status in their society. Examples abound from Hitler and his Nazist anti Semitic experimentations, to the Bosnian Muslim Serbs massacre and the Rwandan genocide of 1994 where the Hutu extremists fought to not only dehumanize Hutu moderates and Tutsi people but also to banish them from the face of Rwanda through indiscriminate killings and torture.

Secondly, by using the criterion of societal acceptance as a yard stick for allowing or not allowing the coming into being of members of the human race we will have made man the servant of the society and not the society for the service of humanity. Unlike the Society, which has no substantial being because it owes its origin to agreement or

convention, Man does have a substantial being. He precedes society in actual existence and society exists for his benefit. In this regard acceptance by society follows a real event in the objective order: conception by a man and a woman regardless of how imperfect or halting the recognition may be.³³

Thirdly, if one employs a relational criterion to determine the reality of life, there seems to be little logic in applying this only to life before birth. After birth the relationship between the child and its parents could deteriorate to such an extent that one could judge that the baby did not enjoy enough acceptance to qualify as a truly human being.³⁴ This therefore means that this criterion could still be used to deny some their rights long after birth in spite of their being accepted and therefore being granted the right to enter into the planet earth.

4.2.1.7. Engelhardt, H. Tristan

In his comparison of the fetus and a sleeping person, Engelhardt claims that the zygote lacks “a well-developed physical substratum of consciousness – that it lacks the actual physical basis for the inherent capacity to function as a person.”³⁵

As we have argued above in our response to warren’s claim about the fetus’s lack of capacity to function as a person what the fetus lacks at this point in time is the present immediate capacity which as we have said above is grounded on the inherent capacity inbuilt in the child right from the time of its conception. Contrary to Engelhardt’s claim the zygote does not lack this physical basis; it is merely that it is now in a primitive, undeveloped form. The zygote has the essential structure of this basis; a structure that will unfold, grow, develop, and mature in the course of time.

Furthermore, a being at the beginning of his/her development cannot be expected to possess what only that development can provide for him/her. He is already the being who will later function as a person, given time. The sleeping person is also a being who will later function as a person, only he/she will do it much sooner. What they each have

now – a fully developed brain in one case, and a undeveloped brain, that will grow into a developed brain, in the other – is a basis for their capacity to function as persons. It is the same essential basis one undeveloped, the other developed – it is merely a matter of degree; there is no substantial difference in kind.

But what in essence is a person? Is he an individual with a developed capacity to meet the criteria of consciousness, communication, reasoning as claimed by such philosophers as Fletcher and Tooley? How about those young ones – the teenagers and the youths whose capacities are still developing? Robert Joyce writes concerning this issue:

A person is not an individual with a developed capacity for reasoning, willing, desiring and relating to others. A person is an individual with a natural capacity for these activities and relationships, whether this natural capacity is ever developed or not – i.e., whether he or she ever attains the functional capacity or not. Individuals of a rational, volitional, self-conscious nature may never attain or may lose the functional capacity for fulfilling this nature to any appreciable extent. But this inability to fulfill their nature does not negate or destroy the nature itself.³⁶

Even a very severely abnormal or handicapped human being has the basic inherent capacity to function as a person, which is a sign that he is a person. The abnormality represents a hindrance to the actual working of this capacity, to its manifestation in actual functioning; it does not imply the absence of this capacity, as in a non-person. The infant's mind is organized right from conception and possesses the necessary elasticity to absorb all future phenomena to be encountered in life if this were not the case there would be no satisfactory explanation as to why it should develop and function normally at a later age if it was not *ab initio*, that it should so function.³⁷

The conclusion arising from the above discussion of Engelhardt's claim concerning the fetus's lack of a well-developed physical substratum of consciousness is that that substratum is present only that it is in its rudimentary form. It is also our contention that that stage of development is befitting the fetus at this point in the development of its life. And that, the substratum has been so designed, that it should be able to function in a

certain way since its conception. Consequently the fetus can not be denied a right to life on the basis of this claim.

4.2.1.8. Michael Tooley

Michael Tooley is the leading proponent of the position that the right to life is acquired after birth. His position has evolved, however, from his earlier publication of 1972 to his later publication of 1983.

Tooley, like Warren, argues that rights belong to persons, and not to every human organism. To have a right to life, he argues, a thing must have certain psychological traits.³⁸

In his 1972 article Tooley starts his main argument as follows; “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. Given this self consciousness requirement, he concludes that since fetuses and infants are not self-conscious and do not have a concept of self, they do not possess a right to life.”³⁹

According to Tooley there is a conceptual connection between possessing a right to something and having a desire for it. A violation of a right only occurs when someone is deprived of something against his desires. Hence one cannot have a right to something unless one desires it; and one cannot desire it unless one has a concept of it. So to have a right to one’s life, one must have a concept of this life, that is, a concept of an enduring subject of experience and other mental states.

Tooley, however, notes exceptions to the argument that one must desire something in order to have a right to it. Namely (i) an individual is emotionally disturbed or (ii) he is temporarily unconscious, or (iii) he has been conditioned or indoctrinated not to desire it.⁴⁰

In this connection it will be difficult merely to say that in view of the above conditions, an individual right to X can be violated only when he desires X but also when he would desire X were it not for one of the reasons above.

In his postscript (1974), Tooley writes that one of the modifications, introduced in 1972, the exception regarding the temporarily unconscious appears *ad hoc*. The concern was on the reasons why the unborn human beings and infants considered an exception. According to Tooley, a satisfactory account must make clear the “underlying rationale” that should be able to account for the question why some should be allowed while others are exempted.

According to Tooley, setting out a slightly more subtle account of conditions under which an individual right can be violated may solve this problem. On the new account Tooley makes reference not to desires the individual would have, but to actual past or future desires.

The new account is that, except for the emotionally unbalanced and those conditioned not to desire certain benefits, an action can violate an individual’s right to something only by frustrating his desire for that thing, generally a present desire, but in some cases a past or future desire.

In an article co authored with Purdy, Tooley argues that an organism has a right to something only if it has a desire—either past, present, or future, for that to which it has a right. One can have a desire, in the morally elementary sense of “desire” for something only if one has a concept of it. Therefore a thing can desire its own continued existence only if it has the capacity for self-consciousness. The conclusion is then drawn that since fetuses do not have a capacity for self-consciousness they do not have a right to life.⁴¹

They wrote that while the future generations have rights based on their future desires, the desires that a thing would have if it were to live can not ground a right to life. It is only actual desires that count, not desires that entities would have under different conditions.

On this account, therefore, the desires that a fetus would come to have if he or she were not killed are irrelevant.

To this end Tooley's argument has been based on the alleged conceptual connection between rights and desires. He has introduced complications into analysis of rights in order to accommodate various exceptions or apparent exceptions. He began by saying that rights are tied to desires: to violate an individual's right is to deprive him of what he desires. He then added two complications: first, reference to past and future desires and, secondly, the exceptions for the emotionally unbalanced and the conditioned or indoctrinated.

From this developments we can take note of one thing, Tooley's shifting position can only mean one thing: his framework is unreliable. Something as vital as life, cannot be based on a trial and error structural foundation. And if the foundational framework of his argument is shaky then his attempts to deny the fetus a right to life are shaky too.

Our fear concerning Tooley's shaky framework is confirmed in his 1983 book when he gives up the claim that there is a conceptual connection between rights and desires, instead, according to his analysis, rights are based on interests. He now argues that an individual may have a right to something based on the fact that it is in his or her interests, regardless of the individual's past, present, or future desires. The earlier attempt to base rights on desires, according to him, must fail because the resulting account will become too complex and it may not be clear when one has arrived at a complete analysis. Lee captures the import of this change succinctly thus:

... the alleged conceptual connections between rights and desires becomes quite complex under the pressure of counter examples. Each new counter example seems to require yet another revision in one's analysis of a right. But gradually it becomes clear that one could never be sure that new counter examples would not arise. Hence basing the analysis of rights on desires must lead to an essentially incomplete, and therefore inconclusive analysis.⁴²

In reference to Joel Feinberg's "interest principle" Tooley says that there is a conceptual connection between interests and rights. In this particular case the lots of being who can have right are precisely those who have (or can have) interests.

In his new position Tooley now disowns his previous exceptions namely: the case of a slave conditioned not to desire his freedom and the child's right to education saying that they have interests and that pointing to these types of examples as an exception to one's analysis is to admit that one has not uncovered the basis of rights as such.

Tooley's position is that even though fetuses and infants do have interests they are not morally relevant interests. For, according to him, to be a subject of rights one needs to be capable of having interests in the sense that involves the capacity for having desires.

He further argues that although rights are not directly conditional on desires, they are indirectly in so far as the morally relevant interests are based upon the capacity for having desires. One need not at present possess a capacity to desire the thing to which one has a right but, failing that, a thing can be in one interest, only if the possession of that thing, makes possible the satisfaction of other desires existing at some time in that same individual.

However, while Tooley grants that an individual's continued existence can be in his own interest, even when he does not have a present desire for his continued existence, as in the case of a slave who has an interest in freedom because that would make possible the satisfactions of other desires. However, the fetus or infant does not have a concept of a continuing self or mental substance. In that regard, the fetus or infant is not an entity, which is identical with a subject of consciousness existing at a latter time. And so the continued existence of the fetus or infant does not make possible the satisfaction of desires which exist at another time and which belong to the same subject of consciousness. His argument then, is that the continued existence of the fetus or infant, is not in that individual's interests, and therefore the fetus or infant does not have any right to continued existence.

We will present the following arguments against Tooley's position.

This critique touches on Tooley's past and present position and his general position that the fetus is not a person until after birth. Our critique will concern the following areas of Tooley's position: -

- i. His attempt to handle counter examples
- ii. Second, how potentialities or capacities bear upon the determination of an entity's moral status; and
- iii. Third, the relationship between consciousness and the physical organism.

In his 1974 article co-authored with Laura Purdy, they say that the mental life of a human fetus is not significantly different from that of a non-human fetus such as a chimpanzee. They then concluded that: "Therefore, unless one is prepared to hold that it is seriously wrong to kill non human fetuses, it seems that one cannot maintain that it is seriously wrong to destroy human fetuses."⁴³

The potentiality which the fetus has, cannot, according to Tooley, be used as a ground for claiming rights for as he argues, "if one confines oneself to the consideration of what an entity actually does, then there are no morally relevant differences between the chimpanzee fetus and human fetus. Here he distinguishes between potentialities and capacities. Roughly, a potentiality requires a change in the constitution of the thing before the thing can perform the function it has the potentiality for. Whereas the capacity does not require such a change, but is immediately exercisable."⁴⁴

The counter argument, however, is that in terms of what a thing actually does, a chimpanzee also is not very different from a sleeping person or a person in a temporary coma. Therefore the quality of one's actual mental state cannot be the decisive feature the lack of which makes fetuses non persons. Even if one were to argue that the sleeping person, would one day wake up and have desires in the future, the same applies to the

fetus, he or she will have desires, unless he or she is killed. So with respect to future desires, sleeping people, comatose people and human fetuses are alike.

The issue of past desires also cannot stand for there are those as Tooley himself mentions, who have been conditioned not to desire (slaves or women for challenging tasks) but even then their rights are clearly violated. These two counter examples made Tooley to change his position in 1983.

On Tooley's argument to the effect that unlike the fetuses, the comatose and sleeping beings have the capacity to desire their continued existence, but fetuses do not. Our response is that still there are counter examples to this. A child has a right to education, and the right to nutrients and vitamins, even though he lacks the concepts of an education and of nutrients and vitamins. Therefore, without the concepts of those objects the child lacks the capacity, in the sense in which Tooley defines capacity, to desire those objects. We cannot therefore say that the capacity for desires, in the special sense defined, is the decisive feature the lack of which means fetuses do not have a right to life. For if that were to be the case then the child should be denied both the right to education and the vital nutrients he needs for growth and survival.

Consequently, one cannot say that fetuses lack a right to life either because they lack actual self-consciousness or actual desires (past, present or future), or because they lack the capacity, defined in the sense Tooley defines it, for having desires.

In the 1974 article, Tooley and Purdy argued that future generations have rights because of the desires they will have; therefore, one ought not to frustrate those future desires. To them it is only the desires they actually will have that count, not the desires they would have. And since the fetus is in this category of they "would have", killing him/her also has the result that none of his or her desires will be frustrated.

The counter argument, however, is that the judgment regarding the rights of future generation would be quite different if one were contemplating bringing it about that there

would be no future generations. This consideration would not by itself show that any rights of future generations were violated, because persons' rights can be violated only if they actually exist at some time or other, since one cannot violate the "rights" of merely possible entities. On the other hand, this consideration does directly bear on the situation of fetuses and infants, since they actually exist at the time many decisions affecting them are made. And unless the natural calamities of life or the abortion act cut short their lives, the possibility of them being there in the future is certain.

Like individuals who have been conditioned not to desire an object, the only reason why fetuses and infants who are killed will not desire what they lose is that their desires are destroyed along with that which they lose. Their very lives are the abodes and carriers of these desires. So when these abodes are destroyed, these desires too are destroyed. Consequently in killing the fetus or an infant one deprives an actual individual of the future life for which that individual had the potentiality.⁴⁵

4.2.1.8.1. The potentiality for higher mental functions

Tooley distinguishes between potentialities for the fetuses and the sleeping persons or the comatose. For the fetuses he calls it "potentialities" and for the later sort "capacities". According to Tooley to attribute an immediately exercisable capacity to something is to make a statement about how the thing would be behaving or what properties it would have, if it were now in certain circumstances or in a certain condition.⁴⁶

He then contrasts an immediately exercisable capacity with a blocked capacity that is a capacity, which is joined with "negative factors that prevent the exercise of that capacity". Finally he contrasts a capacity, in either of the above senses, with potentiality: "to attribute a certain potentiality, he says," to attribute a certain potentiality to any entity is to say at least that there is a change it could undergo, involving more than the mere elimination of factors blocking the exercise of a capacity, that would result in its having the property it now potentially has. In sum, one must have a capacity for higher mental

functions in order to have a right to life; entities that have only the potentiality for such acts do not have a right to life.⁴⁷

The weakness with this position, however, is that, unlike the person who is asleep, the person who is in reversible coma will not exercise consciousness in response to stimuli.

This is often not just a blocked capacity for often the brain tissue itself is damaged and requires, perhaps among other things, self-repair. Hence many persons in reversible comas fit the definition of having a mere potentiality for mental acts rather than having a capacity for them, and so constitute a strong counter example to this position.

The second point of weakness of the above position concerns the nature of potentiality. The potentiality for higher mental functions which a human embryo or fetus has is, first of all an active potentiality. Tooley defines “active potentiality” as a condition in which an entity has all of positive factors necessary for action, lacking only the appropriate circumstances for its exercise. However, with this definition, one would never have the active potentiality to nourish oneself, or to paint, or to perform any activity that requires outside objects as instruments or materials. It is more natural to use the terms “active” and “passive” potentialities” to mark the more important distinction between the ability to do something (active potentiality) and the ability to undergo a certain change (passive potentiality).⁴⁸

The potentialities specific to living things are active potentialities. They are potentialities of an organism to act not on another but on itself. In nourishment, growth, and self-motion, the object of the act, in the sense of what is developed or perfected by the action, is the same thing as the thing that performs the action.⁴⁹ Lee observes thus:

The human embryo or fetus is a living being and so has active potentialities that distinguish it from non living beings. Now, there is a sense in which the fetus does not have active potentiality to perform higher mental acts. Just as fetuses cannot breathe before they grow lungs, so they cannot perform higher mental acts before their brains develop. But there is also a real and important sense in which the fetus does have the active potentiality to perform such acts. The human embryo or fetus is not in the same condition as, say, a canine embryo or fetus. The canine embryo never will perform higher mental acts,

and does not have within itself the positive factor required for actively developing itself to the point where it will perform such acts, whereas the human embryo already has that positive factor within himself or herself. The living thing is dynamic, and it has within itself the source of what it will become (save for external nourishment such as food, air etc) ⁵⁰

As noted above, while a human embryos, or fetuses do not have “capacities” in Tooley’s sense, neither do some people in reversible comas.

The distinction between active potentialities (potentialities in a broader sense, so as to include what Tooley classifies as capacities) and passive potentialities does seem morally significant, at least indirectly for the following reason. An active potentiality indicates that the entity, which possesses it, is the same entity as will later exercise that active potentiality but with passive potentiality that is not so; that is, the actualization of a passive potentiality often produces a completely different thing or substance.

The potentialities for higher mental states are of ethical significance not because they themselves are the only intrinsically valuable entities but because entities, which have such potentialities, are intrinsically valuable, and hence acquire basic rights, at another time.

Consequently, if the entity itself is intrinsically valuable it must be intrinsically valuable from the moment it exists. Nothing can come to be at one time but become intrinsically valuable, and hence acquire basic rights, at another time. The fetus therefore can not be non human now, hence no right to life and be humans tomorrow, and hence the right to life. It is either there or not. ⁵¹

Unlike the fetus, the sperm and ovum do not have the potentiality to become mature human beings, or perform activities specific to human beings, because they do not survive past the fertilization process. The fact that the fetus has the active potentiality for the traits of a mature human being means the actualization of its potentiality does not produce a distinct entity, but rather the maturation of the same entity, which existed since conception. Since this entity is identical with the entity a few years later which

indisputably is intrinsically valuable, consistency demands that one, hold that this entity now is intrinsically valuable.⁵²

4.2.1.8.2. Personhood: An attribute acquired

Michael Tooley like Warren denies that personhood is reducible to membership in the biological species of *Homo sapiens*. Tooley's position is that we can settle the definition of "person" by rational inquiry. His strategy is to begin from ethical judgments. The first step is to determine properties other than potentialities, which suffice to endow an entity with a right to life. Thereafter one can then define the term person to apply to all and only those things that have at least one of the relevant properties. In order to realize his objectives Tooley treats rights in general. According to him non protected property that makes an individual a person – that is that makes the destruction of something intrinsically wrong and severely so, and that does so independently of the individual's value – is the property of being an enduring subject of non-momentary interests Tooley understands "being an ending subject of non-momentary interests" in a way that requires "possession, either now or at sometime in the past, of a sense of time, of a concept of a continuing subject of mental states, and of a capacity for thought episodes. In specifying that personhood be defined by a "non-potential property" Tooley wishes to exclude its definition by an operative potency such as reason. He does not justify this restriction but simply stipulates that the defining property may not be potential. He excludes not only unborn but newborn babies from personhood. Tooley assumes that the morality of acts which bear on others depend on how those acts affects their getting what they want.⁵³

The essence of Tooley's position as is the case with that of Warren is that it seeks to make a difference between two categories of beings – persons and human beings and to hold that it is the former, not the latter that is of moral significance.

We will offer the following criticisms against this position:

First, as Grisez observes, in reference to Weber's and Oxford dictionaries definition, the personhood has ethical implications in that adult human beings are paradigmatic

instances of the concept of person, and the word “person” does not mean the same thing as the phrase “member of the species *homo sapiens*.” Still in ordinary language “person” refers to newborn babies as well as grown up men and women.⁵⁴

Secondly, logically person connotes a substance *sortal*. But a substance *sortal* is an essential property, which implies that whatever has it necessarily has it and never exists without it: Individual persons come to be and become persons at the same time, and they cannot cease to be persons without ceasing to be the individual persons that come to be and become persons at the same time, and they cannot cease to be persons without ceasing to be the individuals they are.⁵⁵

Thirdly, inherent in Tooley’s position are two fundamental flaws. The first concerns the category of persons, and consists in equating this term with functioning persons (present or past), thereby excluding babies who have not yet developed the present immediate capacity to function as persons. The second error, closely related to the first, is to dismiss the category of human being as not (in itself) morally significant. Our position is that while Tooley and Warren are right in asserting that there is a distinction between persons and human beings in that there would be persons who are not human beings – corporations and hence the conclusion that not all persons are necessarily human beings, we shall maintain, however, that all human beings are persons, though not necessarily functioning persons. While being human is not necessary to being a person in that there are other entities that are regarded as persons and yet they are not humans, it is our position that it is sufficient, for all human beings regardless of their status and condition are persons:

Human designates, in its most significant meaning, a type of being whose nature it is to be a person. A person is a being who has the basic inherent capacity to function as a person, regardless of how developed this capacity is, or whether or not it is blocked, as in severe senility. We respect and value human beings, not because they are a certain biological species, but because they are persons; because it is the nature of a human being to be a person. All human beings are persons, even if they can no longer function as persons (severe senility), or cannot yet function as persons (small babies, or cannot now function as persons (sound asleep or under anesthesia or in a coma)⁵⁶

While the theory is correct when it says that it is persons who are of moral significance and that persons need not be human persons, the error is to fail to recognize that humans are persons. Being human is a mode of existence of persons. So we should respect human beings – all human beings, regardless of race, degree of intelligence, degree of bodily health, and degree of development as functioning persons – because they are persons. In this regard we shall have taken man not as a means to, but as an end in itself, as Kant implores us to do in his categorical imperative.⁵⁷

The present immediate capacity to function as a person is not essential to this fundamental reality, the total human being. Warren, Tooley and Singer fall in the trap of seeing “human” as a mere biological category. This is a fundamental error, which not only confuses the person and functioning person, but also groups the two together.

The point is if it is assumed that “person” equals “functioning persons,” and if a small child is not a (fully) functioning person, it follows that the child is not a person if the child is not a human person, “human” can then refer only to a biological species. Once one strips the child of his status as a person on the grounds that he cannot now function as a person, what is left except his being a member of biological species? Separated from the notion of person, the notion of “human”, is indeed only a biological species, and as such morally irrelevant.

The fallacy is, then, the separation of the human and the person and the failure to see that humans are precisely human persons. Humans are human persons where “persons” includes non-functioning persons as well as functioning persons.⁵⁸

4.2.1.8.3. Abortion and unborn human life

According to Tooley, the unborn attain its personhood status some times after birth. The position of this study, however, is that although there are several differences between killing a two or three-year-old child and termination of the life of a human embryo or

fetus, there is no morally significant and substantial difference between them. In both cases what is killed is a living, distinct, human individual.⁵⁹

Consequently, our position here is that whatever makes killing or terminating the life of a two-year-old child morally wrong, is equally applicable, in the killing of a human embryo or fetus. In that regard, therefore, it is wrong intentionally to kill a human embryo or fetus.

Second, the human embryo or fetus is, from conception onward, a distinct human individual. This fusion or fertilization is a complicated process and usually takes some few hours, but at its completion there plainly exists a new, distinct organism. This new cell, the zygote, rapidly begins a continuous process of growth by way of cell division. This multicellular organism is a unit and not a mere cluster or colony of cells.⁶⁰

Third, With respect to both function and genetic structure, the evidence indicates that after the completion of conception there is a new, distinct, individual organism actively developing within the mother's body. Therefore, the embryo or fetus is, from conception and thereafter, human. The humanity of the embryo is shown just by the fact that its sources are two humans; it has the genetic structure that is typical of members of the human species, and its development, barring accident and other related misfortunes, abortion being one of them, ends in a recognizable human individual.

Fourth, the human embryo or fetus, from conception onward is a complete human being. To say that the embryo is human and individual is not the same as saying that it is a whole human being. For it can still be claimed that it is potentially human or a relatively undeveloped hence incomplete individual. That the embryo or fetus is a whole human organism rather than functionally a part of it is shown also by the duration of its growth. In themselves parts do not have the ability to develop themselves into the mature stage of the whole organism. Unlike the sperm or the ovum, the embryo or fetus has in itself all of the positive reality and information to develop itself actively into a mature human organism, and so is a whole human being.⁶¹

Fifth, every whole human being is a person. Lee defines person as an intelligent and free subject. By this is meant not necessarily someone who is actually thinking and willing, but the entity which has the capacity to do so (e.g. those asleep or in comas). And if a human person is an intelligent and free, living organic body as Lee asserts, then being an organism is part of what the human person is, as opposed to a property it has. As a consequence, the organism, which a person is, cannot come to be or cease to be at a different time than the time at which the person comes to be or ceases to be.⁶²

Sixth, since the human organism is not a property which a human person has, but is what he or she is, the time at which the human person comes to be is the same as the time at which the human organism comes to be. Since the human organism comes to be at conception, the human person comes to be at conception also. Hence all human beings, including human embryos or fetuses are persons.

Seventh, contrary to Tooley's claims that personhood begins sometime after birth, the position in this study is that while it is true that birth is a dramatic moment in the life of man, it is no more than a bridge between intrauterine and extra-uterine existence. And neither is it a fixed event for childbirth under normal circumstances takes place anytime in the eight and ninth months after conception. Even those that are born prematurely can still be sustained in the incubator.

Eighth, even if we were to say that at birth the child becomes fully independent of his/her mother, the question would still be asked about how this dependency makes him/her a lesser person or non-person. In fact this dependency at this stage says something about the state of his/her body and bodily needs, but it says nothing about him/her as a person.⁶³

Ninth, furthermore, on the issue of birth as a criterion marking the beginning of personhood and hence acceptance as a member of society, it could still be argued that for a long time preceding birth, the mother knows the child is there, even if she knows little about him/her. The fact that the child is known to be there and is expected makes him, in

a very real sense a member of the human society. The development of modern technology especially with fetoscopy and hysteroscopy means that one can now literally see the child and perform diagnosis and surgery on him.⁶⁴

On the other hand, however, while it is true that the child in the womb is not an active participant in society, it would be very unfair to take advantage of that non-participation to close the fetus out of the community of human persons.

Looking at the above grounds for choosing birth as the dividing line between a person and a non-person it is apparently clear from our analysis that there is no substantive argument in support of that position. Perhaps Stephen Schwarz could be right in his suggestion to the effect that the choice of birth is just a camouflage to allow the woman to remove what is in the womb justifiably". He writes:

..... I think it hides a deeper reason: namely, the claim that a woman has a right over her body, "in the sense of " a right to an abortion." If one assumes this right, it becomes plausible to say that a woman may remove a being that is inside her and burdensome to her. But if such a removal is killing, and killing persons is wrong, it must be held that this being is not a person.⁶⁵

The question that comes out clearly in the light of Schwarz's observation is whether the abortion act is carried out because of some great benefit to the women lot or the persons concerned or in order to extricate oneself from some very uncomfortable situation. In the best interest of humanity, even if arguments are not convincing about the real status of the unborn, doubt should be resolved on the presumption that what is being terminated is a human person. By so doing, the risk and by extension the loss, would be minimized in the event that in the end, the organism whose life has been terminated turns out to be human person after all. The position in this study is that the choice of birth as the dividing line stems not, from the need to ascertain the identity of the fetus, but from the desire to get rid of it.

Then, this being the case we can conclude that this criterion on the basis of which humans obtain personhood status and hence the right to life is flawed. It is the position of

this study there fore that it is wrong to terminate the life of the unborn and even young infants on such grounds even if it is meant to bring “some great benefit”.

4.2.1.8.4. Michael Tooley and the analogy of the kittens.

Tooley’s analogy runs thus: suppose it might be possible at some future date to inject kittens with a chemical that would cause them to develop into cats possessing a brain similar to that of humans. One would not imagine that they have a right to life just because of this potentiality.

His point then is that “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.

Tooley’s position is that an organism possesses a serious right to life only if it possesses the concept of self as a continuing subject of experience and other mental states, and believes that it is itself such a continuing entity. Tooley requires this concept because right is defined in terms of a desire – and desires are limited by the concepts one possesses. Thus “an entity cannot desire that it continues existing as a subject of experience and other mental states unless it believes that it is now such a subject.” On this basis Tooley accepts not only all abortion but also infanticide.⁶⁶

Apart from Tooley’s support of wholesale infanticide, there is another weakness in his position. That is his mistake in connecting inseparably rights and desires. While it is true as he observes, that to abuse a right is to assert something about the *prima facie* obligation of other individuals to act or refrain from acting, he is mistaken in his assertion that “the obligations in question are conditional ones, being dependent upon the existence of certain desires of the individual to whom this right is ascribed.” Thus, he continues, if an individual asks me to destroy something to which he has a right, one does not violate his right to that thing if one proceeds to destroy it; for the owner no longer desires the

object. This basic desire, and therefore the capacity to desire, are said to be essential to the possessor of rights.

Here, Tooley has failed to take note of the fact that the notion of right is an analogous and not a univocal one. Basically, this analogy traces to one's understanding of moral obligation, its source and meaning. At the level of moral obligation, Tooley must examine why it is wrong to kill a person. To say that killing a person is wrong because it is in violation of a person's right is fallacious as it amounts to patent circularity. Two things are worth noting here: First, any viable analysis will apply to all human beings including the neonates and the uterine babies. Second, material goods, which goods are insubordinate to persons and can become one's property, generate different moral assertions than human life itself.⁶⁷

4.2.1.8.5. Capacity for self awareness

According to Michael Tooley, the feature, which makes us worthy to possess the right to life, is the capacity for self-awareness. We have value in ourselves because we find value in ourselves.

On this view, the basis of ascribing to one the right to life is his/her capacity to find value in oneself, and this presupposes a more fundamental capacity, to be aware of oneself as a self, whose continued existence one values. We offer the following criticisms against this claim:

First, this approach is flawed in that it has an adverse consequence. "It follows necessarily from this position that you had no value in yourself when you were a child of one or two. You were no doubt valued a great deal by your parents, but you had no value in yourself because you lacked awareness."⁶⁸

This contradicts the way we view ourselves ordinarily. We think that each of us was a being of inherent worth prior to the time that you and I acquired the capacity for reflective self-awareness sometime during the second year of life. But while it may well

be that the special worth we attribute to ourselves in some way depends on our capacity for self-awareness, it does not follow, however, that the possession of such worth demands the actualization or the exercise of that capacity.⁶⁹

As McCormick observes, when Tooley says that the obligations connoted by the term “right” are dependant upon the existence of certain desires of the individual to whom the right is ascribed he is guilty of confusing apples and oranges, or better, of reducing all of them to prunes. One cannot in other words argue that what is true of one’s right is true of all rights. For if certain rights are alienable, others inalienable, there is no way we can say, without the risk of contradicting ourselves, that they are all alike.⁷⁰

4.2.1.8.6. Desires and the embryo or fetus

Tooley holds that for the right to life, the capacity for self-consciousness is not necessary but that it is necessary to be a subject of non-momentary interests.

An individual can have a right to its continued existence either if it now desires to continue to exist or if its continued existence will make possible the satisfaction of desires which exists in and at other times.⁷¹

However, Tooley argues that in human beings the subject of consciousness, which later has desires, is not, contrary to what one might think the same subject as the embryo or fetus which exists in the womb. This is because according to him there must be psychological continuity, especially memory links, among desires and among other mental states for there to be an identifiable subject of consciousness existing over time. Since there are no memory links between the embryo and the fetus, on the one hand, and the individual at a later age on the other hand, Tooley holds that the desires that late come to be do not belong to “one and the same subject of consciousness.”⁷²

We offer the following criticisms against this position:

First, is his claim concerning how desires and rights are connected. Using the two examples of the enslavement and that of the woman who has been conditioned not to desire intellectually challenging items, the application of Tooley's argument would mean that the enslavement and the case of the woman are wrong because it made impossible the satisfaction of other desires which belong to the two persons. But the point here is that the deprivation of freedom in itself is a violation of rights, independently of whether it leads to the frustration of other desires. The same applies to the woman even if the deprivation did not frustrate any other desire for any other object still it would in itself harm that woman and violate her rights.⁷³

Hence the connection between rights and desires, which Tooley tries to retain, is misconceived. It seems more reasonable to hold that the violation of someone's rights is more closely connected with what truly harms the individual than with what he or she desires. One cannot, then, use the alleged connection between rights and desires, at least in the manner Tooley does as a way of establishing the extension of rights. And consequently, the denials of rights to some, in this case the developing organism in the mother's womb and even the physically challenged neonates and infants.⁷⁴

Secondly, Tooley can be accused of basing his position on a dualistic understanding of a human being. While Tooley rejected the position that the fetus is not a person because it does not have the capacity for self-consciousness, he maintains in his 1983 publication, his position that personhood is acquired after birth. According to him the reason why the fetus lacks the right to life, is not simply that he or she lacks a capacity for self-consciousness, but rather, he claims, there is no identity between the fetus and any later subject of consciousness.

Tooley holds that a comatose individual has a right to life because his continued existence would make possible the satisfaction of his or her desires existing at other times. According to Tooley the early embryos or fetuses before attainment of consciousness are not partakers of this right to life because a "subject of interests, in the relevant sense of interest, must necessarily be a subject of conscious states, including

experiences and desires. There cannot be any connection between the baby that was and the individual that is, he asserts, because the individual cannot be able to remember the experiences the baby enjoyed (hence lack of careful and psychological connection) because memories, according to him do not extend to pre-born stage. And yet, Tooley claims, such psychological connections, apparently those of memory are necessary for personal identity. Without such connections there is not an identity of a subject of consciousness.⁷⁵

But here is a dilemma, if the organism persists through time, Lee observes, but the subject of consciousness does not exist through out that whole time, then either the subject of consciousness is distinct from the organism (dualism), which seems to be what Tooley is supposing, or there is no subject but the person is the experiences themselves standing in a certain unity (the “no-subject view,”). Such are the positions on the subject of consciousness to which this view leads.⁷⁶

When Tooley talks of reprogramming individual by replacing the memories and personality of one individual with that of another and that such reprogramming destroys a person who is a subject of experiences, although it does not destroy the physical organism, “the assumption is that the person is a subject of experiences and other mental states associated with a physical organism but not identical with the physical organism”.⁷⁷

We will not delve in detail into the arguments against the dualistic position but for the purposes of our study we will briefly state counter arguments against this position.⁷⁸

First if the person is a non-physical subject, why do the person’s operations so closely depend on physical states?

It is not one thing, which performs the act of understanding, and a distinct thing, which performs the act of perceiving. It is the same self-agent, which performs both actions. Those who hold that the human person is a subject or thing distinct from the human

physical organism hold at the same time that the person is that which understands, and that which is conscious. This first point recognizes that the thing referred to as the source of understanding and self-consciousness is identical with the thing, which perceives.

Secondly, perceiving is a bodily act. This is not to say that a “mere body”, as apposed to a soul, performs it. Rather while understanding may be a spiritual act that is an act performed by a bodily organ, perception is an act performed by a physical organism by means of a bodily organ.

Thirdly, if sensing or perceiving is a bodily organic activity, it follows that what does the sensing or perceiving is a bodily thing, that is, an organism. We learn what type of a thing we are dealing with by learning what types of activities it performs. Precisely their different types of actions and reactions distinguish various things. Thus, a thing, which performs organic activities, must be an organism.

The fourth criticism arises from the conclusion implied by the first and third criticisms above. If that which understands and is self-conscious is identical with that which senses or perceives, and that which senses or perceives is a physical organism, it follows that that which understands and is self-conscious – which dualists themselves refer to by the word “I” – is a physical organism.

The conclusion then, is, since the human person is essentially an organism; one cannot hold that the human organism comes to be at one time while the person comes to be a later time. Hence the argument presented by Tooley that although the fetus is a human organism, it is not a person because it is not conscious, is misplaced. Therefore it can not be used to deny the fetus its right to life.

A closer look at the criterion that a being only has a right to life only if is capable of having conscious desires or interests reveals that this criterion gives us no more than a necessary condition for the possession of rights. While it states that a being cannot have

rights without conscious desires or the capacity for them, it does not, however, state or imply that these are enough to endow a being with rights.⁷⁹

And that being the case to what extent then does it make sense to found rights on a “conscious desires” intention? As Berquist observes, there are issues that have to be dealt with while responding to the above question, namely:

- i. Questions of classifications- are rights founded precisely on actual conscious desires? Or is the *capacity* for such desires the decisive element in the criterion?
- ii. Must the desires or interests in question be rational and based on explicit understanding of ends and means? Or do the instinctive desires of animals also count?
- iii. Is there a distinction between good and bad desires? If so are the rights founded on both forms of desires or only on good desires?

The difficulty involved in whatever response one gives to the above questions is that, there is an apparent impossibility with regard to the issue of founding rights on actual desires or on the capacity for such desires *per se*. This is so because a desire cannot have the character of a right unless it has a certain status, a status such that we are obligated to respect it. But even then, one could still ask, why then, do at least some desires or interests have the status of rights. As stated above this intension – based merely on desires does not give us the slightest hint as to why some desires have moral status? Concerning the weakness in this criterion, Berquist writes:

The “conscious desire” approach to the foundation of rights is inadequate because it does not ask the most important question: What is the source of our strict moral obligation to recognize, respect and even promote the good of another being? (see S I. Benn, *Abortion, Infanticide, and Respect for Persons*,” p.141). When the question is thus posed, the sort of answer we require is readily apparent. Beings that possess rights are beings that have a certain kind of value, a value such that in and of themselves such beings are worthy of respect. 80

This kind of value, a value such that in and of themselves beings are worthy of respect, cannot be an accidental or extrinsic value/utility for that matter. It has to be an intrinsic

value or dignity. This is the value of a being, which exists ultimately, for its own good. And such are the beings to which respect is due.

The fact that human beings naturally lack their own good and refuse to be mere means of the good of others shows us their value. It shows us that human beings are naturally oriented to their own good as an ultimate end. Human beings by nature possess an inherent value or dignity. And hence the dignity of humanity does not disregard them on their level of development or on the degree to which they are capable of exercising their rational faculties. The immature, retarded, and senile and the comatose possess dignity on the simple ground that they are human beings naturally oriented towards a rationally directed life even when they cannot attain it. Hence a being's dignity depends on what it is meant for, and not on the degree to which its natural purpose has reached.

This concept of dignity together with an understanding of the human good in its various dimensions namely: life, physical integrity, emotional and spiritual development among others, provides the foundation for the system of natural rights. We are concerned here only with the most basic right, the right to life. If human beings exist for their own good, as an ultimate end, and if life is a prerequisite for the attainment of any further good, it is clear, then, that human beings have the right to life.⁸¹

According to Daniel Callahan, abortion should be viewed not as the destruction of a human person but rather as the destruction of an important and valuable form of human life – for according to him, at no stage of its development does the conceptus fulfill the definition of a person, which implies a developed capacity for reasoning, willing, desiring and relating to others⁸²

In response to this “developmentalist” approach of Callahan, we will, in agreement with Robert Joyce, argue that a person is not an individual with a developed capacity for reasoning, willing, desiring and relating to others as Callahan claims. On the contrary, our position is that a person is an individual with a *natural* capacity for these activities and relationships, whether this natural capacity is ever developed or not. In this regard the

life of an individual member of the human race cannot be sacrificed on the ground that he/she has not attained the functional capacity expected of him/her.

Consequently, while individuals of a rational, volitional self-conscious nature may never attain or may lose the functional capacity for fulfilling this nature to any appreciable extent, "this inability to fulfill their nature", Joyce contends, "does not negate or destroy the nature itself, even though it may, for us, render that nature more difficult to appreciate and love".⁸³

Whereas, neither the human embryo and nor the rabbit embryo has the capacity to undertake the said activities associated with rational beings, think, will, desire and self-consciously relate to others, the radical difference even at the beginning of development is that the human embryo actually has the natural capacity to act in these ways, whereas the rabbit embryo does not have and never will have it.⁸⁴

The proponents of the developmentalist approach, in their understanding and interpretation of the concept of potentiality have, according to Joyce failed to see the actuality upon which these potentialities rest. The potentiality of a person to walk across a street or the woman's potentialities to give birth to a baby is actualities that neither the tree nor the cat across the road does have. Every potentiality according to Joyce is itself an actuality. The actuality in this case is entailed in the fact that this is indeed the natural course of the species *Homo sapiens*. Some cases however seem to contradict this assertion of the actuality of the potentiality of the human being.

How about those infants who are crippled and cannot walk or the deaf? – Will we be in a position to talk of such potentialities- to talk and walk as being actualities?

However, while this actuality may be blocked as in the examples given above or in other similar situations like the case of a barren woman or an impotent man not being able to sire children as per the natural expectation but even then this is just an actual potentiality blocked and not a logical possibility unrealized. And it is upon this actual potential not

mere logical possibility – that would seem a much more reasonable ground for affirming personhood than the other criteria established by the developmentalists of the likes of Callahan, Tooley among others.⁸⁵

Professor Raphael Murungi (of Kenyatta university department of Philosophy and Religious studies), in his exposition on the meaning of human life, asserts that there is a difference between human living and human life.⁸⁶ Human life according to him is a complex in which thinking and willing, appreciating and desiring, meditating and feeling, intuiting and analyzing, accepting and questioning among others inextricably compose a complex of living-cum-deliberating.⁸⁷ The fetus according to him does not possess this kind of life-the human life *per se*, and therefore is not an actual human being because its deliberating sub-complex is relatively undeveloped. He writes:

I maintain that, before birth, there is definitely human living- namely, the active processes such as growing, feeling, desiring, and even perhaps willing to satisfy certain drives which the fetus undergoes. This, however, cannot alone constitute a complete human life. A fetus is a living being; but it is not an actual human being because a human being has life. But a fetus does not have human life because the sub-complex of deliberating is relatively undeveloped in a fetus.⁸⁸

Unlike Tooley, however, Murungi contends that the attainment of this status by the fetus does not have to coincide with birth. Since the capacity is already developing it can be possessed as soon as is demonstrated at a certain stage of its development that the processes it undergoes include the sub-complex of deliberating, developed beyond at least non-human animals.

We offer the following criticisms against this position:

This theory suffers the same defects like that of Tooley and Warren in regard to the denial of human life to the fetus on the ground that it has not attained the acceptable status of a functioning human being. What is required of the fetus is being not achievement. The fact that the fetus is living and not just any kind of living but human living is sufficient to grant the fetus human life at this stage in its development

Secondly, as Murungi admits, life is not lived in a vacuum or isolation but within specific cultural contexts hence the manifestation of this life will be as varied as the cultural contexts are. In the same way life itself manifests itself differently in line with the different stages of human development. The environment in which it lives within its mother's wombs limits the life of the unborn and so are the "born" members' of the society whose lives are affected by the happenings on planet earth. The same applies to the infants, teenagers, youths, middle aged and the old men and women, each category live in their "own world." We can not say that any one of these sections of humanity has better life than the other. Professor Joseph Nyasani(of the department of Philosophy and Religious studies University of Nairobi) captures the gist of this argument succinctly thus:

The infant's mind is as organized as an adult's one except that it is suited to the circumstances that hold for its tender age. Indeed, it is organized right from conception and possesses the necessary elasticity to absorb all future phenomena to be encountered in life. This is certainly inevitability since there would be no satisfactory explanation as to why the infant's mind should develop and function normally at a later age if it was not constituted, *ab initio*, that it should so function. Again, it should be reiterated here that the infant's mind possesses an inexhaustible capacity just like that of an adult except for lack of an inundation of crowing cognitive intuitions.⁸⁹

As a matter of fact, even the somnambulist, the mad men and women in our streets have their own lives which they consider as human life but which according to us fall short of the same in light of the weird things they do which under ordinary circumstances a normal man would not do. So we say, "Their lives have been destroyed." The reference in this case is not human living, as Murungi calls it, for indeed the mad men are alive. So the reference here, is the human life, the more superior category as Murungi's position seems to suggest. And if that be the case then following warren's and Tooley's argumentations we can say that this made men and by extension the undeveloped fetuses lack personhood and hence the right to life. So the next possible and sensible thing then would be to take away such lives if they have them already or to deny such the opportunity to become or come to be, if that is possible. It is our understanding in this

study that in abortion we do not hinder life from coming to be but rather we bring to an end what has come to be. Back to our discussion about the insane members of the human race, we can with some degree of certainty say that not many people would agree to a program where such members of the human race are targeted for elimination. And that being the case we can ask why the Unborn are being discriminated against.

Thirdly, Murungi's position, like those of Warren and Tooley, fall short of one crucial point: the fact that a human being functions as a person or has the present and immediate capacity to do so, is not the ground for his dignity, and right to life, rather, that decisive ground is the fact of his being a person. Further more, his assertive position, that whatever the solution to the human-life-beingness of a fetus may be, his thesis about the meaning of human life still stands, means only one thing to the fetus especially at its early stages of development: its life is condemned to the status of just human living. The level of the criteria set before it, in order to attain what Murungi calls human life or what Warren calls human in the moral sense, is such that it will be impossible to attain.

But even if it were logically possible for the fetus to meet that requirement as Murungi alleges, what degree or "amount" of each of the items in the sub-complex of life will be required and what kind of instruments will be used to determine or measure the same? His distinction of Human living and human life apparently is no different from Mary Warren's dual distinction of humanity in the genetic and moral senses. Perhaps, the only difference is his admission of the fact that the distinction between the two is not a definite one, Even though Warren too says the same with regard to the determination of the criteria which she sets forth. The wording, however, in the reiteration of his position as pointed out above, with his use of the pronoun "whatever" speaks of a different thing: a definite position which in turn implies a definite distinction.⁹⁰

Fourthly, Murungi talks about the term fetus being labile with respect to the living human being because the "fetus" is linearly vague with respect to the term "human life." By this he meant that human life recedes asymptotically from the human Infant to the human embryo. But if we can talk about an asymptomatic recession from the human infant to the

fetus we can also talk of a symptomatic ascension upwards from the fetus to the human infant which amounts in the end to Murungi's position being a gradualist position on the status of the fetus. This understanding is false when applied to the being of a person, but valid when applied to functioning as a person, which is indeed a matter of degree. For we gradually develop our basic inherent capacity to think or deliberate and communicate as Murungi puts it. But as earlier mentioned the crucial thing in the possession of human life is not functioning as a person but being as a person. For if we were to logically extend this position across the board then we would also say that human life asymptotically recedes from the octogenarian to the infant and vice versa. However, life experiences and capacities only have meaning and relevance within the particular stage in the life continuum. If an infant were to be born with a beard or mature breasts, the parents and the society at large will be shocked because at that particular stage in life such have no immediate use for them. But if a grown up man or women were to lack the same it would be seen as unnatural basically because at that point in time such items have immediate use or significance. There is the common English saying that life starts at forty. But does life really start at forty? In the Kenyan scenario a civil servant at the age of forty starts planning about his retirement, which is just fifteen years away. In the same set up a judge or university lecturer whose retirement age is over seventy years is just about half way. So who among them has human life? Alternatively, who among the section of humanity, from that one-day-old conceptus to that a hundred-year-old great grandfather has human life? As in the case of the common saying that beauty is in the eyes of the beholder, we may also say, vaguely though, life is in the eyes of the "liver".

Finally, the other issue of concern in this position like the other positions of Warren, Fletcher and Tooley among others is the distinction of *actual* and *non-actual* life if we may put it that way. According to Murungi, the fetus at this point in time when the criteria of the deliberating sub-complex is relatively undeveloped does not have actual human life because at this stage it is just living- mere human living. It is the position of this study is that the crucial thing about the status of the fetus is not his ability to function as a person but rather his being, which his just mere human living attests to its presence. It is on the basis of this that we can talk about the fetus having human life. There is no

such thing as a potentially living organism. Every living thing is actual, with more or less potential: actually itself; potentially more or less expressive of itself. This being the case then, we can say as Joyce asserts, that a one-celled person at conception is an actual person with great potential for development and self-expression. That single-celled individual, is just as actually a person as a normal adult, though the actual personhood and personality of the new individual are as yet, much less functionally expressed.⁹¹

In this regard, therefore, the talk about the actuality or non actuality- or potentiality, is not about his being but rather his ability to function as a being. Consequently we can not convincingly use this criterion of actuality as a ground to deny the fetus the right to life.

According to H.J. McCloskey the right to life is grounded and must be found in the nature of man, in his autonomy. He states his position thus:

...the right to life is possessed by persons and by certain potential persons, that it's ground is and must be found in the nature of man, in man's autonomy, that it is not merely a negative right a right not to be killed, but a right to receive aids and facilities to protect and preserve one's life against dangers, humanly and naturally created, and that being a right of recipience, it is a prima facie or conditional right, a right, the claims of which must on occasion be subordinate to the claims of other rights and values.⁹²

McCloskey is opposed to the view that all human beings possess an absolute inalienable and inviolable right to life.⁹³ Rights, according to him, are to be explained as "entitlements to do, have, enjoy or have done to/for you, which are possessed by the possessor of the right. Rights should not be thought of as correlative with duties in some simple and uniform way or as always against some determinate person or persons. But rather as entitlements which can meaningfully be ascribed, exercised by or on behalf of their possessors etc."⁹⁴

Concerning the attribution of rights to some animals on the basis of the quality of life or other traits such as sentience and rationality, McCloskey is of the position that traits such as sentience, rationality and emotionality should not be solely used as a basis for the possession and grounding of rights or entitlements and the defense of the right to life

especially with regard to animals. According to him the vital element which must be present and upon which such decisions can be grounded is the notion of choice. To that effect he observes:

It is when the notion of choice, possible or actual choice enters the picture that the idea of a right possessed by the holder of the rights gets some sort of grip. When there is evidence of the possibility of choice and of the making of rational choices including moral choices, and more so, when there is evidence of a language used to express thoughts, decision, wishes, choices, that we move from the idea of duties concerning the being to the idea of being a possessor or potential or possible possessor of rights. It seems then quite evident not simply to be our duty to act in certain ways towards the being who can and does choose to do certain things; such a being comes to be thought to have entitlement, to have sort of right to respect for his existence and choices, and he/it to be a possessor of rights which impose duties on others... my contention is that it is autonomous beings that may be possessors of right. The argument to that end is that *things* can be the objects of duties, of important grave duties, but that they cannot be possessors of entitlements. Hence rationality alone, is also far as it can be explained without reference to freedom and creativity and hence be attributed to things for example, to computers, cannot be a ground for ascribing rights.⁹⁵

But if autonomy or rationality and freedom are crucial what do these have in respect to young infants or the fetus whose possession of such traits is a subject of a big debate? McCloskey claims that since the rationality or autonomy in the infant and the fetus are still at the potential stage, it would not be necessarily told that infants could be possessors of rights by virtue of the potentiality to be autonomous beings. Potentiality cannot be the whole story; at most potentiality of autonomy is necessary but not a sufficient condition for qualifying as a possible possessor of rights.⁹⁶ sees the defense of the right to life as (i) resting on the nature of autonomous existence; (ii) involved in respect for autonomy as giving the autonomous person rights over his existence; and (iii) respect for autonomy as is detailed in respect for the right to liberty. In any case of violation of one's right to liberty, McCloskey observes, "One requires a good reason to be justified in overriding another's' will in a matter which virtually affects that person in his enjoyment and use of his life"⁹⁷

We will raise the following issues with regard to this position:

First, what is the nature of this rationality and autonomy of the infant and the fetus, which McCloskey says, is still at the potential stage? Our position in this study is that the level and nature of autonomy for any member of the human race depends on many factors among them being the stage of development in the life's continuum, other factors such as whether some one has been categorized as a threat to the well being of the other members of the society and hence the decision to confine him in a prison facility, one's state of health or obligations he or she is charged with, as is the case of an expectant woman whose actions or moves must always take into consideration the welfare of the being she is carrying in her womb. The point, however, is that even the worst of criminals confined in a maximum prison cell still has some level of freedom available to him even if it involves moving in a circle within his small prison room. Even in his current state, he can not be tortured anyhow by the prison authorities. So we can say that he has freedom only that that freedom is limited by the circumstances he finds himself in. The same case applies to the fetus in the womb. He has freedom to move around in the womb, to make some gestures and maneuvers only that such freedom is limited within the uterine wall. In this case we can not say that he does not have "the real freedom" and by extension the right to life. The fetus has freedom, a freedom befitting that stage in life. Or do we expect him to have the freedom to walk on his two legs at this stage? The same case applies to the small infant and other sections of the human race that may be in need of assistance and care from the other members of humanity who may be in a position to provide the same. But that assistance aside, who among the members of the human race does not require assistance in one way or another either from the doctor, the butcher, the tailor, the farmer, the shopkeeper and the list continues? Where is that absolute freedom or autonomy that has no limitation? The answer of course is that it is not there. So why then do we discriminate against some members of the human race by denying them the right to life on the ground of something that is also applicable to the entire family of the *Homo sapiens*?

Secondly, with regard to the issue of potentiality of the fetus and the infant as McCloskey understands, the potentiality referred to here is that of functioning as a being and not the being of these two categories of humanity. All of us, at one time have unexploited

opportunities, skills or talents either due to lack of relevant circumstances/opportunities which require the exercise or utilization of the same or we are not yet at the stage which requires the exercise of the same. A young nursery school girl is a potential mother; however, the best she can do at this stage is just to imitate. The same applies to the baby boy, a potential father; but for now can only manage to imitate the same. Shall we then say that such kinds of beings should be denied the right to life or to later become mother and father because they now do not possess the present immediate capacity to exercise what nature has set for them to do later in life? We do not believe so. But why should we then subject the fetuses to a situation, which is beyond their control in as far as the biological clock is concern?

Some pro-choice proponents view the role of parents in determining the fetus's right to life as being pre-eminent. One such proponent is Pierre de Loch. According to him personhood is a status bestowed rather than inherent in the unborn. He argues that parents confer personhood on a fetus by perceiving it as a *thou* and so giving it a place in the human community.⁹⁸ Mary Warnock too, holds a position similar to that of de Loch, that personhood is a status, which others bestow. Citing Philosopher John Locke, Warnock argues that the word "person" as a moral term distinguished from the word "man" is not a biological but a forensic term the determination of which—that is to know whether or not some person or corporate body is to be deemed person or not, is something which must be decided.⁹⁹

We will raise the following criticisms against this position:¹⁰⁰

First, if we were to grant that this position is true, that the parents or guardians or whoever may be do bestow personhood, what shall become of the unborn or the young infant in a situation where one of the parties declines to grant or to deny these entities personhood? Shall we then say that the fetus or young infant is half person or not a person at all? Or supposing they both agree but realize later, may be due to the unbecoming behavior of the entity concern, or financial strains, that they had erred in their decision. Will they be able to undo their decision or to withdraw their "offer"? If the

answer is the affirmative what shall be the fate of that entity? The implication of this position is that since their lives have no meaning being taken out of existence will be of no consequence. If that be the case then the lives of other members of the society who for one reason or another may fall in that category-the nagging wife, the trouble some husband among others will be threatened.

Secondly, as Grisez observes, the supposition underlying de Loch's thesis that human meaning – giving constitutes social and cultural realities is not correct for unlike such realities, he argues, people are principles of society and culture. Consequently, human meaning – giving presupposes rather than constitute people.

Thirdly, while the contention to the effect that persons are beings who exist only in interpersonal communion may be granted; it can be objected to on the same ground as the realist position. Supposing a particular member of the human race was to be banished in the remotest part of the Mau forest to live there for the rest of his life with no relationship at all, will we say that that being does not exist as a person just like that tree that may fall down in the Amazon but since it is unperceived we deny its existence? Human beings indeed do not live in a vacuum. They are directly and indirectly entangled in a cobweb of relations starting from the immediate family, the extended family, the neighborhood, the country and the continent among others. But that in itself does not give man his being but rather he enters into such network of relations on the basis of his being.

Fourth, while we do agree also as Warnock contends that we can handle relevant moral issues without settling the question of personhood for as she asserts correctly that there can be bad criteria for making such designations, and her rejection of the criterion for personhood some apply to neonates, namely that they are wanted on the ground that it is not generally applicable, we do however, have an issue to pick concerning the reason for the rejection of this criterion. Warnock rejects the wantedness criterion on the ground that it was not generally applicable. Indeed the biologists can do without term "person" and the law does bestow personhood on corporations, sea going ships and so on, as well as on some human individuals, while denying it to others. Our position in this study, however,

is that even if it was generally applicable the nature of the criterion itself is such that it is selfish and that it cannot be objectively applied. The subjectivity issue arises because of the fact that the person who is making the decision is herself the complainant. So whether it is the mother or the male partner making the decision, such a decision will very often than not serve the interest of the maker. In fact Warnock herself attests to this when in her reference to John Locke's works she says that in the attempt to establish whether or not someone or some corporate body is to be deemed a person or not we need to know the criteria that have been established for settling such cases or else we must establish new criteria for ourselves. This establishment of a criterion for one self will definitely serve self-interests in one way or another. The fetus then or any other entity in a similar category will hardly get a fair treatment. So we reject the said criterion not only because of its lack of general applicability but also its very nature and its underlying suppositions.¹⁰¹

According to Jane English, there is no such a thing as the correct definition of a person. She contends that the definition of a concept of person cannot be captured in a strait jacket of necessary and/or sufficient conditions; which is what would be required of an adequate definition of person. Her conclusion in the first part of her paper is that "our concept of a person is not sharp or decisive enough to bear the weight of a solution to the abortion controversy. To use such concept to solve that problem is to clarify *obscurum per obscurius* (the obscure by the more obscure).¹⁰²

We will offer the following criticisms against this position:

First, while we do agree with her that attempts to define personhood as have been made by the pro-choice proponents is an exercise in futility, we are of the position that her failure to distinguish between being as a person and functioning as a person does not amount to the conclusion that the term "person" is indefinable. The weakness in her position is in her failure to distinguish between the two. Indeed, if her contention is applied to the concept of functioning person, it is valid and of great significance. But when as in her paper, it is applied to the concept of being a person and used as a reason

for justifying some abortions – it is a serious mistake. While the analysis offered by English is excellent, the conclusion she derives from it is wrong. In essence what her analysis shows is that a functioning person can not be adequately defined. Nothing follows from this regarding being a person, especially not the conclusion that the being in the womb is not a person.

In an attempt to avoid the pitfalls inherent in other attempts to define personhood, namely that any attempt locks out some recognized group of human beings, some abortion proponents seek to defend their views by appealing to the arbitrary character of definition. Among them are Garrett Hardin and Glansville Williams. According to Garret Hardin, whether the fetus is or is not a human being is a matter of definition, not fact; and we can define it any way we wish. It is his position that, in view of the human problem involved, it would be unwise to define the fetus as human.¹⁰³

Our responses to this position are as follows:

First, if the definition of a human being is such that it is purely arbitrary, we may classify any group of persons as non-human, so as to satisfy our personal interests. We believe. The procedure is warranted by the presence of some “human problem” –the alcoholics, senile- may be classified as non-human and dealt with as we please. Or just any person or group of humans we may not be happy with. While Hardin himself closes his attention from any argument highlighting this shortcoming as the well known argument of the camel’s nose – which says that if we let the camel put his nose in the tent, we will be unable to keep him from forcing his whole body inside, Hardin’s position and his insistence that it is always possible to assert, to draw arbitrary lines and enforce them, must be rejected out of hand. And his position that, it is only the prenatal beings, those in utero alone to whom this arbitrary definition is proper should be condemned as arbitrarily discriminative. After all as Humbler asks, what makes this feeling proper than the feeling, say, alcoholics should be classified as non-human and exterminated? Furthermore, what shall prevent a mother or a guardian from arbitrarily deciding to exterminate the life of a now bothersome but previously wanted baby?¹⁰⁴

Glansville Williams, in his attempt to give a rational support for Hardin's "feeling" that it is with prenatal beings alone that arbitrary non-human classification is legitimate, argues that, whereas one can regard the microscopic fertilized ovum as a human being if he/she wants, there are, however, most important arguments for not adopting this language. Furthermore, he continues, a look/glance at actual beliefs and behavior reveals the contrary; an almost unanimous rejection of it. His rational justification for this position is that Women do not mourn the loss of spontaneously aborted zygotes as they do the death of children ¹⁰⁵

William's argument, as Humbler observes, is wanting in one major aspect: its clarity. It is not clear here whether William is referring to the fact that societal attitude and behavior has already classified the unborn as non-human hence it would be improper to disagree with the opinion of the majority? Or, that the society's classificatory status of such organisms is in doubt and that the available "social arguments" together with the consent of the majority provide us with good reasons for grouping prenatal beings as non-human?

Whichever stand William's position suits there are hurdles to be jumped! The first option must be rejected out of hand, for what it amounts to is simply the assertion that the majority is always right. But whether or not the proposition "x is human" is true or not, is not something to be resolved by an appeal to majority opinion.¹⁰⁶ With regard to the second option, the construction too is unsound on the following ground that if we accept William's contention that majority doubt concerning classification plus the availability of social arguments provides, a moral justification for dealing with certain groups of beings as non-humans, various undesirable consequences follow. For example, the senile, handicapped and the terminally ill will not escape such categorization. Neither will the rapists and murderers, often referred to as "animals" and "mad dogs", be spared.

Furthermore human life is so precious an item that it can not be made dependent on the unreliable and ever changing societal feelings and desires or the whimsical desires and wishes of some humans.

4.2.1.3. Lisa H. Newton

The abortion debate according to L. Newton is not about conflict of rights – the mother’s right to decide what shall happen in and to her own body verses the fetus’s right to life as is often portrayed. Newton’s position is that, the abortion issue will not yield to any analysis in terms of rights, *prima facie* or otherwise; that the only moral resolution to any conflict on abortion will involve a careful and painful balancing of moral claims, with compassion being the decisive value and no appeal to rights’ claim at all.¹⁰⁷

Newton distinguishes, between *prima facie* and absolute rights. *Prima facie* rights are rights you can exercise until that exercise runs into someone else’s right, at which point you must stop. Absolute rights, on the other hand, are the specific rights that particular parties may exercise to their fullest extent, rights fixed by adjudication or absolutely guaranteed. Among the absolute rights are rights that are by nature exclusive; if two individuals are both awarded sole right of possession of a certain piece of property, there must be war between them unless one decision is reversed. *Prima facie* rights in conflict are regularly reconciled by adjudication; absolute rights in conflict are irreconcilable.

According to Newton, the abortion issue appears to be a case of an irreconcilable conflict of rights. If the fetus is granted the right to life, the right must, be absolute. And if the woman is to have under any description the right to decide what shall happen with her own body, that right, possibly not universal absolute, must be absolute in the case of pregnancy. Any right to control over the events of one’s own body must include control over this event or be worth nothing at all. But then any case of pregnancy gives rise to two absolute rights in conflict: the right of the fetus to live (in the womb since it can only be there) and the right of the woman to decide whether or not the fetus shall be allowed to live (and grow) in that womb.¹⁰⁸

On the face of it, then – given the clear pleas of right on each side and the futility of the sophistry that attempts to explain away one set or the other – the abortion issue cannot be usefully presented as a case of “conflict of (*prima facie*) rights,” where a “just solution” must be found somewhere between the two extremes; those claims of right are absolute and compelling, hence mutually destructive. Thus there are no “rights” in the abortion issue at all until the conflicting claims of fetal life and maternal privacy have been resolved by the courts, and then there shall be only those rights that the court assigns.¹⁰⁹

In the light of this apparent and seemingly irreconcilable conflict, appeal to rights is not going to solve the abortion issue. Consequently, we are forced to tackle the problem where it began, as an agonizing conflict of moral claims, to be resolved only case by case, in such a way as to maximize all human issues for all the parties concerned. Individualized decisions can, and must, be guided by love, by a deep personal concern for the human beings involved.¹¹⁰ The essential point is that it is the attitude of the “deciders” towards these losses that really matters. In this kind of scenario Newton asserts, there is no way of getting a right result in any situation where abortion is desired and a decision must be made whether or not to proceed with it; there is only a right manner of approaching the decision, of weighing the factors and of reaching a solution. The only way to get out of this dilemma is by moving away from the divisive and irreconcilable path of rights claims to one of compassion, of concern for the individuals that recognizes that any decision must be made with at least some regret, that proceed with sorrow for the value lost in either conclusions, and that acts to heal the inevitable injuries as quickly as possible.¹¹¹

While agreeing with Newton that an analysis of abortion in terms of rights will not clarify the abortion issue and that no general solution can be found, since the conflict between maternal rights and the rights of the fetus are irreconcilable, we are also of the position that such analysis are unavoidable. Whatever position one holds, it must have a basis of some kind- more especially in the realms of rights. The difference, however, is that unlike the pro-abortion advocates, our position is that such rights can not be taken just as one’s rights regardless of any claim by others, but, as one’s rights in recognition of

others' rights. Compassion then becomes not the determining value but the icing cake camouflaging that recognition and respect for the wellbeing of the other and oneself.

4.3. Pertinent Issues arising from above discussion

Arising from the discussions above the following issues have been raised and discussed as the key features, which make us worthy to partake of the right to life and other basic rights due to a human person. We shall in this section revisit the most pertinent of them.

4.3.1. Human is not merely a biological category

According to Singer, Fletcher, Tooley and Warren it is not in itself wrong to kill human beings, that this can only be wrong when the being in question is a "person." In essence they say, only functioning persons (and those who were once such persons) are truly persons. This is what Schwarz calls the functioning-person theory.¹¹²

Michael Tooley contends that membership in a biological species is not morally significant in itself". While peter Singer position is that whether a being is or is not a member of our species is, in itself no more relevant to the wrongness of killing it than whether it is or is not a member of our race. According to Mary Warren, being human in the genetic sense, does not give the being a right to life.

The fundamental error inherent in these definitions is the notion that human is a mere biological category, that it designates simply one of many zoological species. But as we have discussed above, even though human may be named as a zoological species, and compared to other species in the study of anatomy and physiology, it is not simply a biological category. It is rather a mode of being a person.

Further more, it is our contention in this study that the biological aspect itself is so crucial to the beingness of the human being such that without it we will not even talk about him. Hence this aspect of a human being is itself the most fundamental in the human realm.

The construction of the position that proceed on the assumption that fetal beings are human, but argue that there is a distinction between “human” and “human person” in that though human life begins at conception, no person is present until late in gestation, therefore under some circumstances the welfare of actually existing person might supersede the welfare of developing human tissue, the response is that that construction is flawed.

This is so because of the fact that if there are difficulties involved in trying to define the term “human” this problem might simply arise again in attempts to define human person. In addition, the right to life is a “human” rather than a “personal” one. Therefore fetuses must be seen as possessing that right even if they are held to be non-persons.

The bone of contention is that, if, as the proponents of this positions seem to say, some lives (some humans) are less valuable and therefore may be refuted when conflicts with some right or rights possessed by those more valuable (human persons) is granted, then some dilemma which must be explained by the proponents of this position arises. Towards this end Humbler observes:

In some circumstances, perhaps (as when the mother-to-be is, say a doctor on the verge of discovering a cure for cancer), a good case could be made that this woman should be allowed to abort rather than having to risk her life in childbirth. But what if the expectant mother is an alcoholic, on welfare, and a general burden to society? Would the abortion advocate allow us to turn the argument around and insist that this woman should not be allowed to abort her “innocent” fetus, even if her own life were in jeopardy? This seems highly unlikely. Out of this, the question simply re-arrises: what is there about being a person which, in itself, makes one better or more worthy than a being who is merely human? ¹¹³

Here is the dilemma! Shall we or shall we not spare the life of this very important person in the society upon which the survival of many lives depend? If we are to be consistent with our argumentation above we will not. But if the societal feelings will be allowed to come into play we will definitely spare her dear life.

4.3.2. The notion of potential persons

According to Tooley potential persons have no serious right to life. He writes, "There appears to be little hope for defending a conservative view (i.e. that abortion is wrong) unless it can be shown that the destruction of potential persons is intrinsically wrong, and seriously so."¹¹⁴

Mary Warren speaks of the fetus as a "potential person" and of its potential for becoming a person. She denies that the latter provides any basis whatsoever for the claims that it has any significant right to life.¹¹⁵

These attempts by the developmentalists to take into account "life potential" as well as "life actual", and thereby to give more reasonable interpretation to the beginning of human personhood as they allege fail on the following grounds: ¹¹⁶

First, the approach tends to confuse process in the collective with process in the individual. This gradualist approach does not distinguish sufficiently two kinds of processes: the process of the cosmos and the process within the individual entities themselves. For as Joyce observes, there is the process of the cosmos within which living substances exist, and which causes these individuals to exist in space and time. With regard to this process the individuals themselves are not the subject of the process nor are they the cause of it. This grand process of the whole of the physical nature would seem to employ individual substances, such as parents and their gametic cells, in the causation of new individual substances. On the other hand is the other process, which occurs within the living individual entities themselves and one, which they themselves cause. It is the process of their own unique life and growth. This process is primarily caused by the individuals; not by the environment and the whole process of nature. The individual in the womb of his or her mother, is, in effect in charge of the pregnancy, just as every individual in the womb of "mother nature" is in charge of its own life and growth, even while being thoroughly conditioned by its environment.¹¹⁷

Secondly in their call for attention to potential life, gradualists have confused two different kinds of potency. The potency to cause something to come into existence is improperly identified with the potency for this new being to become fully what it is. The potency to become fully what it is, according to Joyce, is only applicable to living beings, since only these can grow or become manifestly themselves. The zygote exemplifies this growth kind of potency – the potency of an existing being *to become* more expressingly, what it already *is*. The ovum and sperm exemplify the first kind of potency – the *potency to cause* something to come to existence. As the organism in the womb progresses up the ladder of life what is encoded in the DNA continues to unfold.

These two potencies, however, are not mutually exclusive but rather interwoven. Much of the confusion between the two types of potencies arises from the fact that they interweave and interact. The potency to cause something to come into existence – which is proper to the ovum, for instance, also entails the latent function of disposing the newly caused being (the zygote) to become fully what it is, once it is. And once the zygote is, its potency to become fully itself (growth potency) also entails the latent function of internally causing (cause potency) its own stages of organization and development. But the potency to cause something (within self or within another) is radically different from the potency to become developed (to grow).¹¹⁸

The other major flaw in the gradualist approach lies in its typically utilitarian projection of a mechanistic model of development onto an organically developing reality. By so doing it fails to distinguish between a natural process and an artificial process.¹¹⁹

Only artifacts such as clocks and cars, among others come into existence part by part. Living beings come into existence all at once and then gradually unfold, to themselves and to the world, what they already, but incipiently, are. The zygote cannot be compared to a blueprint, as a blueprint never becomes part of a house unless it is used to paper the walls.¹²⁰

Moreover the human zygote is much more than a genetic package. It is a living being that has genes. We do not think that an adult is a package of organs, muscles, and bones, but that he or she is a being who has these structures. The whole of a living being is always, at every stage, much more than the sum of its parts.

Inherent in this approach is another weakness entailed in the implicit or explicit notion that a human person is a rational animal. While this is true it is also true as Joyce contends that a person is not a rational animal any more than an animal is a sentient plant. According to him, persons are animal-like, plant-like, rock-like and God-like in many ways. We fall like rocks when dropped and we digest food like animals. And in contemplative moments we act like God. Effectually, he concludes, we are a whole unique kind of material entity; even more different from animals than animals are from plants.¹²¹

The underlying basis of this position seems to be the latent idea that a human person is an “incarnate spirit”. In this view one’s own body and biology are regarded as thoroughly subject to the superior and inevitably imperious judgments of mind and the command of the will. Hence the various psychological criteria put forth by the proponents of this approach namely reasoning, self consciousness, ability to communicate in complex terms, willing, deliberating all touching on the mental / spiritual aspect of man. The body is viewed, not as a vital identifiable part of our person, but as an alien animal to be civilized by socialization and technology. This latent idea has adverse implications for humanity. For, as Joyce observes:

By implication, then, one own’s body is not regarded as an intrinsic revelation of person, but as a sophisticated instrument for personal use and eventual discard ... in this view, nature is not a friend to be known and loved, but an alien, massive and impersonal monster ultimately to be outwitted and subdued. Thus the most immediately threatening and most symbolic part of this monster is one’s body. One should not claim ownership of this body until one is sure he or she can handle it: until one is functionally capable of reasoning, desiring and willing. There are the minimal criteria for a meaningful bodily existence, conferred by the person whose self-concept represents a refusal to be essentially (not exclusively) identified legacy of the developmentalist approach.¹²²

Our response is that both the body and the mind are vital components of a human being. Man consists of both and both must work together as they are not parallel or mutually exclusive, but interactive and interwoven.

With regard to the potentiality of the child what is potential about the child in the womb is not, her being as a person, but rather her functioning as a person. The potentiality in regard to functioning is, in the sense that he/she now has a latent capacity to function and not yet a present immediate capacity, because her basic inherent capacity has not yet had a chance to develop sufficiently. It is the position of this study, therefore, that the child in the womb is not, as the functioning – person theory maintains, a potential person, but rather a potentially functioning actual person.”¹²³

In our understanding here, there is no such thing as a potential person. The ovum and sperms are preparations for a new person. Each of them is not that person in potential form, because it is not that person at all. There is a radical break between sperm/ovum and the new person/life in the zygotic state. “The sperm and ovum are not potential (personal) life rather they are potential causes of individual human life. Hence any allegation about the potentiality of the human being is mistaken interpretation of the nature of the being of humanity.”¹²⁴

4.3.3. The achievement/gradualist view

According to Mary Warren, Tooley and Singer infants are non-persons simply on the grounds that they have not yet achieved the status of functioning persons.

By implication what this theory means in essence is that only human beings who have achieved a certain degree of development of the present immediate capacity to function as persons count as real persons.¹²⁵

According to this view human life is a gradual process. At the beginning there is no real person only a potential person; at the end there is a real person. Abortion is either

morally justified or only a lesser evil at the early stages. As one progresses through the stages, abortion becomes progressively hard to justify.

Our responses to this position are as follows:

First, that the infants have not achieved this status is perfectly normal, and could not be otherwise; for they have not reached that stage in their development over time when such capacity is normal and when its utilization will be required.

Secondly apart from some element of truth which the theory contains that the concept of "person" and "human being" are not identical, for there could be non human persons, the theory has another aspect to it, its mistaken understanding and interpretation of the nature of this distinction leading to discrimination of some sections of humanity. For the theory implies that only persons count: those who have achieved the status of "functioning persons". Unfortunately the unborn do not happen to fall in this privileged category. So in this regard they do not count. their lives can be taken away arbitrarily.

Whereas there is indeed, a gradual process in the development of a person, physical and psychological, but there can be no gradual process in the being of a person. The gradual development refers not to the being of a person, but to his capacity to function as a person

For if we were to accept this position of the gradual development of the human being we would have a situation where there could be a half person. But there can be no such thing as a half person save the Hindu god Hanuman, who is said to be half man and half monkey. Human life or personhood can not be compared to a car in the assembly line. The fault in this kind of picture is that a person is totally unlike a car, and the gradualist picture completely falsifies the being of a person and with it his gradual development. Our position is that there can be no two ways. If a person does not exist fully as a person, he/she does not exist at all.

Furthermore, when the gradualist position is examined in the context of a time frame, it is clear that human beings develop from the beginning of their existence, during the time in the womb, during infancy, through childhood, to puberty and to maturity. At first it is a development that is largely physical, but soon the psychological development begins and expands. However this development can not be taken to mean the coming into existence of a person as the developmentalists seems to say.

But even if this development was to be taken as the coming into being of a person the question would still be asked as to why this is limited to the time of pregnancy, or early years of the child's life following birth. We believe that this done with an ulterior motive, that is so that early killings are less wrong and easier to justify than later ones. However, what the gradualist position actually produces is a view that implies the same result for a whole class of human beings after birth as well; namely, that they too, are not "persons in the whole sense", but only "partial persons" who are still in the process of becoming persons, and that earlier killings are less wrong and easier to justify than later ones.¹²⁶

Our position is that the baby is equally a person as an adult; he has the same dignity with the rest of humanity. To suggest, therefore, that killing an unborn baby is less wrong than killing an adult is to admit of degrees among human beings. The resultant logical implication however is that if personhood or humanity admits of degrees before birth, then it would seem that it must admit of degrees after birth as well. So the criteria that one uses to classify that section of humanity in the uterine environment must of necessity be used on those living outside.

Furthermore, the development of the person does not stop within the time in the womb but continues into the time after birth. In this regard a line that seeks to mark the end of the development of a person during the time in the womb is as absurd and arbitrary as one intended to mark the beginning of the being of a person during this time. Just as in the later case, the person was already there before any alleged line, so too, in the former; he continues to develop after any such line. But what substantial difference is there whether I kill a sleeping person (painlessly) five minutes after he falls asleep at night or

five minutes before the alarm goes off in the morning. It does not make any difference to him. So when an unborn baby is deprived of his/her life before or after the alleged “mark line”, it makes no substantial difference.

Then there is the “Time frame” problem. If the full being of a person is not attained until his/her development is completed, it follows that new born babies are not fully persons, that younger babies are “less persons than older ones, and the younger a baby is, the less wrong it is to kill her. This is absurd. A theory that necessarily implies such an absurdity, as Schwarz asserts, must be false.¹²⁷

Finally, the question, when does the fetus become a person, or when does it become human, meaning a person, since it is obviously human in the biological sense all along, is misleading. Contrary to the assertions of Warren and Tooley among others, it is our understanding here that mere biological existence is what a member of the species *Homo sapiens* requires. And since there is a person, a human being, all along what ought to occupy us at the moment is the issue about the ceasing to be of this biological life and not the coming to be. The difference between the developing fetus and the adult human being is only a matter of degree of development of the basic inherent capacity to function as a person. This it self cannot make the baby to lose or to be denied his right to life for what is required for such purposes is being not achievement: being a person, having the nature of person, regardless of how far along the achievement scale one has progressed.

4.3.4. Multiple definitions of functioning persons: The problem of which, how much and by what means?

According to the “functioning person” theory, humanity can be divided into two categories persons and non-persons. We have argued in this study that this division is flawed and that all human beings are human persons and that person does not mean “functioning persons,” but also include those with a merely latent capacity to function, or what Warren and Tooley would call mere biological category.

However, the mistaken division aside, there seems to be no uniform definition of the notion of person and what characteristics a being must have in order to be classified as a person as advocated by the proponents of the “functioning person theory”. The following examples of the definitions by the various authors attest to this. Mary Warren proposes: consciousness, reasoning, self motivated activity, the capacity to communicate, the presence of self-concepts and self-awareness. Peter Singer offers a definition that selects two crucial characteristics as the core of the concept: rationality and self-consciousness.¹²⁸ Joseph Fletcher proposes a list of fifteen criteria of indicators of humanness (by which he means personhood) minimum intelligence IQ scale not below the mark of twenty, self-awareness, self control, a sense of time, the capacity to relate to others among others.¹²⁹

Michael Tooley proposes the following as constituting his criteria: (i) capacity to envisage a future for oneself, (ii) concept of self and a continuing subject of experiences and other mental states (iii) being a self (v) self consciousness, (v) the capacity for self consciousness.¹³⁰

The question with regard to the criteria listed above is which among them are the most basic for the concept of person and how much/what degree of these identified criteria is required and by what or which means of measurement shall we be able to ascertain the presence of the required quantity or quality of the same? With regard to the question “which”, Schwarz, highlights the complexity of the issue at hand:

Which of these definitions, or sets of indicators or criteria, or combinations of them, is the correct one for the concept of person? Which features are necessary for being a person? Which ones are sufficient? Which ones are both necessary and sufficient? This problem is further complicated by the fact that the authors listed here offer conflicting views about the features to be used in defining the concept of person. Thus, rationality is affirmed by Warren and Singer, and denied by Tooley ... It seems to be affirmed by Fletcher (“minimum intelligence”). Self-consciousness is affirmed by Warren, Singer and Fletcher, and by Tooley in three of his articles. It is later denied by Tooley in his book, *Being an agent or having self-control* is affirmed by Fletcher (“control of existence”), denied by Tooley.¹³¹

But even if the problem of which criteria to be employed were to be resolved; there is another problem, which must be solved still. That is, given a criterion or feature that is to be employed in defining the concept of person, how much of it is necessary? How much is sufficient? For example Mary Ann Warren, in listing reasoning as one of the features, says it must be "the developed capability to solve new and relatively complex problems." Our position is that even the ability to solve elementary problems is sufficient. In any case, even if we were to grant the ability to solve complex problems, how complex must the problem be? Or more generally what kinds of reasoning are to be required? And how extensive must the ability to reason be? ¹³²

But even after establishing the necessary and sufficient criteria for a concept of person, and how much of each is necessary, there will still be a further problem. That is the problem of measuring the features and their level of development. Given a small infant how do we know how much rationality the baby has? Tooley tries to grapple with the problems of measurement by examining a complexity development.¹³³ But such evidence, even if it were adequate could only be indirect, in that it measures the physical requirements for functioning as a person and not the functioning itself, for example, having self-consciousness. At the end of this attempt, unfortunately, Tooley does not solve the problem."¹³⁴

Arising from the above observations we can say the following:

First, that there is no one correct definition of "person" in the sense of functioning person. It is not that there is a correct definition but no one has yet found it. There are many definitions, and one given being.

Secondly, that there can be no one correct definition of person as functioning person, because "functioning person" means precisely: one who has the present immediate capacity to function. And functioning as a person means a wide variety of things, each to varying degrees.

Thirdly, this wide variety representing the plurality and complexity of what it means to function as a person, involves two fundamental dimensions as Schwarz observes,

i. The gradual development of the status of functioning as a person as something that a human being develops gradually. During growth and development, both in the womb and after birth, the child gradually acquires more and more of the features discussed here, and each of them to a greater and greater degree.

ii Relativity to context

How we construe the term person when it is used to designate “functioning person” varies from case to case. So the degree of attainment of present capacity to function as a person that we have in mind, and require, for someone to be called a person varies according to the situation, and is determined by our needs and interests.

Consequently, there is no such thing as the definition of the term functioning person because the features that constitute any definition vary across the spectrum of gradual development and a spectrum of the context. Hence the definition itself varies; there is not one meaning of functioning person. This shows that the whole attempt, by Warren, Singer, Fletcher, Tooley, and others, to define the person is fundamentally misguided.¹³⁵

4.3.5. Social functioning

This criterion describes personhood in terms of social involvement and social value. In order to qualify as a human being one must do something or be capable of doing something that will enhance the welfare of society. This criterion sees humanity as an achievement, not an endowment, and the fetus only becomes human when it begins to function in the human socialization process.¹³⁶

Our responses to the usage of this criterion are as follows:

First, the development and growth of a human being cannot be compared to the building of a car on the assembly line that involves systematically putting together the bits and pieces and now with the modern technology with the use of a robot. An extrinsic agent, assembling already existing components or infecting social personality into sub-human raw material does not bring about humanization. Man realizes his potential by self-actualization and in a process of give and take within the society. This process begins when the embryo causes the mother to miss her menstrual period and learn of her new status. Man develops with the help of society, not by the power of society.¹³⁷

Secondly the fetus becomes socially active and socially involved immediately after conception because it develops by interaction with the maternal organism. These early biological communications mark the beginning of the individual's social functioning.¹³⁸ Hence the claim by some that a meaningful relationship between the mother and even other members of the society can only take place after birth is flawed. As a matter of fact the unborn through the mother interact with the external world in one way or another.

Thirdly, Human life is an unfolding process rather than a finished product. A human being has a variety of abilities, some of which are lost as he grows older; the "social functioning" of the early stages gives way to a different mode of socialization in later life. The earliest years of our lives are not necessarily the best ones but we should not adore the "functional humanity" of the adult to such an extent that we deprive his infancy and his life before birth of all human quality.¹³⁹

Finally, this criterion reduces the unborn to mere objects whose meaning and value depend on what their parents think of them. It opens the door not only to abortion but also infanticide, and it implies that those who regard themselves as humanized and socialized would be justified in doing away with any group they did not consider "functionally human".¹⁴⁰

4.3.6. Social perception

According to the proponents of this criterion, humanity and in this case the fetus derives its value and meaning for its life through acceptance by parents such that in the absence of such acceptance its life cannot be guaranteed or valued. There is, however, no justification for making the quality of unborn human life contingent on the sensory perception or the emotional response of parents or of society at large:

Secondly, the human sentiment is an unreliable index of the dignity of others. Many communities have experienced difficulties in feeling that persons of a different color, creed, language or sex were truly human.¹⁴¹ The slave owners of the past centuries, the past and the recent Genocide cases in Rwanda and other tribal or religious based strifes across the globe are just but a few manifestations of the unreliability of this criterion.

Thirdly, while it is true that we mourn the death of an adolescent more than the loss of an unborn baby or a neonate, this does not in anyway point to any substantial difference in the humanity of the unborn baby, the young infant and octogenarian.

Fourth, just like feelings, sight is also untrustworthy in determining humanity. Incidences where sight has been used to the detriment of some sections of humanity abound. By sight, color became an acceptable criterion for determining who was man during the apartheid regime in South Africa. Minorities of various kinds exist today who are “invisible” or out of sight and are often not recognized as fellow – humans by society with which they have “lost touch” for example, prisoners, and mental patients, among others.¹⁴²

Fifth, perception of the fetus requires no greater effort than what is needed to penetrate physical and psychological barriers in recognition of other human beings. The main problem is that this perception demands a follow-up in the form of personal response and personal attention. Society therefore seeks to limit to a minimum the number of those who are entitled to its protection and care, and this lack of generosity restricts the scope

of its perception to a convenient group. The decision to close out the unborn from the circle of protection reflects an indifferent and gravely selfish attitude on the part of the "able" members of the human community.¹⁴³

4.4. Granted the fetus is not a person and therefore has no right to life is the abortion act morally acceptable?

Our position in this study is that even if the fetus is not a person and therefore has no right to life, abortion is always a violation of the right to life, whether the aborted embryo is an actual person yet or not.¹⁴⁴

For even persons who do not exist can have rights. Namely: those who do not yet exist and those who have existed, and are now dead. The dead person can have rights, a person's will concerning the disposition of his property after death. And that even those who have not yet come to be have some rights, for example, the right to inherit property left by parents/guardians or the right to health and integrity of requiring mother not to take toxic substances harmful to the developing organism in the womb.¹⁴⁵

Below are some of the arguments intended to show that persons who do not yet exist but are coming into existence through the process of embryonic development possess the right to life.

The first argument is based on the fact that embryonic development is naturally ordained to the life (existence) of the new person. The objections often offered in rejection of this position such as the question as to why this right is not extended to the sperm and ova, the objection concerning the formation of chimeras which are visible for about two weeks after fertilization can be accounted for by the fact that each early embryo, so far as we can tell is naturally ordained to become a particular person. This original ordination is not affected by the fact that an embryo subsequently ceases to exist as an independent being (chimera formation) or given rise to another early embryo (twinning). The

occurrence of these phenomena, therefore, does not refute the existence of a right to life from fertilization.¹⁴⁶

Secondly, unlike property, life is not owned by a third party. Each person's life is his or her own and does not belong to others. Property ownership depends on human agreement and tradition, whereas life belongs to each person by nature.

Thirdly, whereas ownership of life, however, does not imply the right to life, for even animals and plant's lives are their own by nature, the difference, however, is that the system of human rights is founded on the principle of human dignity according to which human beings exist for their own good. On the basis of this principle, each person is endowed with life by nature for the sake of that person and may not be disposed of by others in the furtherance of their interests. Neither can the able and better-placed members of the human race.¹⁴⁷ exploit it, as means to an end

The question is, can life be naturally meant for or intended for a person before he or she actually acquires it? The process of embryonic and fetal development, which precedes the existence of each person, is naturally ordained to use the existence of that person. Therefore from the very beginning of that process at fertilization, life is naturally intended for and therefore naturally due to the new person. From this fact together with the principle of human dignity, it follows that the right to life of every human person begins at fertilization. The objections often offered in the rejection of this position such as the question as to why this right is not extended to the sperm and ova, the objection concerning forming and the formation of chimeras which are visible for about two weeks after fertilization can be accounted for by the fact that each early embryo, so far as we can tell is naturally ordained to become a particular person. This original ordination is not affected by the fact that an embryo subsequently ceases to exist as an independent being (chimera formation) or given rise to another early embryo (twinning). The occurrence of these phenomena, therefore, does not refute the existence of a right to life from fertilization¹⁴⁸

The fourth argument begins from the premise that whatever exists in any way for the sake of the person shares, proportionately, in the dignity of the person or private property.

The embryo or fetus is related to the person who is coming to be in the most intimate way of all. It is destined specifically to become the person. Hence it shares even in the dignity of the person for whose state it exists than do the parts of the body. If then it is a violation of human dignity to mutilate a person's body, it is an even a greater violation to destroy a developing embryo or fetus.

Another argument for the fetus's right to life is derived from a consideration of the kind of value that belongs to a being, which is developing into something more excellent than itself. That which is moving from a lesser to a greater perfection should be evaluated primarily according to the greater perfection towards which it is tending. Therefore, the value of the embryo must be understood primarily in terms of the dignity or intrinsic value of the emerging person, and, for the sake of that person, must be accorded respect. The point here is that unlike the adult being whose life is tending towards an end and therefore degenerating while the embryo's life is just beginning to unfold.¹⁴⁹

4.4. Summary and Conclusion

In the first section of this chapter we have attempted to make a defense of the central thesis that the right to life begins at conception. In this section we have taken the position that biological realities – embryology, genetics and medicine are the basis upon which the criterion of personhood can be build. Our evaluation of fetal life is based on the empirical observation that, at conception a living and human organism arises, which is only terminated by death.

The question at hand, however, is how we can reconcile biological and philosophical data in that while some appreciate the contribution of biology in the search for a comprehensive criterion for personhood of humanity, they doubt the fact that such biological data warrant definite philosophical conclusions and strait forward moral imperatives. Hence, the need for a distinction between the empirical question and the philosophical question.¹⁵⁰

The position taken in this study is that the factual question: at what point in the reproductive process does the human individual originate, as Grisez observes, is answered by biology, which states that the fetus is a living human individual from the time of conception. On the other hand, the philosophical or moral problem is quite different: should we treat all living human individuals as persons or should we adopt a concept of personhood that will exclude some living human individuals because they do not meet certain additional requirements which we have previously incorporated in the idea of "person?" While we do agree that no amount of empirical facts will settle this question, we do believe that that notwithstanding, we have some reason to believe that the fetus is a person, namely the fact that it is a living human individual, as well as the inconclusiveness of the arguments that try to withhold personhood from the unborn child. Consequently, in the absence of any compelling reason to exclude the fetus from this category of humans, we must admit that the fetus can as well be considered as a person as not.¹⁵¹

Conclusion

In this chapter the position taken is that the fetus 's right to life extends to its beginning. That the criteria set forth by some philosophers namely Mary Warren, Michael Tooley and Peter Singer among others, as parameters for gauging whether it is a person or not are inadequate.

With regard to the claim concerning the potentiality of the unborn, the position taken here is that the child in the womb is not a potential person. It is an actual being with potential for growth and development just as a normal adult. There is a difference between being a person and functioning as a person. The child in the womb has a potential capacity to function fully as a person. In terms of being, the pre born is an actual person. The greater the level of development, the greater the capacity to function as a person and that the Level of development is relevant only to functioning as a person not to being a person contrary to the position taken by the developmentalists of the likes of Tooley, Warren who see this as an index to be used in determining whether or not a fetus is a person.¹⁵²

Looking at the development of the fetus from the zygote to the infant stage, one will not find any differences between successive stages significant enough to bear the enormous moral burden of allowing wholesale denial of fundamental rights at the earlier stage while categorically denying that permissiveness at the next stage.

But granted that there are differences even significant ones, between the zygote and the newborn but are those differences morally relevant? Are these differences sufficient to ground the differential treatment accorded to newborn babies on the one hand, and embryos or fetuses, on the other hand? When we compare an embryo in the very early stages of development with a newborn infant, the differences are marked; yet, there are also important similarities for example, they are beings of same species, have human parents, and they have the same genetic structure among others.

The real question is: what differences and what similarities are morally relevant? We need a criterion, which distinguishes morally relevant differences and similarities from morally irrelevant differences and similarities.¹⁵³

The claim that unborn humans differ from us in such a way that they lack basic moral rights requires evidence. Lee's contention is that, such an argument would have to show, not only that they lack some characteristics associated with entities, which have rights, but also why having these characteristics is a necessary condition for having basic moral rights.¹⁵⁴

Our fear is that when there is a strong predisposition on the part of some people to destroy a child, there is an interest that can obviously be used to draw a line in the scale of gradual development of the capacity to function as a person, designed specifically to exclude the uterine life that one wants to get rid of.¹⁵⁵ For the functioning person theory that underlies the achievement view can easily be formulated as excluding not only those who have not yet achieved "functioning as a person", but also those who no longer can function as persons in a particular, specified way.

Ultimately it would be a matter of power. Those in power could decide the level of achievement necessary for being counted as a person. The application of that might to exterminate other members of the human community who along the way have fallen short of the required standards will no longer be an imagination but a real possibility.

It is the position of this study that no one has proven beyond a shadow of a doubt that the human zygote is not essentially a person, and that, in the absence of such proof, reasonable people must act as if it were a person.¹⁵⁶

We have argued that we can be reasonably certain that the developing human organism in the womb is essentially a human person. We have attempted to show that it is unreasonable to hold that there is such a thing as “potential human life” and that it is quite reasonable to hold that at conception an individual human person in the “whole sense” is present physically in the space- time world as we naturally and normally perceive this world.

Our position is that the human zygote is an actual person with great potential, and not at all a potential person.¹⁵⁷ Our position is based on the following:

- (i) That though there is a gradual process in the development of a person, physical and psychological, there can be no gradual process in the being of a person. The gradual development refers not to the being of a person, but to his capacity to function as a person;
- (ii) That, there can be no such thing as a half person. If a person does not exist fully as a person, he does not exist at all;
- (iii) That the development of a human person can not be compared to a vehicle manufacturing assembly line for a person is totally unlike a car. The gradualist picture completely falsifies the being of a person and with it his gradual development;

- (iv) Lastly we have also argued that even if the fetus is not a person and therefore has no right to life, abortion is always a violation of the right to life, whether the aborted embryo is an actual person yet or not. For even persons who do not exist can have right, namely: those who do not yet exist and those who have existed, and are now dead.¹⁵⁸

From the foregoing discussions we can conclude that every member of the Human race has a duty to protect and preserve life whether of a child or a grown person, whether of a healthy individual or the terminally ill patient. Any attempt to value some lives and devalue others or to put one's life above that of the other as some supporters of abortion on demand like Mary warren have done, will not be in the best interest of the Human race, to which women belong.

The outcome of our analysis of the arguments seeking to rob the fetus and even young infants of their right to life has also shown that they are not only wanting in their construction but also in the adverse implications arising from them. The conclusion therefore is that such arguments can not be used as conclusive grounds for the woman's claim to abortion as a basic right.

Our discussion in the next chapter on the radical feminists' right to liberty claim will shed more light on these concerns.

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CHAPTER 5

ABORTION AND BODILY INTERGRITY, THE RIGHT TO LIBERTY AND THE RIGHT TO PRIVACY

5.1 Introduction

In this chapter we examine the thesis that a woman has a right to abortion based on the claim of the woman's right to bodily integrity and the right to privacy.

The proponents of this position among them, Judith Jarvis Thomson; Mary Warren, Steinbock among others, contend that the fetus's right to life must be weighed against women's rights to bodily integrity and privacy. Having a right to life, according to Thomson, does not constitute the right to be given the use of or a right to be allowed continued use of another person's body.¹

There are two distinct claims arising from this thesis:

- i. A woman has no duty to sustain the child
- ii. She may expel the child as an intruder

We begin by examining the argument that abortion, or many abortions, are morally right because they are not intentional killing, in other words they are indirect as opposed to direct killing.

The main proponent of the position is Judith Thompson, in her article, "Defense of abortion. In this chapter we will focus chiefly on Thompson's presentation but will also refer to others as mentioned above. We shall reply to the argument that killing the fetus is justified because the fetus is an oppressor, a denial that abortion is the intentional killing of an innocent "person".

5.2. Abortion, bodily integrity and the right to privacy

After granting for the sake of argument that a fetus is a person from conception on and that this in itself does not follow that abortion is always immoral, Thomson expresses her argument as follows:

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.²

Her reply to this position is to grant that the fetus has a right to life (at least for the sake of argument) but to deny that this right intends that the fetus has the right to everything she needs to sustain her life, in particular to the use of the woman's body. Thomson holds that the mother does not have a right to secure the death of the fetus. She argues rather, that the mother is not obligated to provide life support for the child in the form of the use of her body.³ The woman may, therefore, expel the fetus from her womb, if carrying the fetus to term would involve a great Sacrifice on her part.⁴

In an attempt to expound her position further, she makes the following now famous comparison. Thomson argues that pregnancy is analogous in the relevant respects to being hooked up to the famous violinist. And so, she concludes, just as it would be morally permissible to detach oneself from the violinist, so it is morally permissible, in many abortion cases, for the woman to remove the fetus from her body.

Thomson explicitly distinguishes between securing the death of the fetus, which she says is not morally permissible and removing the fetus from the mother's body, an action she says is morally permissible if carrying the child involves a great sacrifice for the mother. Her argument can be expressed as follows. There is a distinction between intended killing (securing someone's death) and bringing about death as a side effect. Many abortions are cases for bringing about death as a side effect, and instances of choosing not

to make a great sacrifice, rather than refusing to make a small one. Thus, most abortions are morally right.

Thomson denies that a biological relationship by itself can establish a relationship that obligates the mother to take care of her uterine offspring by virtue of being his or her mother.

According to her we do not have such “special responsibility” for a person unless we have assumed it, explicitly or implicitly. If a set of parents do not try to prevent pregnancy, do not obtain an abortion, but rather accept to carry the pregnancy to term, then they have assumed responsibility for it, they have given it rights, and they cannot now withdraw support from it at the cost of its life because they now find it difficult to go on providing for or nurturing the pregnancy.

5.2.1. Thomson’s argument and child abandonment

The reason Thomson gives against child abandonment is flawed. She says that after you take the child home the child has a right to be cared for because you have voluntarily assumed responsibility to provide him or her with care; the parents have given the child a right to that care. But suppose that the only reason a woman did not get an abortion was that she could not afford one. She and her husband take the child home because they had no alternative. Moreover, they live in a society where people are not inclined to adopt a baby. And so the baby is several days old before anything can be done. If they abandon the baby then the baby is found, he or she will simply be returned to them. Would it not, according to the analysis Thomson has given, be permissible for these parents to abandon the child in some isolated place – not to secure the child’s death, but to detach the child from them, although this would most likely result in the child’s death?

While some may see nothing morally wrong in abandoning the child in such a situation, we cannot help but acknowledge the fact that even reluctant parents have responsibilities to their children.

Thomson's argument would lead to condoning such acts, but also believe such acts are immoral. Thomson's position, according to Lee, has implications, which should at least cause one to pause and reconsider.⁵

5.2.2. The no duty to sustain argument.

In refuting the "no duty to sustain argument", we shall focus on Thomson's formulation of it. Our position on this formulation is that the two cases – the violinists plugged into the person and the child plugged into his mother – are radically and essentially different, that the alleged parallel does not hold; and this is so for three reasons:-

There are times when we may detach ourselves from another person, even though this results in his death. So far, Thomson has a valid point.

Thomson may withhold support from the violinist, and the lifeguard may withhold support from the drowning victim. They may withhold life-sustaining measures – they may not kill the other person. This is the crucial distinction here. Thomson's argument tries to justify abortion as an act of withholding support. However, it is also a primary act of killing. So even if it is justified under the heading of "withholding," it is not justified because it also falls under the heading of "killings" – where killing refers to actions where (A) the intention is the death of another person, or (B) the intention is something else, but what is actually done is in fact killing.

For withholding, as the term is used here, two conditions are necessary. The first refers to the intention. It can only be not to sustain, or not to save the other person; it cannot be to cause her death. To withhold support because you want the person dead does not fall under withholding as understood here. The second necessary condition refers to the mode of implementation. Withholding of the kind that Thomson is talking about can either take the form of an omission or the form of an action, as when Thompson cuts the link connecting her to the violinist. But that action can only be the cutting of the link or

something essentially similar. It cannot be an action that is in fact killing, even though; the intention is only the severing of a link i.e. the cessation of support. Thus if “withholding” takes the form of an action, it cannot be an action that is in fact killing.

This is where Thompson’s argument clearly fails. Assume that the human has no duty to sustain the child. This means only that she has a right to withhold her support from him. It does not give her the right to kill the child, which is what abortion is. If Thompson’s argument seems to have plausibility, it is because it views abortion only as an act of withholding support.

Thompson emphasizes on the withholding of support aspect of abortion, suppressing the deliberate killing aspect. The fact that an act may be right when viewed under one description or circumstances, does not mean that the act itself is right generally.

If the only way I can exercise my right to withhold support is to kill another person, I may not do it. My duty not to kill an innocent person takes precedence over the exercise of my right to withhold support.

The argument by Thompson, to the effect that such general statements in abortion literature such as “no one may choose say to help one abort’ should rather be *I cannot choose* to do it, do not hold water here especially as concerns the decision to support abortion or not.⁶ The basis of our decision is not really our personal tastes, opinion or preference. His or her own personal opinion but rather a rational stand applicable to all of similar kinds irrespective of their circumstances.

It is true that the right to life, as Thompson contends, does not imply or consist in the provision of what is needed to continue that life. Rather it is just the opportunity or space to go for it that is being referred to.⁷ To connect this to the argument that the unborn does not therefore have to use the mother’s body unchecked, even if it needs it for life, is not plausible. The mother’s womb is the natural place for the unborn at that stage of development. It is the opportunity and the space that is ‘its’ by nature at that stage and

time. So to deny it that space at that point in time or stage in development is to do to it the unnatural. It is a denial of a right granted to it by nature and not a privilege. That is why even the so-called test-tube babies still have to be implanted into its natural place, the mother's womb for its growth and survival.

The woman then is not being deprived of her right to take charge over what she has a right to: her body, but rather it is nature being given a chance to take its course without undue interference. The case of the two analogies of the Samaritans – the Good Samaritan and the minimally decent Samaritan used by Thomson to illustrate our obligation to others and the extent to which we can go in carrying out such obligations does not apply here as the issue of rights has no degrees or levels.

The specific attendant circumstances surrounding a particular situation may be different, but that in itself, cannot be taken as sufficient ground for relativity in degree and application.⁸

5.2.3. Intended killing and causing death as a side effect

The heart of Thomson's argument concerns the distinction between intentional killing and causing death as a side effect.

While in her original article Thomson claimed that unhooking the violinist would be direct killing, in her reply⁹ she concedes that unhooking the violinist would not be direct killing. On the contrary, Thomson claims that in many instances abortion is a case of not providing life support, rather than a case of intentional killing. According to Lee, whether she is comfortable with the distinction or not, her argument rests on the distinction between intentional killing and causing death as a side effect, or at least between intentional killing and "letting die".¹⁰

We will argue that Thomson is correct to say that not every abortion is intentional killing, but we will also argue that most abortions are intentional killing. Secondly, we will

argue that even if some abortions are not intentional killing, they are not morally justified, except perhaps in some cases to save the mother's life.

Whereas Thomson's position may be appealing to some, our position is that in addition to denying her premises, we also deny that her conclusions follow from her major premise. While admitting that some cases of abortion may not be intentional killing, they are nonetheless morally wrong for a different reason. One might argue that every abortion must be intentional killing because one must intend everything that one knows should be physically included in the physical act one chooses to bring about. But in abortion, one chooses the removal of the baby, knowing that one can not, according to this argument, choose the removal of the baby without choosing the killing of the baby.¹¹

If we put aside cases where those making the choice are ignorant of what is being destroyed in abortion, it does seem that abortion in which the death of the child is only a side effect are in the minority. Only mostly is it simply avoiding the condition of pregnancy that is denied (killed). Except in rare cases, what the parties involved desire to do is the absence of responsibility for a new child.¹²

Even in cases where what seems uppermost in the minds of those choosing abortion is the cessation of the condition of pregnancy, this motive may often be mixed with revenge toward the baby as the cause of the undesired condition, or, in rape cases for example, the baby may be hated through association with the child's father. So, again, most abortions (setting aside cases of ignorance) involve willing the child's death.¹³

Moreover, at least most of the cases of abortion, which are not intentional killing, are still objectively immoral while it is not always morally wrong to cause deaths as a side effect; it is not always morally right either. The question is, what criteria are there for determining when causing death, as a side effect is right and when it is not? And, how do those criteria apply to the abortion case?

Parents have a duty or responsibility to their children even if they had taken careful precaution to avoid having children by contraception or by natural family planning. The question about whether those children were planned or unplanned is inconsequential. For most people realize that contraceptives and other methods of avoiding conception have a certain rate of failure. Reckless drunk drivers are responsible for damage they cause even if they make great efforts to avoid it. Thus, contrary to Thomson's argument, we are responsible for the natural and foreseen results of our actions even if we try or have tried our level best to avoid them.¹⁴

The responsibility to the child that stems from the fact that one has performed the action, which causes the child's conception, is a responsibility that belongs both to the mother and to the father. Our laws for child support recognize this point: fathers who have fallen back on their child support can not claim they have no duties to their children on the grounds that they wished not to have them. Thus the parents of the child have a specific duty to the child. In virtue of that duty, the parents are morally required at least to refrain from performing an action that would cause the child's death.¹⁵

With regard to the fate of the fetus's life in the abortion process, Thomson concedes that while she is arguing for the permissibility of abortion in some cases, and not the right to secure the death of the unborn child, it is easy to confuse these two things in that up to a certain point in the life of the fetus, it is not able to survive outside the mother's body and therefore aborting it guarantees it's death.¹⁶

In response to the above claims, we will make the following criticisms:

First, as Thompson has acknowledged, there are some situations where the two; aborting and securing the death of the fetus, cannot be separated. For example in the case of abortion in the first and second trimester the death of the fetus is inevitable.

Secondly by making a decision to abort one is not only thinking of aborting the physical body but the very life therein.

Thirdly the methods used in the abortion procedure – Dilation and curettage (D&C), Dilation and Evacuation (D&E), Saline solution and the vacuum machines leave one with no doubt as to the intention regarding the life of the fetus and it's final outcome. Under such conditions and circumstances the fetus's probability of survival is very minimal although it cannot be ruled out. Hence the talk about just the right to "remove" and not to kill is just mere propaganda and euphemistic talk far removed from the reality of what happens: the actual death of the fetus.

5.2.4. Abortion in pregnancies due to rape

Save for the cases of rape, sexual intercourse is a premeditated act that the parties' concerned get into with the full understanding of the consequences attached thereto or arising from the act. But even if the pregnancy was as a result of rape would the removal of the baby erase the reality that one was raped? Will it not instead add physical pain? Is the expectant mother not risking her life even after escaping from the noose of the rapist?

How about if the mother were to make a decision to continue with life, in spite of the unfortunate incident and carry the pregnancy to maturity and perhaps give out the baby for adoption in case she doesn't want it? During the delivery process women have been known to curse the fathers of their babies but it is no secret that upon delivery, the joy of having the baby by her side replaces the curse and before long the woman is in the "act" again, the memory of the pain having faded but sure to return during the next visit.

As John Noonan notes, "Rape causes fear and a desire for revenge, and reference to rape evokes emotion. The emotion has been enough for the state to take the life of the rapist. Horror of the crime is easily extended to horror of the product, so that the fetal life becomes forfeit too".¹⁷

Expelling the child from the womb at an early stage of pregnancy imposes a grave burden on the child, since it causes his or her death. Now, the fact that the woman has been

violated, as in the case of rape, does not morally justify her imposing such a burden on an innocent third party. Furthermore, even though the woman has not voluntarily performed the action, which causes the child's conception, the biological relationship itself does have moral significance. First this physical bond creates a special duty to the child. Second, and perhaps more clearly, an action chosen by the mother who kills this child is an action against herself because she exists in a way in her child through that special bond.

This second implication has important psychological ramifications due to rape. The central violation in rape is a loss of autonomy.¹⁸ The rape victim needs to sense her regaining of autonomy, and to regain her self-esteem. But in so far as causing the death of her child is an attack on herself or on the prolongation of herself, to that extent abortion prolongs rather than helps the violation involved in rape.¹⁹

In addition to the injustice to the unborn child, having the abortion is more likely to exacerbate the mental and emotional problems of the girl or woman pregnant due to rape rather than help it. For these reasons, rape cases do not provide moral grounds for abortion.²⁰

5.2.5. The analogy of the famous violinist

In her article "Defense of Abortion", Thompson argues that abortion may be morally permissible even if the premise that the fetus is a person and that every person has a right to life was to be taken as true.²¹

Using an analogy of a violinist, Thompson makes an attempt to show that even if the fetus has a right to life this right does not give the fetus leeway to whatever it needs including the use of the woman's body to stay alive.²²

In response to Thompson's claim above, and her use of the violinist analogy, there are things in nature that one cannot successfully argue out such as why human beings are the

way they are or why individual persons have their body features and colors and not otherwise. These are things beyond our control, however much modern science and technology struggle to take control of in the sense of trying to look for justifications and explanations about the same.

In the same vein, we cannot argue that the unborn has no right to use the woman's body to stay alive. This is an intricate feature of nature in which we find ourselves. It is not of human decision or will nor a happenstance.

Furthermore to compare the unborn with a forcefully plugged in violinist, is to be very simplistic. This analogy completely waters down the gravity of the issue at hand and in effect misrepresents the real situation and circumstances surrounding the pregnancy in question, and more so, the mother-child relationship.

The cases Thomson compares to pregnancy as a basis for her argument have significant dissimilarities. Indeed, it is precisely the features unique to the violinist example – the injustice and the extensive burdens – that pull on our intuitions so that we tend to feel it would certainly be permissible to unhook the violinist²³

Thompson's violinist's argument fails because the two cases she employs are not parallel and therefore uncomparable. The person hooked up to the violinist (we are assuming) has no duty to sustain him, for he is a total stranger, standing in relation to the person that is most unnatural. This is exactly the opposite of the mother – child relation, which is most natural and proper.

If the mother has the duty to sustain the child, she may not “unplug” herself from him. Therefore, abortion merely as “unplugging” is morally wrong. So the “duty to sustain” argument is wanting at its very core; the woman does have a duty to sustain her child, because it is her child. The person plugged into the violinist does not, correspondingly, have the duty to sustain him, for he is not his.

There is indeed a special relation between the woman and child; the child is entrusted to her, as she was entrusted to her mother when she was a child in the womb. The “no duty to sustain argument” arises out of denial of this deep relationship of being entrusted, or a refusal to accept it.

The claim to a right over one’s body as a rallying point for the pro-abortion proponents is not a genuine claim to a right, for it cannot be compared to an ordinary claim that one member of a group or society or the group or society itself would claim as his/their entitlement as the members of another group. It is rather a refusal to acknowledge the relationship of being entrusted or being looked upon to provide direction. It is the expression of a determination to live one’s life even at the expense of utterly crushing that of another.²⁴

Abortion is a double tragedy: the killing of a helpless member of the human race, in a most cruel way, and the denial of the special parental relationship of entrustment. The woman who has an abortion destroys a child who is especially entrusted to her by nature.

Furthermore it should also be noted that the child in the womb is not a patient as the violinist. She has no declared kidney problem or any other disease that can warrant being hooked to the only hope available for survival: her mother. So the comparison here is unsuitable.

Mary Warren an ardent supporter of abortion on demand does not spare Thomson in the appropriateness of the use of the violinist analogy and the resultant argumentation. Having given her credit for her bold move in questioning seriously the assumption long held in the abortion debate by opponents of abortion that the fetus is a human person therefore abortion is murder; she challenged her choice of analogy. While appreciating her for her boldness and acknowledging the fact that so far she is the only one who has seriously raised the issue of the moral permissibility of abortion without becoming involved in problems about what entitles an entity to be considered human, and accorded full morals, nonetheless, Warren sees Thomson’s Violinist argument as based upon a

clever, but faulty, analogy. According to her the argument is initially quite plausible, and in the extreme case of pregnancy due to rape is probably conclusive. Difficulties arise, however, when we try to specify more exactly the range of cases in which abortion is clearly justifiable even on the assumption that the fetus is human. In this regard what shall be said about the woman who becomes pregnant not through rape but as a result of her own carelessness or because of contraceptive failure or who gets pregnant intentionally and then changes her mind about wanting a child? With respect to such cases, she observes, the violinist analogy is of much less use to the defender of the woman's right to obtain an abortion.²⁵

As is evident from the arguments above, Warren's problem with Thompson's violinist analogy is that it only takes care of the abortion due to rape cases where the women can be exonerated of any blame and leave out cases where women contributed to the pregnancy intentionally, but must at any rate abort, with no restriction when they want it. Warren is of the conviction that a woman has a right to obtain abortion regardless of how and why she got pregnant. Unfortunately, she argues, once we allow the assumption that a fetus has full moral rights; we cannot avoid taking this absurd suggestion seriously.²⁶

Warren's contention here and even Thompson's, especially her concluding remarks concerning the decision to grant the fetus person-hood as a starting point to her work to the effect that she was pretending, unveils the very intentions of the proponents of abortion on demand: the formulation of clever ways, tactics, shrewd and crafty argumentation to justify their pre-held and supposedly no looking back decision to abort and nothing else. The question of granting rights in the first place is a lofty one. Who are we, and where do we get the power to give or withhold at will? It is our position in this study that as fellow humans we can only acknowledge the fact of life in us, before us and with us. The power to grant life *per se* is not in our hands.

5.2.6. The unborn child as an aggressor

The fetus cannot be categorized as an “aggressor”. In the first place an aggressor need not be guilty of his threat in order to be an aggressor, but at the very least there must be some action which he is performing, and which he would be guilty of if he did it voluntarily, in order for him to be classified as an “aggressor”.²⁷

Neither can we talk of a woman having a right to self-defense because in the first place there is no declared war between her and her offspring. If anything it is in fact a case of aggression on the part of the mother. This calls for a solution. A decision has to be made as to the justification or “un-justification” of such kind of aggression.

The fetus is simply growing and developing in his/her natural abode in a way quite natural to him or her; the fetus is not performing any action that could in any way be construed as aimed at the life or well being of the mother.

In any situation of conflict where a decision has to be made one way or another, where it is either the mother’s or the fetus’s life that has to go, such actions would be morally right only if another condition were met namely, the selection of which one to save were just. The procedure to be followed in making the decision has to be fair and considerate with all the attendant circumstances fully and soberly examined and all available options fully exhausted.

5.2.7. The “child as an intruder” argument

The second claim for a right to an abortion based on a woman’s right over her body concerns the child as an intruder.

First, the unborn child is not an intruder. He/she is precisely where he/she should be, in the place appropriate to the just phase of his/her life. That an argument comparing a woman’s own child to a burglar or other intruder is even put forward is significant for what it reveals about the mentality of its proponents. What is forgotten in this mentality is the great privilege of being a mother, the gift of being allowed to nurture a new human

person. Also overlooked is the deep responsibility we have to each other, as members of the human community.

Second, even if the unborn child were an intruder that would justify only his/her removal from the woman not killing him/her. As already noted I cannot throw an intruder out, if this means killing him. Abortion is wrong because it is so much more than a mere removal. It means cutting the child to pieces, burning her skin etc. Would such a thing be done to a "born" person who was an intruder?

The child's relationship to the mother is not parasitic as is often claimed. This is total distortion of the real relation between the child and her mother. A parasite is essentially an alien being; the uterine life is clearly not an alien, but the mother's known offspring whom she conceived, her flesh and blood.

5.2.8. The child's right over his body

Further more if we were to extend our argument concerning the mother's right to her body we can argue that if it is true that the mother has a right to her own body then arising from that we can conclude that every other member of the species homo sapiens to which she belongs, has a right to his or her body. And that right includes the right not to have ones' body destroyed or right not to be killed

If a child has a right to his/her body then right to a woman's body cannot be used as an argument in support of abortion but rather to oppose it! Since that right too has to be protected.

5.2.9. The zygote and the acorn vs. tree analogy

In this analogy it is claimed that the zygote is no more a person than an acorn is an oak tree. Just as an acorn is not a tree, a zygote is not a person, though in each case the latter grows out of the former.

A conceptus is in the process of becoming a fully mature human being, and it could be more proper to compare it to an acorn that is sprouting into a full grown oak tree. As we would probably consider such an acorn to be an oak tree and not just an acorn, we should also consider the conceptus to be persons.²⁸

This analogy is based on the false assumption that there is a discontinuity between an acorn and oak tree. The acorn and the oak tree are not distinct organism. Rather, an acorn contains the embryonic plant that will become the oak tree. The acorn is the embryonic plant, plus other organic material such as nutrients. The planted seed does not die; the embryo it contains is the plant that will grow and thereby assume the familiar form of a tree. Essentially the same is true of the zygote. It is the being that will later be a born child.

If we assume discontinuity the analogy fails. If we recognize the continuity between an acorn and oak tree, then the analogy fits, perfectly and merely points out that the acorn and the zygote are different from the oak tree and the later child respectively. The force of the objection is then to emphasize this difference. The acorn differs from the oak tree in being much smaller, less developed, in location and in appearance. The same applies to the child in her zygote stage and her later stages.

Furthermore, the comparison, which equates the fetus with an acorn and merely grants it some dormant potential, is biologically fallacious because as is the case with most seeds—the acorn represents an inactive phase in the reproduction process of the mother plant. Human creation, Grisez observes admits of no such stage.²⁹

5.2.10. The mother's right and the unwanted child

In the first place it should be acknowledged that the “unwantedness” criterion speaks nothing of the being of the child who is being said to be unwanted. It only talks about not being welcome in the locality in which she is at this point in time. And that in itself does

not also say anything about whether she is naturally where she ought to be at this point in time or not. No amount of feelings can change this reality it can only obscure it.

It is doubtful that the mother has a right to deny protection to the child who is not wanted because material organisms are teleological directed towards both the needs of the child as well as those of the mother. As a result the mother is not simply “letting the child use her body” for the child has some sort of rightful claim to use the organs which are naturally directed towards its gestation.

What she says would be true of organ donation but it is not entirely true for pregnancy because one loses the use of organs temporarily in pregnancy, but in organ donation one permanently loses them and gives them away.

5.2.11. Case of missile and children

The argument in this analogy is about the existence of a dangerous missile within the children’s playing ground which if not immobilized can be triggered off by the playing children with subsequent loss of many innocent lives.

The argument in this analogy that the life of the unborn can be denied or ended on account of threat it poses to the mother and other members of the society is wanting in one major aspect.

It would be a wise idea and an appropriate one, to attack the missiles and only indirectly threaten the children assuming they launched the missiles unintentionally. Deliberately killing them in this instance would not be permissible, but deliberately attacking the missiles while indirectly threatening the children could not be unjust.³⁰

5.2.12. Case of chocolate and brothers

With regard to the analogy of the chocolates and the brothers, the analogy does not bring out clearly the mother –fetus relationship in that one can say that the chocolate belonged

to the elder brother any way so the other brother was not entitled to it in any way. Hence the brother is justified in denying him a share of it.

However, the right structure of abortion is better illustrated by a situation where the older brother takes chocolates away from his younger brother that had been given to him or that he had brought for himself. This comparison not only expresses Thomson's belief that there is a right to life that pre-exists others claims, but it also expresses the pre-existent character of this right in a way Thomson's comparison does not. Unfortunately for her, this comparison argues rather forcefully against permitting abortion.

5.2.13. Baby's threat to the mother

The child is no threat to the mother as Thomson attempts to portray. But even if the child in the womb were a threat to the mother, the worst it could be would be a material threat because the child is incapable of intentional, deliberate and willful action. For if the child was playing in a car on a grade and accidentally caused the car to roll down the hill at a pedestrian that would not mean the child could be shot by another bystander simply because it was posing a material threat to the pedestrian.³¹

Furthermore, to compare the unborn to a tenant renting a house owned by the mother⁶⁹ is to forget the fact that the same (womb) was given the mother by nature. She found herself with it, not as a meritorious offer, but as a gift of nature or the creator as some claim. Hence no party can lay claim to it, not even the very life that sustains the said body. However this does not mean that the woman is helpless in her own house as depicted by Thompson, or a prisoner hence the need to revolt or untie herself.

5.2.14. Society of music lovers and Women

The comparison between the society of Music lovers and abortion is flawed because the society of music lovers is a deliberate and intentional aggressor against the woman who

in this case has a moral right to protect herself. With the exception of rape, pregnancy does not usually involve the profound deceit or fraud her hypothetical case does. This situation is also quite unlike a mother – child relationship, for that relationship is more enduring and a complex. This dissimilarity calls the authenticity of this comparison into serious doubt.³²

As pointed out earlier in our examination of the appropriateness of the violinists' analogy, the violinist suffers from a clinically diagnosable medical treatment that apparently can only be treated by another assuming an extreme and radical burden: being immobilized for nine months. The fetus ordinarily does not suffer from a diagnosable pathological condition that requires the therapeutic "medical treatment" of abortion.

Thomson compares abortion to withdrawal of medical treatment. If abortion is to be comparable to any action it would be more comparable to the woman reaching over and strangling or decapitating the violinist to whom she is connected than the withdrawal of "medical treatment" of abortion.

While the society of lovers may have unlawfully invaded the woman's body, that does not give the woman the right to reach over and stab or poison the violinist which is morally equivalent to what a mother permits in abortion.

When the woman disconnects the violinist she physically removes a medical treatment and her action only indirectly and remotely impinges on the violinist. But when the child is removed from the mother in an abortion operation, the action has the unborn child as its immediate physical object that immediately, proximately and directly kills the child.³³

When an abortion is performed the child does not die from an omission if a treatment and an underlying pathological condition from a death dealing positive action, which is unlike what prevails in the case of the violinist. The unborn child does not need medical treatment to continue growing. Rather, what it usually needs are measures that can be

properly classified as “normal care”, and for the mother to refrain from certainly lethal positive actions.³⁴

5.2.15. Housewife and invasion of “people seeds”

Thomson contends that, pregnancy is analogous to that of a housewife finding her home invaded by “people seeds” which enter her home when she opens her windows.

This comparison is flawed also for it implies that this housewife had no role whatsoever in the entrance of the “people seeds” into her house. This is quite different from a woman becoming pregnant by engaging in a sexual relationship. This example also implies that the child has a hostile intention and has deliberately imposed itself on the woman when it was free not to do so, both of which are also not true.³⁵

This analogy can only be appropriately applied in the case of rape. But even then in such circumstances it will not be sufficient to grant the mother the right to end the life of the organism resulting from that forceful and unwelcome act.

5.2.16. A woman trapped in a home and a baby growing very rapidly.

Most of the threats to the mother come from defects in her that are made present in the pregnant condition, and there is no way to eliminate that condition without directly killing either the mother or the baby. The high blood pressure, the swollen legs, the frequent morning sicknesses and other pregnancy related complications occur in the life of the mother and not the developing baby within.

In this regard, it is not the baby who is a threat to her but her inability to deal with the pregnancy that is the true threat to her health.³⁶

5.2.17. The comparison of pregnancy to an invasion of the woman's bedroom by a burglar.

According to Thompson just as a woman would have a right to slay a burglar forcing his/her way into her house at night, a woman would also have a right to slay an unborn child.

The difference between these two cases, however, is quite great for the burglar is obviously intending to harm the woman, in a free, direct, deliberate, willful and knowledgeable manner. However, the unborn child does not intend such harm against the mother. There is no deliberate move or attack emanating from the fetus's side.

Another difference is that the woman has only imposed a partial barrier to the burglar for she could take further measures such as an electric fence or posting of round the clock security around her house to protect herself. This case is like a woman who has sexual relations using contraceptives, for she too could take further measures to protect herself from pregnancy, namely abstinence.³⁷

The contention by Thompson that the maternal organs are the mother's property and the body is an unjust claimant to these organs fails to see that the maternal organ is also the rightful temporary possession of the fetus.

Furthermore, if the use of some maternal organs constitutes a proximate threat to the mother's life, similar to a case where the conception is lodged in the fallopian tube, whereby measures could be taken to save the mother that might indirectly threaten the life of the fetus. This is quite different from Thompson's sanctioning of the killing of the child because it is a material threat to the mother.³⁸

5.2.18. Burdens and Responsible Samaritan

The analogy of the Samaritan and the burdens imposed on the woman by the growing baby in the womb is also a misplaced analogy. In the first place the fetus cannot be compared to a stranger found on the wayside. The fetus has an intimate relationship with a Good Samaritan even if that relationship is being denied, as is the case with Thomson.

If the burdens imposed by a pregnancy on a woman warrant deliberate killing, it would seem that the burden imposed by a handicapped child on parents would give even greater justification for abortion.

The unwanted burdens imposed on the mother are not the result of free decisions or actions of the child, rather, they are a result of her decision to engage in an act that risks "pregnancy". And even if it were as a result of rape it would still not be as a result of a free decision or action on the part of the fetus.

The implication of Thomson's argument that difficulties suffered by the mother are caused by fetal action is contrary to medical reality that many of these difficulties are a consequence of the pregnant condition, and the mother and child suffer equally from those difficulties. In this regard if a mother is medically threatened by a pregnancy, the child is equally threatened with death or impairment.³⁹

Thomson's theory that burdens make abortion morally permissible is flawed because it is discriminatory and allows poorer women to have abortion where wealthier women could not because the burden of a pregnancy on a poorer woman would be greater than on wealthier women. If anything, it would at worst drain whatever little resources they have in their possession as they look for funds and other related resources to meet the financial implication of the abortion decision.

Thomson's claim that a woman is forbidden to abort because of being physically proximate to the child and therefore has greater obligation to preserve life, fails to see that the strength of one's duties to refrain from abortion is not based on one's proximity to the agent, but on the obligation to refrain from directly taking life.

Entailed in Thomson's analogy is an implication, which application will negate the decision of abortion on grounds of being a burden. For if being tied to a violinist represents only a light burden as Thomson envisages in her analogy, then the case for abortion based on this analogy is then significantly weakened, if not destroyed altogether.

On the other hand if it represents an extreme hardship and burden, the very strength of this argument is also the collapse of the argument for abortion based on it. For that argument, if granted, would justify abortions only when they represented extreme hardship for the woman.

What defenders of abortion want of course is a general universal right to an abortion, especially when they stress a woman's right over her body. Thus the analogy of the violinist, when the connection to him represents an extreme hardship, will simply not apply. Hence the argument fails.

It should also be noted that in cases of extreme hardships and sufferings we do have an obligation not to let others die, hence to sustain them if they need our help. This applies to strangers and our own family members during times of national catastrophes such as famine or earthquake.

Thus even if we were to grant that the mother has no specific obligation to care for her own child, there is the very important general obligation we all have to each other, to sustain one another. A woman would have the duty to sustain the child even if she were a stranger, unless it were an extreme hardship or burden, one which very few pregnancies involve. But even then she would have only the right not to sustain, not the right to kill.⁴⁰

Thompson's argument to the effect that the expectant mother can only grant the fetus rights once she has accepted responsibility over it is wanting.⁴¹ The responsibility of the expectant mother over the unborn need not be announced or declared or assumed formally. It is an automatic responsibility that comes with the natural condition into which the woman has entered. However, that responsibility need not necessarily bind the mother to keep the child after birth for the woman is free to keep the child after birth or to put it out for adoption.

This therefore means that the claim about giving the unborn rights after birth⁴² does not arise. The room for choice in terms of responsibility assumption is after the birth of the child. The mother will have the option as said above, of keeping the child or giving it out for adoption.

Furthermore, to argue that abortion may not always be permissible, and that abortion is permissible except in cases where it falls beneath the standard of “minimally decent Samaritan”, as Thompson does, is not acceptable.⁴³ We can not peg the rights of the unborn on our social or economic considerations or conveniences.

Thompson’s analysis of burdens and abortion is unfortunate because it undermines many of the protections that could have been given to the unborn. While in other sections of her discussion, she admits the mother’s right to abortion, in admitting that the burden of pregnancy can justify abortion, she, however, abolishes those protections in practice. The ultimate consequence of this analysis is that she generally makes the rights of the baby contingent on the needs, claims and desires of the mother. But while Thompson may deny this, her theories in fact do deprive fetuses of all rights against a mother who does not consent to their presence or who finds their presence burdensome.⁴⁴

Thomson’s criteria could permit abortion when the mother did not consent to the pregnancy, and this criterion gives justification to abortion on demand. While she seeks to present herself as only giving justification for abortion in strictly limited circumstances, her permission for abortion when maternal consent to pregnancy has been withheld, allows her to justify all abortions

Thomson has indeed overlooked the distinction between our duty to save a life and our duty not to take a life.⁴⁵ The former duty is much weaker than the latter.

According to Brody, granted that the fetus is a human being whose life may not be taken except in the most extreme circumstance. It is permissible to abort to save the mother’s life if the fetus is going to die anyway in a relatively short time and taking its life is the

only way to save the mother. The whole rationale for taking some life to save others “is that he whose life will be taken loses nothing of significance and is not therefore being treated unfairly. To this role he adds an additional requirement that taking the mother’s life will not save the child, or even if it will, it has been determined by a fair random method, that the mother and not the child, ought to be saved.”⁴⁶

Brody’s argument ought to be rejected because in the first place human life is so vital to be subjected to some swinging individual moods and preferences through random selection.

Philosopher John Finnis⁴⁷ claims that Thomson has muddied the discussion by conducting it in terms of rights. According to him, the dispute is properly about what one “must do”, or morally required to do. After such determinations have been made, we will be able, by a convenient location, to assert the child’s right. Furthermore, he asserts, Thomson’s constant appeal to rights obscures the weak points in her defense of abortion.

That point is seen in the contentions that:

- i. Rights typically or essentially depend on grants, concessions, among others.
- ii. Special responsibilities likewise depend on grants, concessions, among others
- iii. Therefore the whole moral problem here concerns one’s special responsibilities

We reject the idea that the mother’s duty not to abort is an incident of special responsibility she undertook. Rather, it is a straightforward incident of an ordinary duty everyone owes to his neighbor.⁴⁸

In the presentation of his own understanding of the morality of abortion, Finnis argues that there are basic goods that demand, among other things, that we never choose directly against them. And among such goods is the right to life.⁴⁹

The conclusion of the argument arising from Thomson’s use of the analogy of the sick violinist and the fetus is clear, for if the right to control one’s body justifies “unplugging”

the violinist, it must also legitimize abortion, regardless of whether the fetus is a human person or not.

While Thomson's argument may appear convincing at a glance, a further look at counter examples reveals the contrary: that the reasoning rest on confusion. In his critique of Thomson's violinist analogy, Murphy gives the following counter example whereby he is involved in a shipwreck and after being thrown off board, he manages to secure himself to a large piece of flotsam. But while lobbying around in the water a non swimmer grabs his hand asking for help but basing his argument on Thomson's contention 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," he shakes off the non swimmer and down the water he goes.

Murphy's contention is that whereas he will be accused of acting in an immoral manner in this particular situation, Thomson's analogy ought to fall in the same category. He asserts that:

But why does the immorality show up so clearly here, and not in Thomson's paradigm? The answer I think lies in the degree of hardship being imposed upon the persons whose bodies are being used. In my example, it would have required very little effort for the one shipwrecked person to have saved the life of the other. In Thomson's analogy, however, we are asked to consider ourselves bedridden for months, even years. And as Aristotle long ago realized, anyone can "break" under pressure and do something which he realizes is morally wrong. Now in certain cases... the man who "breaks" and acts immorally is said to have an excuse for his actions. But to excuse an act is not to say that it is morally right. Indeed, just the opposite is true, for unless an act is morally wrong, it hardly stands in need of an excuse. And if this is granted, two conclusions seem mandated: First, if Thomson's reasoning has some "convincing power", it is only because the reader has followed her in failing to distinguish between excused acts and acts which are morally right. And second, if Thomson's argument shows anything at all about abortions, it is only that it is a morally wrong act, which, like all other morally wrong acts, may sometimes be excused.⁵⁰

In the light of the above argumentation it becomes clear that the mother's responsibility can not be merely overlooked nor denied. She truly has a duty to take care of the uterine life in her womb.

In her response to the conservative view that abortion is impermissible even to save the mother's life, she seems to suggest that if the woman's right to decide what happens in and to her body is added to her right to life, what she shares with the fetus then the sum of her rights will outweigh the fetus's right to life.⁵¹ But can we talk of how much rights one has? Can a right be measured in weights of "quarter", "half", or "full"? One may have a right to some information and not all information. But to the extent that, that information is extended, it is itself a full right – a right as a whole not pieces of it. It is the access to what one is entitled to that is being limited.

In reference to the claim by Thompson that the 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 abortion, we should understand that such attention is guided by the subject matter of the abortion debate: the fate of the unborn.⁵³ This does not in anyway mean that the interests or rights of the mother are subordinated to the third party. She is part and parcel of the act on the ground that she has the custody of the subject matter: the unborn child. And hence cannot accurately be compared to the analogy of the house that passively waits to be exploded from within by the unhindered growing child.⁵³ None of the actors in the relationship – neither the mother nor the unborn child is a passive spectator of the unfolding mysteries of nature. They are both actively involved in the process.

5.3. Feminists' Bio-ethical perspective on Abortion and The right to liberty

Some feminists believe that abortion debate should center not on the question whether the fetuses have equal right with adult human persons but, rather on the fact that fertilized eggs develop into infants inside the womb of women.⁵⁴ The key question in the abortion debate according to them, should be, "can it be moral, under any circumstances, to make a woman bear a child against her will? Women, to them, must have power to say "no" to potential life.⁵⁵

According to Thomson whenever the fetus's life comes into conflict with that of the gestator, the woman's right to life overrides that of the fetus. But contrary to Thomson's analogy abortion cannot always be seen as a fetal extraction. For among those who carry out abortions, are those who do it with the goal of fetal extinction. It is in this regard that some feminists argue that it is more important to stress a woman's right to privacy as a ground for abortion rather than women's right to bodily integrity. Rosemarie Tong captures the essence of that concern thus:

Assuming that Thomson is correct – that the right to life does not include the right to use someone else's body to support that life – and even assuming (as Thomson does not) that all fetal extractions are therefore justifiable, unnecessary fetal extinctions would not necessarily be justified. Nevertheless, when a woman seeks an abortion, fetal extinction rather than mere fetal extraction is probably her goal. She simply does not want to procreate – to bring another life into the world at that time. In this connection, some feminists claim that it is more important to stress women's rights to privacy (to procreate or not than women's right to bodily integrity. In this new approach the emphasis is on the fact that the woman's right to procreate entitles her to the death of the fetus even if survives the abortion procedure.⁵⁶

Among the proponents of the above position is Christine Overall. She puts forth the following four arguments in support of the view "that failure to observe the wishes of the biological mother with respect to the death of the fetus is morally wrong. First, Overall argues that keeping the fetus alive against the wishes of its biological mother violates that woman's reproductive autonomy.

Second, saving the fetus against the mother's will would be like compelling her to donate organs against her will. While acknowledging that unlike organs or blood, the fetuses have a life of their own, Overall, refused to grant any hope or any effort aimed at survival of the fetus born alive. As to the method of abortion, that to overall depends also entirely on the mother. However, while, the fetus will die physically, the memory of the abortion act will not die from the mind that easily, if that were ever possible. Furthermore, what has the fetus done for it to die by all means?

Third, by virtue of her physical relationship to the fetus, the biological mother is the most appropriate, if not the only one, to decide on the disposition of the fetus. This argument, according to Overall, is only applicable fully with regard to the “not-yet-born fetuses” and only partially with respect to “born fetuses”, including those who survive the abortion procedure. The ground for this is that since the born fetuses are like premature infants the biological mothers have an obligation to take their interests, including their interests in living and being adopted.

The crucial point to note here, however, is that the relationship between the mother and the fetus begins from conception and grows the fetus develops. Therefore, whether within the womb or extra uterine, the obligation for the mother to nurture and care for her offspring can not be underscored.

Fourth, deliberately withholding the determination of the disposition of the fetus from the biological mother is yet another example of the take over of reproduction by women. Arguing in consonant with philosopher Anne Don chin, Overall contends that the legal and medical encroachment on women’s reproductive autonomy during pregnancy must be resisted at all costs. It is the woman alone who can decide the kind of abortion she will have and what to do with the fetus that is born or removed born alive. The mother has a *prima facie* right to decide what is in the infant’s best interest.⁵⁷ In regard to overall’s contention that the mother of the fetus born alive should decide his or her fate is flawed on the ground that when the parent does not want the child, it is justifiable to conclude that the parent does not have the child’s best interest at heart. Thus in the case of the fetus who survives the abortion, another party within the woman’s network of relationships, especially the father should decide the fate of that child.⁵⁸

The major shortcoming in this position is that the complainant is to decide the fate of the accused? In most cases such judgments will not be fair and more especially when it is being made within the context where the fetus’s life must go!

Allison Jaggar presents the position that in a patriarchal society; a woman should have the sole legal right to decide, in her own case whether and how an abortion should be performed. However, instead of using the woman's primary rights or bodily integrity as his grounds for the claims, he appeals to what he calls two fundamental principles namely:

- i. the right to life for, a human being "means the right to a full human life and to whatever means are necessary to achieve this and
- ii. Decision should be made by those, and only those, who are importantly affected by them.⁵⁹

It is Jaggar's position that unless the individual or the group is prepared to rear a child to adulthood, the fetus they saved from abortion, he/she or they, have no moral grounds for compelling a woman to continue with a pregnancy against her will. The woman's right is derived from the fact that she is very likely going to be the one to rear that child to infancy.

The response to this claim, however, is that if the right to life means the right to a full human life and whatever is necessary to achieve it, then why is the fetus being denied that full human life by being nipped in the bud? And all these happen, even after escaping the first attempt in the womb? Concerning the second principle, the father too is closely affected by the act; the medical practitioners who are performing the abortion are no exception. The siblings too and the larger society cannot be left out of the circle of those affected by the act, each within the context of their relationship with the fetus, the parents, family friendship, or professional grounds.

The pro-choice feminists are wary of any attempt to limit or deny the woman the right to abortion on demand through various attempts such as:

- i. Limitation on public funding on abortion related cases

- ii. The requirement for third party consent or notification provisions which invite intervention either by parents or of spouses into the abortion decision
- iii. For example the concept of informed consent which they believe has been invoked not so much to increase women's knowledge about abortion as to make the abortion decision more difficult for women.⁶⁰

In addition to the above concerns about funding restrictions, notification and consent laws, and regulations about the time, place, or method of abortion, the pro-choice feminists are now even more worried about the fact that the new development in neonatology, have pushed back the point of fetal viability from twenty eight to twenty six weeks. The implication of these new developments on women is that younger and younger fetuses can now be able to survive outside or within the womb and that lowering down of the viability point will likely lock out some women who would want to do an abortion beyond the new limit/point.⁶¹

5.3.1. Concept of liberty

Those opposed to abortion see abortion as immoral, the murder of a fetus, and a violation of the right to life as an inalienable right. This position holds that to place no value on the interests of the unborn is immoral and carries consequences for all society.⁶²

At the other extreme is the belief that a woman has exclusive rights to her own body. Another variation on this position holds that a woman, not a male parent, a physician or a nurse, or members of her community, has a right to decide whether or not she should seek an abortion. This decision is for the woman, not because of the right to her body, but rather, according to this view put forward by Jaggar, because a woman has a right to decide based on two principles.⁶³ The first principle is that the right to live means "the right to a full human life". Jaggar contends that a newborn has the right to a full human life, and if the woman is unable to provide it, she has a right to terminate her pregnancy. Jaggar's second principle is "that decision should be made only by those importantly affected by them"⁶⁴. This onus rests on the woman since, it is claimed, in our culture the

main onus of parenting rests on a woman on the ground that since she is most importantly affected by it, she should be the one to decide.

The unique thing about Jaggar's first principle is that until recent times the right to life has not implied "the right to a full human life", including necessary means such as a nurturing caretaker and adequate food, shelter, clothing, education, and healthcare. Maurice Granston and Charles Fried, oppose Jaggar's understanding of rights on grounds of the cost involved. The point is that it will neither be sustainable nor feasible. However, in Jaggar's argument this position is consonant with the theory taken up by such writers as Golding and Feinberg who identify rights to a full human life with welfare rights.⁶⁵

The argument often presented by the pro-choice proponents that women should have exclusive freedom to determine when life begins and to choose whether they want to carry the pregnancy to term, because they are the ones who bear the burden implies that the unborn is part of a woman's body. This, however, is not true because right from the early stages of its development the unborn is a completely different entity from its mother.⁶⁶

The early embryo can not be considered a mere piece of the maternal tissue. From the very beginning the fetus has an entirely different potential. Moreover, there is a genetic incompatibility between the tissue of the mother and that of her off spring, and the mother's body would reject the child if it were not enclosed in the amniotic sac. Nor can the value of the zygote be equated with that of a set of blue prints for a particular structure. Unlike the blue prints of a house, the zygote is alive and dynamic. It is in continuous contact with the end product, the mature individual while blueprints are merely an external point of reference for the builders, disposable when the house is finished.⁶⁷

Whereas it is true that a pregnant woman is free and everybody should enjoy his/her freedom it is also true that certain conditions may arise which may demand a limit to one's freedom. No one can absolutely, legally control his /her own body or that of another.⁶⁸

One's rights are workable only in the broader context of the rights of all. "When we tolerate abortion-on-demand on the grounds of the "freedom to choose", we in effect favor the right of each individual to impose his or her morality on the defenseless in the human family"⁶⁹

Individual liberty must be circumscribed to the interest and needs of the whole.

Naturally and traditionally, a mother's obligation is to care for the welfare of her child; her body is so designed as to provide such care during the normal term of pregnancy. The question, however is this, do a mother's right extend to a denial of what is natural to her.⁷⁰

Whatever actions people undertake, they have some consequences-both positive and negative. Pregnancy among other things is a possible consequence of a sexual encounter. The mother has already exercised her right to "freedom of choice" by choosing to have sex, by choosing to make herself susceptible to pregnancy. Although it may not be what she wanted or intended, she could have been aware that conception is an inherent possibility of such a choice.⁷¹

Freedom is not free reign. "Rather, freedom is a state that grows from an awareness and acceptance of truth. But what kind of "freedom" is found in the pregnant mother when the oppression she seeks to avoid is turned on her own would be son or daughter?"⁷²

Because all life is interrelated many individual rights are partial and not absolute. If from one's choice emanates deadly consequences which affects others, he, or she should restrain from making such a choice.

Mary Warren

Mary Warren, argues that the extension of legal person-hood to the fetus would not only threaten women's rights to choose abortion, but also undermine other fundamental

rights.⁷³ It is in the light of these dangers therefore, that she argues that birth remains the most appropriate place to make the existence of a new legal person.⁷⁴

In response to Warren's claims above, we ask, "What is Warren's concern? Is it the desire to seek to know whether the fetus has a legal right or her fears about the granting of legal rights to the fetus and its implication on the woman's interests and well being? But must the women abort or kill to show that they have a right to exercise? Must the unborn be subjected to untold suffering for the sake of women autonomy? Do they have any connection or relationship that ties them together? Can anything good come out of their relationship or is there anything good or positive in their relationships?"

According to Warren, it is impossible to treat fetuses in *utero* as if they were persons without treating women as if they were less than persons. And that as Warren claims, the extension of equal rights to sentient fetuses would, inevitably license severe violations of women's basic rights to personal autonomy and physical security. If abortion must be justified as self defense, she contends, it would rarely be performed, until the woman is already in some extreme danger. Such a policy, she contends, would cost some women their lives, while others would be subjected to needless suffering and permanent physical harm.⁷⁵

As a rejoinder to Warren's claims above, the claims are not in tune with reality especially with regard to statistics on pregnancy related deaths? It is no secret that of a big portion of deaths among women are those that have disregarded the status quo and gone ahead to carry out abortion with the claim that what they are aborting are not persons or not necessary or unwanted at that time.

Furthermore, and as we shall try to show later in the chapter on Abortion, Infanticide and Euthanasia, those women who have accepted to abort their children on flimsy grounds and the supporters of abortion are guilty of contributing to the devaluation not only of children, but more significantly, the entire humanity, women being part and parcel of it.

Furthermore, Warren continues to argue, the recognition of fetuses as persons not only poses a real threat to women's autonomy but every aspect of life. This they do by authorizing the legal regulation of virtually every aspect of women's public and private lives, and thus, is incompatible with even the most minimal right to autonomy. It is her position that, such laws are apt to prove counter productive, since the fear of persecution may deter poor or otherwise vulnerable women from seeking medical care during pregnancy.⁷⁶

The above claims are not plausible. Indeed there are no unique restrictions concerning pregnancy save the normal natural adjustments that women have always gone through. The only exception is in such cases where the mother has been given complete bed rest or other conditions due to some complications. To argue, therefore, that virtually every aspect of the woman's public and private life will be regulated and that some may be scared away from seeking medical care is to use unorthodox and alarming means to secure sympathy for a selfish agenda.

Another fear expressed by Warren, is that the extension of legal personhood to sentient fetuses would rule out most abortions performed because of severe fetal deformities such as Down's syndrome or Spina Bifida. She concedes, however, that with improvement of early detection methods such as biopsy-though their safety is not proven yet, the need for late term abortion due to abnormality would be rendered unnecessary.⁷⁷

In response, we argue that there are not many cases of abortion that can be attributed to abnormalities. The possibility of giving birth to a defective child is so rare that we cannot sufficiently build a conclusive case for abortion on it. Second, giving birth to defective children, is no new thing, it has always taken place. So what is the hullabaloo all about? Third, Down syndrome or Spina bifida are just some of the medical conditions afflicting humanity. It should not be demonized, as is the case now. As a matter of fact, we do have Spina bifida or Down syndrome victims who are currently living grown up persons and who want and desire to continue living in spite of their situations. The testimony of Allison Davis, a spina bifida victim, will suffice to prove our point here:

My own life has been full and happy despite my disability and the many operations it has entailed. And, while I have always despised the ever-smiling cripple character as a patronizing stereotype, I am still unashamedly clad to be a live. So, too, are the vast majority of handicapped people; and in view of this, I think it is time society as a whole woke up to the fact that we have the same right to life as everyone else, and that the therapeutic killing, whether before or after birth, is the ultimate discrimination.⁷⁸

In the light of the above testimony and others of similar kind we can go one step back from Warren and say that even the need for early abortion due to abnormality would be unnecessary.

Fourth, the increase in cases of deformed children being born can be attributed to increase in the use of dangerous drugs or birth control pills and other contraceptive drugs with adverse side effects. So in effect the mother and even the doctors and drug manufacturers have a share of the blame. Unfortunately it is the deformed child that fatally carries all the blame.

Fifth, the fear about the method of detecting fetal abnormalities is not only about safety, as Warren expresses, but also the accuracy of the finding. As is the case with other laboratory and medical procedures there is always a possibility of wrong diagnosis, so it will not be prudent to rush to the abortion clinic just because you have been told that you are carrying a deformed child. A second, third, or fourth, opinion is necessary.

On the concerns raised above, precisely that abortion is not the best and only option for mothers carrying alleged or proven cases of defective fetuses, Warren concedes that the elimination of such abortions might be a consequence that could be accepted were the society willing to provide adequate support for handicapped children and adults who would come into being as a result of this policy.⁷⁹

Unfortunately though, Warren laments that our society is not prepared to do this. In the absence of adequate communally funded care for the handicapped, the prohibition of such abortion is exploitative of women.⁸⁰

Indeed, Warren knows what needs to be done to wipe out or at least to check the issue of abortion due to abnormalities. The society should provide adequate care for the concerned- the victims, mothers, and families where applicable. This will call for the formulation of relevant policies and the provision of financial and moral support for institutional and organizational structures, corporate and individual efforts seeking to provide a lasting solution to this problem.

However, instead of going ahead to suggest concrete ways of revamping or improving the current state of affairs, in the social and welfare sector and even individual attitudes, she regrettably talks about the provision of room for abortion. That, indeed, is a wrong prescription for a right diagnosis. It is not our children that need to die as a matter of priority and concerted effort but rather it is our attitudes, systems/structures and institutions that need to be improved and revitalized.

Warren acknowledges the wrong prescription she has proposed, when she correctly expresses her fears, to the effect that the arguments she had presented may not persuade those who deeply believe that fetuses are already persons, with equal moral rights on the basis that denying legal equality to sentient fetuses is no different from denying the same to any other powerless group of human beings.⁸¹

This fear indeed is true, for if some human beings are more equal than others, as is the case in the *Animal Farm* story, what guarantee is there that anyone of the "lesser mortals", is or will be safe?

In an effort to buttress her position, and to justify her case before the opponents of the women's rights to autonomy in the abortion decision claim, Warren builds her case on the ground of the uniqueness of pregnancy related relationship thus:

First pregnancy is a relationship different from any other, including between parents and already born children. It is not just one of innumerable situations in which the rights of one individual may come into conflict with those of another; it is probably the only case in which the legal person-hood of one human being is, necessarily incompatible with that of another. Only in pregnancy is the organic functioning of one human individual biologically inseparable from that of the mother.

This organic unity makes it impossible for others to provide the fetus with medical care or any other presumed benefit, except by doing something to or for the woman. To try to "protect" the fetus other than through her cooperation and consent is effectively to nullify her right to autonomy, and potentially to expose her to violent physical assaults such as would not be legally condoned in any other type of case.⁸²

The supposed incompatibility of the legal status of the fetus and the mother as argued by Warren is indeed incompatible with the known natural facts regarding pregnancy. In the first place the relationship between the unborn and the pregnant mother is in accordance with nature. It is a harmonious biological, physical and psychological relationship. It is a relationship in the order of nature and as fate or the creator, as some believe, purposed it to be. And if it is in order or in accordance with nature, then, it is compatible with nature and by extension the two natural beings- the unborn and the woman. And if there was to be any incompatibility of any kind, of the kind of like poles then the relationship would on its own, without any interference, be in jeopardy. One would then hear of such cases as miscarriages or "spontaneous abortion". Which cases, also occur as a result of the interference of the natural order either through injury or other adverse medical conditions.

And in response to the question why the woman should be favored and not the fetus, in a conflict of interest situation, Warren argues that it is difficult to justify this apparent bias towards women without appealing to the empirical fact that women are already persons in the usual non-legal sense – already thinking, self-aware, fully social beings – and fetuses are not. The "not yet" is, according to her, morally decisive. In the light of this difference, she contends, it is wrong to treat persons as if they do not have equal basic rights and even worse, is to deprive persons of their most basic moral and legal rights than to refrain from extending such rights to beings that are not persons. In that case if

women are persons and fetuses are not then the balance must swing towards women rights.⁸³

On the question of who has what already, between the fetus and the woman, in her argument that the women should be preferred over the fetus because the woman is a person already, Warren makes a factual claim that cannot be sufficiently defended on the grounds she is proposing. The criteria she is using, that for a fetus to qualify as a person, it must possess consciousness; reasoning; self-motivational activity, capacity to communicate; and the presence of self-concept and self-awareness is a debatable and not a conclusive proposal. In fact, when that criteria is stretched to its logically limits it does not only put into jeopardy the life of the unborn, but also the handicapped, terminally ill, physically incapacitated and the senile. Furthermore life is not something one can chance with. If all those who “have not” were to be liquidated then the “haves” would soon be no more for the haves and the so-called “have not” are one and the same people after all. The destruction of today’s unborn babies is the destruction of tomorrow’s adults.

5.4. Abortion based on woman’s primary role in conception, nurture and subsequent birth of child.

In her essay “Abortion through a Feminist Ethics Lens”, Sherwin gives a feminist analysis of abortion. She argues that unlike the case in most non feminist literature where the woman is treated as secondary, to the interest and well-being of the fetus, the pregnant woman is a subject of principal concern, and she is in the best position to make an appropriate decision about abortion.⁸⁴ According to her, this freedom to choose is very critical for the woman’s sexual and reproductive freedom.⁸⁵

At the outset Sherwin expresses deep concern on the fact that most non-feminists discussions of abortion tended to focus their attention on the questions of moral or legal permissibility of abortion without taking cognizance of relevant connections to other social practices that oppress women. “In contrast”, she argues, “feminists seek to couch

their arguments in moral concepts that support their general Campaign of overcoming injustice in all its dimensions.⁸⁶

According to Sherwin, the pregnant woman, often pushed to the periphery and rendered virtually invisible in non feminist discourses as they focus attention on the moral status of the developing fetus, is, in the feminist view, a subject of principle concern in abortion decisions.⁸⁷ The woman's decision is the deciding factor and not a secondary voice.

The need for abortion and therefore the right to liberty or freedom to choose the same on the part of the pregnant woman and women in general is necessitated by the following: First, the fact that women have pursued abortions under appalling and dangerous conditions, across widely diverse cultures and historical periods. Any restrictive abortion laws will leave women with no other option but to continue seeking out illegal and life threatening abortions to terminate pregnancies they cannot accept. Unfortunately with inevitable loss of life.⁸⁸

Second, contrary to the accusation often made against women, that they are bound to make frivolous and irresponsible decisions about abortion, Sherwin argues that the pregnant woman is in the best position to judge whether abortion is the appropriate response to her circumstances. This position is enhanced by the fact that every individual woman's situation and circumstances are unique. Therefore each woman's right to come to her own conclusion since there is no single formula for balancing these complex factors through all possible cases.⁸⁹

Third, childbearing, even without patriarchy, Sherwin argues, is a very important event in a woman's life as it involves significant physical, emotional, social and economic changes for her. Consequently her ability to exert control over the incidence, timing, and frequency of child bearing is often tied to her ability to control most other things she values. And given that we live in a patriarchal society, it is claimed, the women must gain full control over their reproductive lives if they are to free themselves from male dominance.⁹⁰

Fourth, feminists also link the women's freedom to choose abortion with their ability to control their sexuality. Since a woman's dependence on a man is assumed to entail that she will remain sexually loyal to him, Sherwin points out, restriction of abortion serves to channel women's sexuality and further perpetuates the cycle of oppression.

We will respond to the foregoing arguments thus:

First, the argument that abortion need to be legalized and made safe and accessible is in bad taste and is counter productive. To argue that crime or whatever illegal practice should be made legal in order to save many lives is in effect a recipe for the creation of a lawless society. Furthermore abortion can never be safe to the extent that no lives will be lost even in the best hospitals in the world. The nature of the process involved rules out such a possibility.

Second, to argue that women must be acknowledged as full moral agents with the responsibility of making moral decisions about their own pregnancies rules out the participation of another interested party, the father of the child to be. Furthermore, the opinion of other family members, friends and the doctors are also vital in the abortion decision.

The contention that women's personal deliberations about abortion include contextually defined considerations reflecting her commitment to the needs and interests of everyone concerned-including herself, the fetus she carries and other members of the household is not true. This is so because very often than not, such decisions lead to insurmountable physical and psychological harm to herself and other members of the household. If it is a fatal decision to the fetus it cannot be said to have taken care of its interests. And lastly, such decisions disregard the contribution of the husband, a very vital member of the household.

In addition, and as Sherwin herself acknowledges, it is possible for a woman to make a mistake in her moral judgment on this matter.⁹¹ And even if the woman will or is willing to acknowledge the same, it will already be too late as the very delicate, irreplaceable life will already have been nipped in the bud.

Third, to say that women must take full control over their reproductive lives, if they are to free themselves from male dominance, is, to fail to acknowledge the spirit of the cooperation and mutual understanding, necessary for the healthy development of the family in this harsh world of today. The issue is not about freeing oneself aggressively, but rather changes on the part of the husband in response to modern demands and challenges facing the family today. The task ahead is not a solo act but rather a combined effort of all concerned parties. Furthermore, even if there was a need for the woman to free herself, we ask, what has the ending of the life of the unborn in the name of freedom to choose to do with male dominance? Why not exterminate the very men themselves and leave alone the unborn? The fact that they are products of the male dominance is not enough ground to declare them guilty. However, one may say, they are guilty by association. That kind of argument, however, is not sufficient and necessary to warrant their painful death. It is like saying that since a thief is a child of his/her mother, the mother too is guilty by association and therefore should face the same sentence as her son or daughter. An argument, which I believe no pro-choice feminist, would support.

On the issue of the moral status of the fetus, Sherwin expresses disappointment about the way the opponents of abortion have structured the debate so that it is necessary, to define the status of the fetus as either valued the same as other humans (hence entitled not to be killed) or as lacking in value.⁹² Citing the works of Tooley (1972) and Warren (1973), Sherwin laments that the situation has not been made any better by the many defenders of abortion for instead of challenging the logic of this formulation they have concentrated on showing that the fetus is indeed of no significance.⁹³

Hence the debate has been about including or excluding the fetus from the moral community. In the process of such debates, the interests of the woman, on whom the fetus depends for survival is overlooked or considered as secondary.⁹⁴

The advances in the medical field especially in the field of embryology and fetology has not, according to Sherwin, made the situation any better in terms of containment or reversal of the above attitudes and developments that have relegated women's interests into the periphery. She writes:

Medicine has played its part in supporting these sorts of attitudes. Fetal medicine is a rapidly expanding specialty, and it is commonplace in professional medical journals to find references to pregnant women as "fetal environments". Fetal surgeons now have at their disposal a repertory of sophisticated technology that can save the lives of dangerously ill fetuses; in light of such heroic successes, it is perhaps understandable that women have disappeared from their view. These specialists see fetuses as their patients, not the women who nurture them. Doctors perceive themselves as the active agents in saving fetal lives and, hence believe that they are the ones in direct relationship with the fetuses they treat.⁹⁵

Sherwin sees in these developments that focus on the fetus as an independent entity a presumption, which deny pregnant women their roles as active, independent moral agents with a primary interest in what becomes of the fetuses they carry. This emphasis on the fetus's status according to her has led to an assumed license to interfere with women's reproductive freedom.⁹⁶

According to Sherwin the abortion decision ultimately belongs to the woman, for two reasons: (i) the woman, not the man is the fetus's gestator; (ii) usually only the woman is properly situated to weigh the entire relevant factors operative in an abortion decision – especially the needs and interest of everyone to whom she is related. Whereas some women may make some wrong decisions in their lives that in itself, according to Sherwin are not enough ground deny them the right to abort. For even if one makes a wrong decision, it does not imply that all should be denied the right to abort.

Sherwin's, and by extension the radical feminists' response towards the progress of medical advancement in fetology and embryology is wanting. Instead of such a negative response and suspicion, Sherwin *et al* would do well to appreciate the developments and internalize the outcome constructively. The pregnant woman should now rejoice that the possibility of carrying a pregnancy to term now is more real than before.

It is true, as Sherwin contends, that fetal development need to be examined in the context in which it occurs, within women's bodies and that fetuses develop in specific pregnancies which occur in the lives of particular women's bodies, and that their principal relationship is to the women who carry them.⁹⁷

But what is unique about relationships? Are not all human beings in relationships of some kind either knowingly or unknowingly? Humanity up to the family level is entangled in a cobweb of relationships of various kinds and degrees. In the light of this therefore we cannot conclude, as Sherwin has done in the case of the fetus, that we have no independent existence at all. To some degree we must admit, we do have some sense of independence, in spite of the fact that our existence is uniquely tied to the support of one another in the human family. The relationship between the fetus and the pregnant mother is no different.

In response to the attempt by philosophers to resolve the moral status of the fetus debate solely in terms of abstract metaphysical criteria of personhood, Sherwin argues that this cannot work as it reduces the whole exercise to an empirical question. Whether or not fetuses possess the relevant properties. On the unworkability of this attempt, Sherwin observes:

But this vision misinterprets what is involved in personhood and what it is that is especially valued about persons. Personhood is a social category not an isolated state. Persons are members of a community; they develop as concrete, discrete and specific individuals. To be a morally significant category, personhood must involve personality as well as biological integrity ... persons, in other words are members of a social community which shapes and values them, and personhood is a relational concept that must be defined in terms of interactions and relationship with others.⁹⁸

Sherwin is saddened by the fact that there is a growing tendency among some legal and medical authorities to view women as the enemies of the fetuses they carry – as heartless types who show inadequate concern for their fetuses' well being. Contrary to the impression created and propagated by the anti-abortionists that fetuses are little persons whose interests are fundamentally at odds with the interests of the women who "house" them, Sherwin argues that a truer understanding of pregnancy sees the pregnant woman and her fetus "as a biological and social unit".⁹⁹

When the question of abortion is viewed from this perspective, Sherwin claims, the moral significance of the fetus is not derived from the possession of an abstract-quality such as independent selfhood but, rather, from the fact that they are related to the human community in and through the bodies of women who gestate them

Nevertheless, because of where the fetus is located (and whether society likes it or not), says Sherwin, the responsibility and privilege of determining a fetus's specific social status and value must rest with the woman carrying it. It is the woman and only her, who must decide whether her relationship with the fetus is valuable enough to warrant her developing it. Should she decide that this relationship is less valuable to her than some of her other relationships, her health, or her life plans, she has the right, and in some instances, the responsibility to end her relationship to the fetus by aborting.¹⁰⁰

We will raise the following additional criticisms on Sherwin's position:-

The requirement that for any entity to be a person needs to be in relation to others puts the fetus in no better position than the high flying criteria presented by Joseph Fletcher, Tooley and Mary Warren. The level of relationship required here can only be found in a grown up person.

Second, as it is the case with the power focused feminists rights claims, whereby the woman is the sole deciding factor in an abortion decision, Sherwin's relational approach still leaves the woman as the central player in any abortion decision. The fetus and other

stakeholders, are peripheral actors. It is the woman who must decide the degree of her relationship with the fetus as compared to others.

Thirdly, the location of the fetus in the woman's womb is not by accident it is a natural endowment. To take advantage, therefore and use this gift as a bargaining power knowing very well that it cannot be located elsewhere (save the laboratory tubes in invitro fertilization is meant to benefit not only oneself but also others of the same species for whose benefit the baby is and shall be.

Fourth, if one employs a relational criterion to determine the reality of life, there seems to be little logic in applying this only to life before birth. After birth the relationship between the child and its parents could deteriorate to such an extent that one could judge that the baby did not enjoy enough acceptance to qualify as a truly human being.¹⁰¹ And this is in spite of the fact that the child had earlier on been loved and subsequently allowed to be born into this world.

Fifth, the relational criterion, which is proposed, has an inherent inconsistency. Whereas it is true that human relations are mutual and thus it should be argued that the child has to be able to recognize and acknowledge the acceptance of parents there is a genuinely human relationship present in the case of the unborn child. The mother and even those around her are in an undeniable intimate psychological and physical relationship with the uterine life within her womb.

Sixth, if humanity depends on social recognition, being denied any status in society may dehumanize individuals or whole groups. For example, slaves and prisoners.¹⁰¹

Abortion, according to Virginia Held, should be seen, not as an attack on the fetus but as a refusal to provide it with what it needs to live. This refusal ought not to be made towards those who have rights to life. And rights to life are not unlimited: even where the basic minimum requirements of food, shelter and medical care are provided through governmental arrangements that tax those lucky enough to have more than they need to

provide for those in need, the right to life do not give persons valid claims to unlimited amounts and kinds of resources.¹⁰²

Held laments the fact that in many abortion discussions very little, if any, consideration is given to the role of the woman beyond referring to her “convenience”:

In all the vast literature on the subject of abortion, the most consistently overlooked consideration is: what does a woman do and feel when she makes a baby? Babies do not make themselves; women make babies. Yet this fact is ignored over and over as the fertilized ovum is shown turning as if by itself, into an embryo and then a fetus and then a baby and finally a grown up human being.¹⁰³

According to Held, in normal circumstances, no one should be forced to become a parent against her or his will. On this view, it might be morally wrong for a woman to force a man to become a father against his will by refusing to have an abortion if he is strongly opposed to becoming a father. This action would be considerably less wrong than forcing a woman to become a mother because the man’s contribution in making the baby is so trivial in comparison to hers, and his likely contribution to bringing up the child, if she is forced to have one, is slight in comparison to hers. But if he recognizes his obligation as a father, he should not be forced into incurring this obligation against his will.

With regard to the question of the personhood of the fetus, Held is of the opinion that the view that the early products of conception can be considered persons with any sort of entitlement to life cannot be supported by any arguments that do not dissolve into myths when examined impartially. Religious myths have long influenced the debate by conferring personhood on such entities “from the moment of conception”. Although believers should be free to consider the early products of conception “persons” on religious grounds if they wish, there are the strongest moral arguments against allowing such religious views to be imposed on those who do not believe them. More recently, for some people, genetic codes have taken the place of souls as the essential element of personhood. It has been argued that since the fertilized ovum contains the genetic code

for a human being, the entity containing it has a right to life. But any member of cells contains genetic codes from which human beings could with appropriate technology be formed, as in cloning. The special status of the fertilized ovum thus disappears.¹⁰⁴

If we think person hood depends on aspects of human entities other than their possession of a genetic code, as any plausible view demands we must admit that the early products of conception resemble sperm and ova more nearly in all relevant respects, that they resemble babies. Then it seems arbitrary to claim that our moral concern and our legal protection should extend to zygotes but not to the billions and billions of spermatozoa wasted every day through masturbation.¹⁰⁵

Held's contention is that if women *choose* to make fertilized ova into human children, that is their right, within the bounds of an acceptable population level. But for women to be forced to do so is unjustified forced labor and a morality that *requires* women to do so is mistaken.¹⁰⁶

In this regard, while there is need for more concern for rights to life than we now have, effort should be directed towards ensuring that such concern is directed towards those who need and deserve it and to ensure that such help is not turned into a campaign to impose forced labor on women for the sake of entities that have no such rights.¹⁰⁷

We will offer the following criticisms against Held's position:

First, pregnancy and childbirth can not be compared to forced labor. In most cases it is the woman herself who is looking for pregnancy or who puts herself in such situations where the risk for pregnancy is possible. Hence the issue about women being forced to make babies against their will, save in the case of rape is, largely not true.

Second, women do not make babies as such rather parts of their bodies, the ova; participate as one of the major components in the coming to be of the new life. It does not do it alone for it lacks the capacity to do so.

Third, the early products of conception do not resemble the ova and the sperm, than babies, as Held claims. Neither the sperm nor the ova are progressively moving towards maturity as the zygote does for the “big bang” such as that in the ova- sperm interaction stage and which forms and set the stage for subsequent growth and development of the fetus is lacking

Fourth, while the parents/ mothers play a crucial role in the coming into being of the nascent human life, they are not the determinants of human life *per se*. Knowing who man is, supposing all the married couples or all the members of the human race were to decide not to have babies what shall become of the fate of humanity? Furthermore it is not the woman alone who has power to determine the fate of the unborn or the coming into being of human life. The male partner too has a place whether through asexual physical contact or through the invitro- fertilization process in the utilization of the banked sperm seeds.

Catherine Mackinon, arguing from the perspective of the U.S abortion laws, claims that it is a mistake for women to defend their right to abortion on the basis of their right to privacy. For the best that this can do according to her, is to help keep women hidden, and dominated in the so-called personal realm. It is in this realm that men impregnate women and advise them to get an abortion.

The meaning of abortion in the context of a sexual intrigue of gender inequality is its promise to women of sex with men on the same terms as promised to men – that is, “without consequences.” Under conditions in which women do not control access to our sexuality, this facilitates women’s heterosexual availability. In other words under conditions of gender inequality, sexual liberation in this sense does not free women, it frees sexual aggression. The availability of abortion thus removes the one remaining legitimized reason that women have had for refusing sex besides the headache.¹⁰⁸

Mackinon’s major thesis is that women must understand that their right to abortion is not dependent on their having more privacy but rather on their having more equality with men. The liberal abortion rights keep women continually under subjugation. It is harm

to the cause of women but neatly backed in glittering golden wrapping sheets. How this "more equality" can be attained and utilized for the sake of improvement of the women lot should be the current concern of the supporters of the women cause.

Arguing along the same line as MacKinnon, Russell McIntyre contends that the only way in which a woman can compete equally with men in this society is when she is truly equal both in opportunity and protection.¹⁰⁹ The inequality between men and women arises from the fact that it is only women who get pregnant and therefore are the only ones who go through all the ups and downs associated with pregnancy, both in their private and public lives. This discrepancy can only be corrected if women are permitted to terminate their pregnancies at any point in time and for any reason. But for this to happen, there has to be a change in the perspective from which women's abortion rights are viewed, as a matter of equality rather than of privacy¹¹⁰

The issue of concern, however, is that if this liberal interpretation of women's right is upheld then the fetus's right to life, as McIntyre herself acknowledges, will be severely undermined. The woman will be solely at liberty, at whatever stage in her pregnancy and whatever the conditions prevailing in her life, to do that which she deems fit with the fetus. This will be a big challenge, as it will now mean that the lives of members of the human race can only be guaranteed if it so happens that the women see it as necessary. The unlucky ones would have to go.

Furthermore, the concept of equality as applied in this particular situation is wanting. Whether we are talking about equality between the races or the sexes the truth of the matter is that this is a matter that can best and easily be realized ideally or conceptually in debates and abstract analysis and academic discussions such as this. The realities of life both socially, culturally, economically vary from place to place and from person to person. When this varying circumstances and situations come to bear on the abortion decision the impact will be as varied as the circumstances surrounding and underlying every case at hand. While attempts may and will be made to guarantee the full right to life of the child through community aid to the mother who wishes to raise it herself, or

adoption arrangements, the full realization of such efforts are usually hampered by among others; (i) limited financial resources, health and social conditions both of the victim and supporting organization/persons, and mistrusts between those perceived to have achieved in life and the disadvantaged, poor lot, who unfortunately are the majority. With this kind of scenario, it is not possible that liberal abortion laws will truly guarantee or increase the range of choices for women. Smith, as quoted by Tong,¹¹¹ argues that the point that both the pro-choice and the pro-life proponents can draw from this is that there will be no situation par excellence or a situation where all things are equal so as to allow one decision or another to be undertaken in a state of *pliz*. The challenges are there and they will continue to be. As to whether the supporters of permissive abortion laws will face up to the challenges and make informed decisions or they will just, with no hesitation, sacrifice the lives of the unborn in the face of these challenges, that we believe is a matter that will/ has been dealt with by the conscience of the individuals concerned and the society to which they belong and in which they are actively involved in its “doing” or “undoing”.

With regard to the claim for equality between men and women, while we may talk and indeed push for equality with regard to access to opportunities for work and personal development no amount of call or push for equality shall make men take over or share equally the institution of motherhood. Unless there are new technological breakthroughs that can make men conceive and carry the baby for nine months that privilege can only be undertaken by women. Unfortunately, but naturally though, that act itself, goes with a package.

Morning sicknesses, headaches, maternity leave breastfeeding to name just but a few of the burdens that go with it. The best that a man can do and which he seems to have abandoned is to offer support in all aspects – moral, physical, and economic during this time and thereafter. So even if we were to work at the issue of women’s abortion right from the perspective of equality with men rather than the women’s right to privacy, this shift in approach will remain just that, a mere shift in approach. Indeed the abortion “choice” is more complex than many people take it to be”.¹¹²

Carol Gilligan in a study she carried out among some women who had done abortion, found out that regardless of their age, social class, marital status or ethnic background all the women interviewed shared a concept that tended to view the self as an interdependent being whose identity hinges on relationships to others. This according to Gilligan is different from men's perspective of self as an autonomous separate being. These gender-based differences in self-perception, Gilligan argues, account for variations in women's versus men's styles of moral reasoning.

Using one of psychologists Lawrence Kohlberg's hypothetical cases, where a man had to make a choice between allowing his wife to die because he could not afford to buy drugs for her or stealing the drug to sustain her life. Gilligan on the basis of the responses of both men and women, concluded that, in making an abortion decision, men are more inclined to set women's rights to privacy and bodily integrity against fetuses' right to life, whereas women are more inclined to reflect on how their having (or not having) an abortion might affect the quality of their human relationships. The quality of the decision made by the woman will, according to Gilligan, depend on how morally developed a woman is and the extent of her understanding of her relationships to others.

According to Gilligan a woman's moral development typically moves her through three levels: (1) an overly egocentric or selfish position – at this level the woman's care is directed completely inwards. She feels scared and vulnerable, in need of affection and approval, (2) an overly altruistic or self-sacrificial position – it is at this level that a woman shifts from self-contenders to other directedness, (3) a balanced position in which her interests count as much as any one else's. At this level, the decision to abort becomes a complex choice that the woman must make about how best to care for the fetus, herself, and anyone else likely to be directly affected by her decision¹¹³. Rosemarie Tong sums up Gilligan's position thus:

Thus, in Gilligan's view, a woman attains full moral stature when she stops vacillating between egoism and altruism, and instead recognizes the falseness of this polarity. When a woman finally chooses to have an abortion, she has fully evaluated the depth both of her connection to others

and of their connection to her. The best decision, then is one that permits a woman to balance her commitment to herself against her commitment to others, realizing that although connections to others are very valuable and must be protected, she does not necessarily have to sacrifice her interests for those of her fetus.¹¹⁴

On Gilligan's position, we will make the following observations. While it is true as Gilligan has pointed out that there are gender based differences in self-generation between men and women, however, to say that men are more inclined to set women's rights to privacy and bodily integrity against fetus right to life whereas women are more inclined to reflect on how their having (or not having) an abortion might affect the quality of their human relationships is to lose sight of the fact that the power focused feminists are in the forefront in the enhancement of what is here supposed to be a men's perspective. When a woman demands that abortion is a basic right to be undertaken regardless of circumstances surrounding the case in question, there is actually little, if any, consideration of the other's welfare. The attitude of abortion "regardless" or "at all costs" speaks much of a selfish and egoistic arrangement all aimed at benefiting the sole decision maker, the woman. This is at the expense of not only the fetus but other interested parties too, among them the father of the child.

When Gilligan talks of the woman making an abortion decision after having fully evaluated the depth of both of her connection to others and their connection to her, this is not in line with feminists' complains against the introduction of any requirements in abortion decision of the notification clause, seeking consent of parents and spouse, waiting period after briefing on Key issues on the pros and cons of abortion. While it is also true that the woman does not have to sacrifice her interests for those of her fetus the life we are in is a life of sacrifices. Nature has decreed that a woman sacrifice her life for the fetus for up to nine months. This is just one among many sacrifices that she has to make.

Nel Noddings, "a care focused" feminist regards abortion as a pregnant woman's decision to end her relationship with the fetus. Nodding, like Gilligan defends abortion

on a relational basis. According to her, the more abstract an analysis of abortion is, the more it is phrased in terms of the fetus' right to life versus the woman's right to privacy – the less likely it is to help a woman make a morally correct abortion decision.¹¹⁵

In order to resolve the abortion dilemma, the approach must change from the language of rights to the language of relations. This new approach as Noddings elaborates will require us to question all of our values, including the ones that seem most basic to our identity. Nodding disputes the traditional ethical claim that rationality is what makes a human being a person. On the contrary, Nodding argues that what makes a human being a person is neither rationality nor even the capacity for rationality but, rather, the fact that she or he is able to respond to others' caring feelings.¹¹⁶

The abortion of the fetus according to Noddings is granted because there is no parent – child relationship. For, until a fetus develops to a level where it can respond to caring feelings, it is not a person. Nodding does not differentiate between first trimester abortion and miscarriages. Women are permitted to abort their fetuses not because their fetuses lack relationality but because their fetuses cannot respond to other's caring feelings in typically human ways. In that regard therefore, whether the death is unplanned or planned it does not make any difference since the early fetus does not have a response-based claim on its parents. According to Nodding choosing an abortion means choosing to end a relationship before it has already begun.¹¹⁶

With regard to Nodding's position we have the following issues to raise:

First, her understanding of the relationship between the developing fetus and the mother is narrow. From the time of conception and implantation a relationship between the mother and the fetus has already been developed. The fact that that relationship can not be expressed in words by the fetus does not mean that it does not exist. Previously it was the mother and the ova now it is the mother and the fetus. This fetus will continue to respond to this newfound relationship by growth and development and eventually by

birth as it seeks to come out through the intricacies of labor to begin another phase of life in this physical world outside the womb of its mother.

Second, while Nodding is right in her dismissal of the traditional ethic claim of rationality as the major distinguish characteristic between the fetus and the adult human being she is wrong in her replacement of this flawed criterion with another flawed criterion, human relations. Whether it is rationality or human relations, the fetus is still burdened with a criterion so high that it cannot meet.

Third, why differentiate, an early fetus and a later fetus. What comes to be realized in the late fetus is that which has been unfolding albeit slowly and systematically. Each stage of development has its own unique manifestations suitable and in line with that particular phase in life.

Fourth, the mother-child relationship is a symbiotic relationship. It is a two-way endeavor. As the unborn and the infant respond in movement and an innocent smile on the infant's face, the mother too should respond with care and love.

5.5. Pro-life feminists perspective on abortion

Contrary to the claim of some pro-choice proponents, that unlimited access to abortion is fundamental in the woman's exercise of her choice, some feminists are of the opinion that instead of unrestricted abortion increasing women's control over their reproductive destiny they do actually limit the choice of those women who want to keep their babies but are unable due to economic and social realities/reasons.

According to Anne M. Maloney, instead of the society providing those women in need with the support systems and structures they need in order to rear their children successfully, the pro-choice society implies that the responsible thing for them to do is to have an abortion. The sad thing about this, as Maloney argues, is that:

As long as abortion exists as a cheap and easy solution, this society will remain a dream. Abortion exists because it's a man's world. If men got pregnant, they would demand health care, living wages, family leaves, child care. They would demand that society value their ability to give and sustain life. But abortion? Having one's body forcibly violated, being told that the price of success is such constant violation? Forget it. Men would never stand for it. It's time for women to stop.¹¹⁷

And if indeed, abortion is a man's world, as Maloney seeks to portray it how will it be reconciled with the feminists struggle to free themselves and their own kin from the traps of patriarchy and male chauvinism? Is it really a woman's right as it is portrayed to be or as the pro-choice feminists seek to present it? Is abortion really the way to freedom for women? In this light and on account of the foregoing discussion, we fear it is not! But rather it is a continuation of the enslavement/subordination of women. This time round with the roles reversed albeit inwardly, it is now an "all women" affair!

Sydney Callahan, herself a pro-life feminist, disapproves of the radical pro-choice feminists' demand for unrestricted abortion and complete reproductive freedom. Callahan argues that the pro-life feminists differ with the pro-choice feminists over the following issues:

First, the pro-life feminists are contesting the pro-choice feminists' claim that abortion rights are prerequisite for women's free development and social equality. It is Sydney's position that, on the contrary, the pro-life feminist argues on good feminist principles that women can never achieve the fulfillment of feminist's goals in a society with permissive abortion laws.

Second, concerning the feminist pro-choice demand for unrestricted abortion rights as a moral imperative and insistence upon women's rights to complete reproductive freedom, Sydney contends that, while the pro-life feminist grant the good intentions of their pro-choice position, they protest that the position is flawed, morally inadequate and inconsistent with feminism's basic demand for justice¹¹⁸

In Sydney Callahan the feminist vision is expanded and refocused thus:

- i. From the moral right to control one's own body to a more inclusive ideal of justice.¹¹⁹
- ii. From the necessity of autonomy and choice in personal responsibility to an expanded sense of responsibility.¹²⁰
- iii. From the moral claim of contingent value of fetal life to the moral claim for the intrinsic value of human life.¹²¹

Sydney laments the fact that in their attempt to achieve their goal of unrestricted abortion and complete reproductive freedom, certain philosophers set the standards of personhood so high that half the human race could not meet the criteria during most of their waking hours, their sleeping ones aside. It is her contention that these criteria, are so high that we are left with one option: either to expand our idea of person, or set up another criterion such as human life itself, to be employed to protect the weak in a just society.¹²²

Sydney is of the position that women have forgotten that as the most recent immigrants from non personhood, feminists have traditionally fought for justice for themselves and the world.¹²³ Instead they have fallen victim to the male created and dominated values of violence and domination.

Sydney challenges women to abandon the erotic sense of sexuality with no long term commitments and instead insists upon a different, woman centered approach to sex and reproduction.¹²⁴ The pervasive erotic view of sexuality, now the in thing among pro-choice feminism, Sydney argues, enhances the male oriented sexual orientation which has been harmful to women and children. Consequently, she calls upon the pro-choice feminists to re-think what kind of sex ideal really serves women's best interests.¹²⁵ This, indeed, is a challenge that women must rise up to if they are to realize the fruits of what the women liberation movement has been passionately fighting for.

Our response to Sydney's position is that while in agreement with her that abortion act is not at all in the interest of the women folk, we do believe that the true women liberation lies in accepting their role and lovingly harnessing the potentials and endowment of nature for the betterment of the human society to which they too belong.

Secondly, the women folk had better learn from past experiences in which they too have been victims and set the pace for themselves and the rest of humanity.

Cecilia wolf-Devine, another pro-life feminist, proposes the following:

- i. That abortion is clearly a masculine response to the problems posed by unwanted pregnancy, and is thus highly problematic for those who seek to articulate and defend the "feminine voice" as the proper mode of moral response, and that;
- ii. On the contrary, the feminine voice, as it has been articulated so far generates a strong presumption against abortion as a way of responding to an unwanted pregnancy.

According to her, the abortion decision is not in line with the eco-feminist and pacifists' feminist's central tenets on the following grounds:

First, the eco-feminists, wolf-Devine argues, see the masculine principle as being insensitive to the inter connectedness of all life as it strives to discriminate, separate and control. In addition it does not respect the natural cycles of nature, but objectifies it, and imposes its will upon it, through unrestrained technological manipulation.¹²⁶

Second, abortion has another characteristically masculine behavior; the willingness to use violence in order to maintain control, i.e., the fetus is deliberately targeted for destruction by being pulled apart by suction, cut in pieces or poisoned.¹²⁷

Third, in terms of social thought, wolf Devine argues, if masculine thought is naturally hierarchical and oriented towards power and control, as the feminists argue, then the interests of the fetus would naturally be suppressed in favor of the interests of the mother. And if this is the case, then, she argues, the question must be raised as to why the mother's interests should prevail over the child's and, yet, unlike the discriminative masculine thought; the feminist social thought is egalitarian.

Fourth, the choice for abortion manifest a sort of social atomism/individualism which feminist thinkers condemn as characteristically masculine. For, if the woman is supposed to have the sole authority to decide the outcome of her pregnancy, wolf-Devine asks, what will become of her interconnectedness with the child and with others in the network of relationships which already exists, i.e., father, siblings, grandparents, among others.

Fifth, there is a *prima facie* inconsistency between an ethics of care and abortion. The feminine voice, she argues, calls for nurturance, empathy and taking responsibility for caring for others. Taking into consideration the methods employed in the procurement of an abortion and the deliberate targeting of the fetus for destruction, it is clear beyond doubt, that abortion is a non-feminine response and consequently not in line with the ethics of care whose premise is that of non-violence.¹²⁸

Sixth, Wolf-Devine contends that the employment of the "Rights" issue in the abortion debate, for example, the argument for unrestricted access to abortion in terms of such things as the woman's right to privacy or right to control her body, is indeed the language of an ethics of justice rather than an ethics of care. It is her view that appeal to such characteristics/features as consciousness, reasoning, self motivated activity among others, as criteria of personhood as Mary Warren does, relies on the kind of opposition between mind and nature criticized by many feminists as masculine.¹²⁹

Wolf-Devine expresses her disgust at the feminists' defenders of abortion, thus:

It is rather striking that feminists defending abortion lapse so quickly into speaking in the masculine voice. Is it because they feel they must do so in

order to be heard in our male dominated society, or is it because no persuasive defense of abortion can be constructed from within the ethics of care tradition?¹³⁰

We are fully in agreement with Wolf-Devine in her concern about the inconsistency with which the pro-choice advocates treat the members of the human race. In their pursuance of justice and fairness especially with men they talk so much about egalitarianism but when it comes to the unborn the language changes and now it becomes “regardless”-totalitarianism in its true colors.

Second, our concern is, what is so big about having one’s voice heard if for that to be achieved some compromises on the very existence of humanity will be severed.

Third, beyond the ethics of care as Wolf Devine advocates, is respect for man for who he is. This respect is due, whether we care for him/her or not. Moreover even in the midst of that indifference we just have to agree to disagree and let live.

In the light of the preceding literature, it is apparent that the concerns for the extreme liberals demand for unrestricted abortion rights and complete reproductive freedom cuts across the board from non feminists to feminists, from secular to religious philosophers, from men to women.

5.6. Issues arising from the discussion above

In the abortion debate and discussion of gender related issues male and female traits are often contrasted. Women are often said to treasure the ethic of nurture, care and non-violence whereas men are said to be obsessed with violence, masculine terms such as autonomy (my body) and rights. However, as Cunningham *et al* correctly observes, “a closer look at the feminist abortion advocacy reveals that the driving force behind it is the so-called masculine values”.¹³¹

There are two different types of self that women hold and which contribute to different positions among women. On the one hand we have women who consider child bearing to be essential to the definition of womanhood. On the other hand we have those who see it as a mark of inequality with men that must be corrected or brought to an end in one way or another.¹³² Quoting the moral philosopher Janet Smith, Cunningham observes that:

Behind women's demands for unlimited access to abortion lies a profound displeasure with the way in which a woman's body works and hence a rejection of the value of being a woman. Whereas one might hope that the women's movement would be based on the assertion that it is great to be a woman and that women endeavor to promote the powers and qualities, which are theirs, the popularity of abortion indicates quite the opposite. Abortion is a denigration of women, a denial of one of the defining features of being a woman – her ability to bear children. Now some may deny that this is a defining characteristic of women. But is there any more certain criterion? A woman is a woman because she can bear children....

Child bearing is basic to them. We might expect that deliberate and violent denial of such a potential may be devastating. Some women argue that the fetus (be it a human being or not) is a part of their bodies and that they may do with it what they will. In one sense – a very different sense – the argument is true. Pregnancy and child bearing are perfectly normal conditions for women, and hence a part of her physical and psychological make-up. To have an abortion is to destroy part of one's self. It is normal for a woman to carry the children she conceives to term. To remove that child forcibly interrupts and harms the healthy functioning of her body. To put it bluntly, an abortion amounts to a mutilation of the woman's body and to a denial of her nature.¹³⁵

It is apparent that women are not all agreed on the issue of abortion. Pro-life women question whether the assertion of “choice and rights” in relation to aborting an unborn child can be reconciled with nurturance and other values cherished by feminists. This question cuts into the heart of the pro-choice feminist’s demand for unrestricted abortion rights and complete reproductive freedom. On the contrasts between the practice of abortion and values identified with the modern construct of the American family, Cunningham quoting Ginsburg argues that abortion as a self-centered act contradicts the very notion of nurturance and as a prerequisite for social equality with men contradicts the value of cooperation in family relationships. And that as a protection against the “invasion” of the unborn child, it contradicts connectedness with, and care for the child.¹³⁴

The inconsistency in the abortion advocacy in the light of the values often associated with women and the family i.e. nurturance, love, cooperation and romance need to be addressed, if meaningful progress is to be achieved in the women emancipation efforts. Women must affirm their identity as life-giver, child bearer, nurturer and cooperator, and their connectedness with the vulnerable and seek to re-examine the emerging ethic based claims of the woman’s power and right to abortion, whether by means of her own hands or the physician’s. This new ethic violates the core of woman’s values and being.¹³⁵

The current agitation for liberal abortion laws should be seen not as a solution to the oppression and disenfranchisement of women but rather should be understood to have arisen out of that inequality. The call for abortion as it is being propagated now should be seen as something done to women by men for men. It is indeed masculine in its nature and implementation¹³⁶

The pro-life proponents, should not only condemn the practice of abortion, rather it should also be equally concerned about its causes: namely ignorance about sexuality and reproduction, the view of pregnancy as a pathological condition, the double standard that promoted male irresponsibility, social pressures against illegitimacy and lack of economic support to single mothers. This approach involves such remedies as the

education and enfranchisement of women, which remedies, seek prevention and not merely punishment.¹³⁷

It was not until the late 1960's that the women's movement began demanding abortion rights. The movement was conceived and portrayed as a revolt against "the traditional female role". The stated goal of the women's liberation movement was freedom and autonomy on an equal footing with men. This encompassed an effort to attain biological "sameness" as well. In that sense, abortion was deemed necessary to avoid the burdens of pregnancy, which men would not share. However, the reality of gender differences could not be ignored. Women came to the realization that being treated exactly like a man was not the panacea they had hoped for.¹³⁸

The commitment to abortion rights has created some glaring inconsistencies for feminism. The reason for this dilemma is not difficult to understand. It is not easy to reconcile the feminine metaphors of motherhood and community with the feminist defense of abortion on the ground of individual rights.

This confusion – about who women are, what women want, and what women believe the "woman's role" to be as Cunningham argues, is no more evident than in the view of unborn children. If feminine values are nurturing and inclusive, does abortion fit into such values? As individuals with abilities and aspirations, women make moral choices as women, in the context of relationships. Those relationships include those who are dependent and vulnerable. And the one who is most dependent on a woman for her nurturance, compassion, strength, courage and wisdom – is the child in her womb. Mature feminism, therefore, would contemplate that society accommodate the reproductive capacities of women, that child bearing and rearing be valued just as much as the establishment of financial security and Job satisfaction.¹³⁹

It is our position that abortion as a basic right" is neither in tandem with the traditional nor contemporary women's self-perception. And although it may be politically and academically possible to espouse abortion as the foundation for women's freedom and

program, it has not truly benefited women. Abortion promotes neither the core values of women, such as inclusiveness and nurturance, nor the premises of autonomy and choice upon which it is based.¹⁴⁰

Abortion as a woman's basic right is premised on abortion as a free, self-determined choice. But, is the abortion choice really free? If the abortion decision were truly a "free decision" *per se*, then many women would likely opt not to do it. For many women may be too preoccupied with other things to bother themselves with something which after all is just passing by. Contrary to such assumptions, such decisions are never free. Many women are either forced by convenience, economic, or social pressures to terminate their pregnancies.

Furthermore, abortion as a woman's basic right imposes a revolutionary social law that denies men the rights whatever to protect their child before birth. The woman is given the power to prevent her husband from protecting his own offspring for in this new set up the choice to abort or not to abort is placed solely on the shoulders of the pregnant woman. By implication whether the child lives or dies is solely up to the pregnant woman. Since that exclusive power over the child's life is under the woman's control, the determination whether the father will become the father of the born offspring and incur child support obligations falls entirely on the mother.¹⁴¹

And on the effect that these developments have on men and the consequent effect on the women as men respond to this new scenario, Cunningham writes:

The logic of women's exclusive control over reproduction is not lost on men. By vesting all rights to abort in the mother alone and by stripping the man of all his parental rights it psychologically divests the man of all responsibility as well. It undermines healthy relationships between men and women. It destroys responsible communication by creating an artificial barrier to discussing a matter that deeply affects not only the woman but her partner as well. Men naturally may respond with distrust. The motives of all women, both those who demand and those who refuse abortion, come under suspicion. True intimacy cannot develop when a relationship lacks trust and communication. Coercion, pressure, abandonment and denial of responsibility all result.¹⁴²

We want to believe that this is not what the pro-choice feminists are asking for in their demands for unrestricted abortion rights. Using the case of a pro-life advocate, Susan Nathanson, who was coerced into having an abortion by her husband though theirs was a healthy, stable marriage, Cunningham, terms as a myth of the abortion liberty, the contention that the Roe v. Wade decision only created a right to choose abortion for women who wanted abortion; and that it didn't force any one to abort or participate in abortion.¹⁴³

The case of Nathanson and especially the husband's initial insistence on abortion and later confession that they would have after all kept the child is indeed a classic example of the tragic nature of the abortion decision and especially the fact that the issue involved is life, a delicate item which once it is nipped, it cannot be reclaimed. This in itself calls for one thing from the abortion advocates and other interested parties, a second thought and exploration of other viable alternatives all for the sake of the irredeemable life. For once life has been nipped, it becomes spilt milk, and it cannot be re-scooped.¹⁴⁴

It is ironical that the "abortion rights" crusade and especially the "freedom to choose" crusade has benefited largely, the very adversary that women are fighting to tame: men. This is possible through the creation of a sexual climate, by which men are freed to engage in non-committal sexual relations, and the consequences fall directly and solely upon the woman who is left to pay the price.¹⁴⁵

Apart from the havoc that the resultant effects of the abortion decision causes to the relationship of the parties concerned, whether within the family set up or outside it, the woman is left to battle with the consequences that bear directly on her health (physically and psychologically), integrity, education and career development. Men are let loose to freely engage in behavior almost devoid of serious personal consequences. For if the way has been opened for him to escape personal responsibility for his actions then what is the worry for after all "... it is the woman's "right" and "responsibility" to get an abortion if anything goes "wrong" ..¹⁴⁶

The painful reality, often ignored either knowingly or unknowingly by the abortion rights crusaders is that “Freely available legal abortion thus encourages the very kind of male behavior that feminists have rallied against for generations.¹⁴⁷ Quoting Daniel Callahan, Cunningham asserts “if legal abortion has given women more choice, it has also given men more choice as well. They now have a potent new weapon in the old business of manipulating and abandoning women.¹⁴⁸

A part from the coercion from the husband or partner, women are often coerced or influenced in their abortion decision by parental coercion. This can be overwhelming especially in the case of teens.¹⁴⁹

In addition, social pressure also is another player in abortion decision. For, “besides feeling alone and without resources, a pregnant woman may also sense the pressure of the workplace” or even the neighborhood environment.¹⁵⁰

But is abortion really for the welfare or interests of the women or the elimination of the unborn? Under this new ethic women seem vulnerable to a system that is geared to deal with problematic pregnancies by eliminating the unborn. “Choice” has come to mean that abortion is a moral good, and any law that might influence a woman to consider an alternative to abortion or that establishes governmental protection for the child *in Utero* is suspect. The debate about the “choice” agenda then is whether it is truly about protecting women or it is about promoting abortion.¹⁵¹ The latter appears to be the case.

Linda Przybyszewski, sees the right to privacy as used in the 20th Century supreme court decisions in America as being a result of a number of far-flung cultural and legal traditions and practices. The gradual evolution of practices and values such as, the confinement of the family into the home and the rise of manners that emphasized the creation of distance between individuals and between the individual and the community, and the idea of the individual having rights against the state have according to her, “bestowed upon late 20th Century American society a variety of means for valuing

privacy in and of itself".¹⁵² In all these, one thing is clear, whatever the circumstances surrounding the evolution of the right to privacy as used in the twentieth Century; the truth of the matter is that it is now deep rooted in our modern society. The "right to privacy" claim has been applied more sentimentally more than in any other area of life in the abortion decision controversy. The Roe Vs. Wade court ruling has contributed to this development immensely.¹⁵³

According to Daniel Callahan, a proponent of the legalization of abortion, the public decision to leave the abortion decision to the individual reflects three philosophical premises:

- i. That private abortion decisions have few if any social implications or consequences;
- ii. That there are no normative standards whatever for determining the rights of fetuses, except the standards that individuals are free to use or create any standards they see fit;
- iii. Those changes in law have no effect one way or another on individual moral judgements.¹⁵⁴

In response to the claim that abortions are selfish and egocentric, Callahan writes thus:

This reflects a strain of thought, which runs very deep among those violently opposed to abortion. But the argument manages to ignore the decisions of those who choose abortion out of a sense of responsibility to their living children. It also manages to beg the question of whether individuals have some rights to determine what is in their own welfare, and to choose in favor of themselves some of the time.¹⁵⁵

While it is true that this line of argument runs deep among those who oppose abortion and that it is sometimes presented out of passion for the fetus and also as a logical response of an outcome of a critical analysis of the opponents' position, it is also true that eliminating a growing up child or fetus in the name of concern or sense of responsibility for a grown up living child, is really not a sense of responsibility *per se*.

The opportunity cost of showing such a sense of responsibility is too much to bear under normal circumstances. If a grown up child were to be told his or her sibling had to die for him/her to have four pieces of bread instead of two, I wonder how that child would react?

While not advocating for laziness or mediocre performance we sometimes struggle to provide for our selves and our children what is more than necessary for our upkeep. Furthermore when we talk about small numbers or small families and associate large families with misfortunes or struggle, we loose sight of a very important factor in life: that it is when we are pushed to the limits that we become innovative and industrious. Since we have to provide, we have to perform. This situation can be related to the issue of overpopulation and the concern over the ever-diminishing space for habitation. In the midst of our worries we loose sight of the fact that high-rise buildings, the norm of many cities in most parts of the world came about as a result of the challenge of numbers.

Secondly, as to the question about individuals having some rights to determine what is in their own welfare, and to choose in favor of themselves some of the time, the answer is in the affirmative. However, it must be admitted that the individual's room for maneuver in any issue at hand largely depends on, among others, the web of relationships he/she is involved in, the nature of the issue at hand, the level of interests in the same by other members in the network and the impact of the same in their own lives and operations.

The abortion decision, however, cannot be compared with the decision about what kind of fruit or soda to take? The decision here is about life, however crude and undeveloped it may be. Secondly, the woman is involved in a network of relationships, some of which cannot just be wished away. First, there is the relationship connection with what is growing up within her womb, then the husband or partner, then the other children and other members of the extended family. Then come the neighborhood, the groups she is involved in and the larger society. Whereas the interests of some of these relationships can be overlooked, for example, the extended family, neighborhood and the larger society, one cannot just afford to ignore or overlook the interests of the fetus and the husband or partner.

The argument that the abortion decision is exclusively a woman's issue to be decided upon by women is based, at least on the following assumptions:

First, that there is no role for male judgment, intervention or interference because it is women who get pregnant and who have to live with the pregnancies. Second, that abortion laws are repressive because male legislators have established them. And that the fetus is a part of the woman's body and is thus exclusively subject to her judgments and desires.¹⁵⁶

With regard to the first assumption above, the role of the man in the abortion decision cannot be truly denied or faked. Everything aside, at least the man has some interests in the woman whom he has impregnated. And if he has some interests in the woman then by extension he would have some interest in the product of their relationship. And if per chance he has no interests, then we would treat it as a unique case. To this end, Callahan, though he does not agree to a situation where male approval is made a legal condition for a woman to receive abortion, observes that:

At least, there is injustice in giving males no rights prior to birth but then imposing upon them a full range of obligations after birth. If the obligations towards a child are mutual after birth, why should there not be a corresponding parity of rights prior to birth? Moreover, if – to accept the feminist premise – women have been forced to carry through unwanted pregnancies because of male domination, the sexist shoe is put on the other foot if all the rights involved in having a child are added exclusively to women. One injustice is corrected at the expense of creating another, and sexism is still triumphant”.¹⁵⁷

Secondly, on the premise that abortion laws are repressive because males dominate the legislatures, the assumption is that women legislators would behave differently from men. But this is only a wish not the reality. Women have often been seen as the ones who are less willing to approve permissive abortion laws.¹⁵⁸ Even in other unrelated issues like elections, the situation is such that in spite of the fact that women registered voters are more than men the women candidates do not fair well in most cases.

On the contention that a fetus is part of the woman's body, the position is that while it is a biological fact that the fetus is in the woman's body, to argue that it is therefore part and parcel of her body just like the heart, arm or legs are, is to go beyond biological facts. The separate genetic constitution of the fetus and that of the mother and by extension other parts of the woman's body clearly distinguishes the body of the fetus from that of the mother.¹⁵⁹

The irony in the above presentations and arguments of the proponents of abortion, especially those of Daniel Callahan, is apparent. While Callahan's arguments are fatal to the abortion rights campaigns, however, his conclusion and his unwavering support for abortion decision clearly contradicts his arguments. Perhaps it is a decision already made irrespective of the force of the arguments against it.

As evident in his analysis, Callahan seems unsettled.. His sanctity of life principle yields a "strong bias against abortion and" instills "an overwhelming bias in favor of human life. On the one hand, Callahan sees abortion as the last resort of a woman, "to be avoided if at all possible. On the other hand we find him saying that it is "possible to imagine a huge number of situations where a woman could, in good and sensitive conscience choose abortion as a moral solution to her personal and social difficulties." In other words, Callahan feels the irony of abortion: yet he feels the desperation of its need. In the light of this, he states in his later essay that the moral problem is the balancing of the right of the mother. However, his ultimate moral position, as McCormick ably observes, is hardly a balance; it comes close to eliminating one right altogether.¹⁶⁰

Secondly, Whereas Callahan's writings on abortion are utterly honest, appropriately corrective, and profoundly sensitive, what is missing is the moral reassuring that would explain his phrase "often necessary" choice. As McCormick contends succinctly, something is necessary, first of all, in terms of competitive values. Callahan explains the necessity almost exclusively in terms of the woman's perception of it. Important as these

perceptions are, they do not constitute the heart of an ethical moral position on abortion.¹⁶¹

In support of their position the abortion rights advocates argue that their decision arise from the unjust and repressive societies that downplay the role and place of women in the society. The argument then goes, “were we to have a just society abortion demand will cease since women would have been relieved from the social and economic pressures that hitherto have been the propelling factors”.

First, we would say that the above argument is a scape-goating attempt by the abortion rights advocates in an attempt to run away from taking responsibilities for decisions individually made. The challenge is to challenge the problematic structures and societal institutions directly. We are in agreement with Callahan, himself an abortion rights advocate, when he writes:

To concentrate on abortion as a response to poverty, poor housing, puritanical attitudes towards illegitimacy and racism is cheap and evasive solution. It achieves no more than reinforcement of unjust political and social structures and institutions.¹⁶²

In as much as abortion has something to do with the unfair treatment of women in this otherwise male dominated world, it is not however wholly true to say as has been propagated by the pro-choice advocates that abortion is nothing but a symptom of an unjust society. This notion utterly ignores the fact common enough in affluent countries, that large numbers of women choose abortion because they have decided they do not want more children. They are acting neither out of social or economic coercion, nor responding to an unfair treatment of some kind but rather out of a positive desire to shape and live a life of their own choosing not dominated by unexpected pregnancies and unwanted children. With such kinds of decisions personal convenience and not economic or social conditions take centre stage. Furthermore such a notion neglects the reality of contraceptive failure-among both the affluent and poor women, which can and does occur independently of economic and social conditions.¹⁶³

While we are generally agreed with Callahan that abortion can not just be said to be a symptom of an unjust society, there are some issues, however, that need to be raised. First, the decision by apparently affluent people to abort their unborn, just in the name of numbers or comfort is a selfish one. For, while some are aborting because they lack financial resources, others are aborting because they do not want to be disturbed in the enjoyment of their abundant resources.

Furthermore, when one condemns the unborn because of contraceptive failure, we ask, what has the fetus to do with that? Should not the concern follow-up with the manufacturing companies or their personal negligence in the administration of the contraceptive method? After all, what is life all about? Is it just a "bed" of roses?

One must be prepared to handle the risks that are part and parcel of our daily lives. We must not lose sight of the fact that our endeavors have attendant risks, which we must be ready to face. And if we are not ready to do so, then let us go the nun's way: abstinence. That is the only way we can guarantee no deaths: that of the woman and the fetuses.

Thompson's' position as discussed above supports the mother's right to abort as a necessary evil, one, which must be accepted in order to respect the mother's rights. The basis of the argument is that the mother has a right to seek an abortion because of her rights over her body.¹⁶⁴ The pregnant woman's right to do as she pleases with her body is held to allow her to refuse her womb's protective environment to the fetus, the latter's right to life notwithstanding.

The said rights, however, must indeed be very unique because of its indifference to whatever is on its way. The mother's rights must of necessity override the rights of the developing child in the womb. But what does the right to liberty really involves? According to McCloskey:

The right to liberty involves freedom from restraint and confinement; respect for the right to life of others involves that my liberty be curtailed by quarantining if I suffer from an infectious disease, which may be fatal to

another person. Thus the right to life dictates quarantining and treatment, whether he wants it or not, for the person suffering from tuberculosis, typhoid, cholera, meningitis, and the like. However, the claims of liberty may on occasions override those of the right to life, as in some cases of incurable carriers, or with diseases, which may only in rare cases be fatal. Similarly concern for the rights to life would dictate different traffic rules, different maximum speeds from those which would stem from concern for the right to liberty, and for other rights.¹⁶⁵

Judging by the above explanation by McCloskey it is apparent that the pro-choice feminists rights claim are indeed “super rights” on a super highway. The reading on the wall is “obstruct at your own risk – no stone will be left unturned all the way.” The right of the other to be given a chance too must of necessity curtail the right to liberty. So, it stops where the rights of the other begins. In that regard absolute claim to rights becomes impractical.

In regard to the pro-choice abortion on demand position, Boss, contends that a Policy of abortion-on-demand does not necessarily entails that women presently getting abortions perceive their decisions to have an abortion as freely chosen. According to her the right to privacy rhetoric, which enshrouds the current pro-choice ideology, rather than empowering women, more often than not, serves to reinforce women’s isolation and sense of abandonment when it comes to child rearing decisions, whether it be to abort the fetus or carry the pregnancy to term.¹⁶⁶

This, indeed, is a negation of what we often hear being said by the liberalists and others who support abortion but which now appears to be just claims with no substantive backing. These contradictory scenarios, open doors for suspicion even about women’s genuine and worthy causes. The need for enfranchisement, and empowerment of the women lot, cannot be underscored. Indeed, few people would question the assertion that, women, in our male-dominated society are in need of empowerment. This, approach taken by the pro-abortion advocates, which approach, seeks to empower women at the expense of their children, need to be re-examined. Perhaps the price is unavoidable. However, if we want to maintain our pro-choice stance let us not at least delude ourselves

into thinking we are doing it to benefit children, but instead be willing to examine our real motives and to back-up our position with viable and consistent arguments.¹⁶⁷

David Mall, speaking of the language usage in the abortion debate writes:

... the abortion controversy exhibits language that is inherently attitudinal... the most efficacious ultimate term now used is that of "freedom". Because this term has broken away almost completely from its denotative moorings, it guarantees instant charisma. A feature of the gospel of ... people may use works as their presuppositions dictate. At any rate, the point to western man seems to be that only the completely unfettered life is worth living. If sheer self-sacrifice is needed, this term finds legions of dedicated people marching to its banner ... In the case of abortion, the woman is characterized as having the inherent right to "reproductive autonomy" or doing whatever she wants with her own body. The doctrine of course, finds receptive ears in a permissive society currently in the process of liberating its women. "Compulsory pregnancy" becomes a devil term. Expectant women are forced to endure nine months of unwilling pregnancy, and we are asked, by implication, what greater emancipation can there be than removing the chains of pregnant servitude?¹⁶⁸

Freedom as a right however, is never exercised in a vacuum, but in a network of relationships. It is never absolute. The exercise of right in the human society is limited by the principles underlying the human rights declarations – equality, justice and fairness for all members and the prevailing contextual realities and circumstances. Even if such claims, as the right to control one's own body or to dispose of what is in it at will, were to be accepted, the exercise of such rights must always be limited by the consequences for other people. One cannot have an undisputed right to live if the price for his/her right is someone else's life or the right to be happy at the cost of someone else's misery.¹⁶⁹ Furthermore, no person can assume supremacy or superiority over the lives of others either arbitrarily or in any other way. A woman who sets her rights claims either to privacy or over her own body above the life of another fellow human being male or female, young or old, born or unborn is declaring directly and indirectly that a woman's rights are superior to the rights that cover them all: human rights. And by so doing she has put herself above the human race. She is by self-appointment, the executor, over life and death!¹⁷⁰

Secondly, privacy/liberty and reproductive rights and freedoms cannot be considered or exercised apart from the exercise of other basic human rights. No woman can exercise or claim to exercise any meaningful right with regard to her reproductive function if other basic human rights are not being upheld. The reproductive rights and freedom claims must be incorporated into a broader human rights framework. Narrowing in on one aspect will not help if the other aspects are malfunctioning. The social and economic elements must be addressed too. “The social entitlement elements consist of the obligation of the state, or of “society” to ensure that everyone can exercise the full range of economic, social, political and civil rights that infuses reproductive choice with real meaning”.¹⁷¹

Furthermore, the freedom to choose is also contingent upon the state’s fulfillment of certain social and economic rights (entitlements) that make genuine choice possible. The critical issue for pro-choice advocates, as Petchesky, observes, is not so much the content of women’s choices, or even the (abstract) “right to choose” as it is the conditions under which choices are made. The “right to choose” means little when women are powerless¹⁷²

5.7. Summary and Conclusion

We have argued that a woman’s right over her body does not justify the claim to a right to abortion. The major argument for this claim is the “no duty to sustain” argument. That argument fails on the following grounds:-

- i. Abortion is not a mere withholding of support, not a mere “unplugging,” but a deliberate killing, even if the intention is the withholding of support;
- ii. The violinist analogy is inappropriate in that the fetus is not a patient or sickly organism seeking means of treatment and sustenance from the mother as is the case with the violinist;

- iii. The woman is not justified in withholding support from the child. The child is her own, and so she has the obligation to take care of her/her. Failure to do so is child neglect. Hence “unplugging” is wrong already on the level of intending to withhold support.
- iv. Indeed a mother’s natural obligation is to care for the welfare of her child; her body is so designed as to provide such care during the normal term of pregnancy. Do a mother’s right extend to a denial of what is natural to her.¹⁷³
- v. The woman is not justified in withholding support from the child, even if the child were not her own,. For we have a general obligation to save others’ lives, to sustain them if they need us to live, unless this represents an extreme hardship.
- vi. The child as an intruder argument (with the analogy to a burglar fails because the child is not an intruder, but in her natural place – even if she were an intruder, she could not be ejected by being killed.
- vii. The argument of the right over one’s body proves the wrongness of abortion: Just as the mother is claiming the right to her body the child too has the right not to have her body destroyed.

Secondly, with regard to the pro-choice interpretation of the concept of liberty, the argument that women should have exclusive freedom to determine when life begins and to choose whether they want to carry the pregnancy to term, because they are the ones who bear the burden implies that the unborn is part of a woman’s body. This is not true because it is scientifically proven that in the early stages of its development the unborn is a completely different entity from its mother.¹⁷⁴

Whereas it is true that a pregnant woman is free and everybody should enjoy his/her freedom it is also true that certain conditions may arise which may demand limit to one’s freedom. No one can absolutely, legally control his /her own body or that of another.

Furthermore, one's rights are workable only in the broader context of rights of all. "When we tolerate abortion-on-demand on the grounds of freedom to choose, we in effect favor the right of each individual to impose his or her morality on the defenseless in the human family". Consequently, Individual liberty must be circumscribed to the interest and needs of the whole.

Pregnancy, among other things, is a possible consequence of a sexual encounter. The mother has already exercised her right to "freedom of choice" by choosing to have sex, by choosing to make herself susceptible to pregnancy. Although it may not be what she wanted or intended, she could have been aware that conception is an inherent possibility of such an encounter. But even in situations where the pregnancy may have resulted from a case of rape, fully aware of the pain involved on the part of the mother, the resultant child cannot still be condemned solely on something he/she did not bring about.¹⁷⁵

On the nature and scope of freedom, it is worth noting that freedom is not free reign. Rather, freedom is a state that grows from awareness and acceptance of truth. After all, what kind of "freedom" is found in the pregnant mother when the oppression she seeks to avoid is turned on her own son or daughter? Life is not lived in isolation but rather in a network of relationships and such relationships acts as parameters of the extent to which the exercise of one's rights can go. In the light of this, if from one's choice emanates adverse consequences which affect others, he, or she should refrain from making such a choice.

The argument by some pro-choice proponents that they have the legal right to choose an abortion because they have a right to marry or not to is flawed in that the abortion issue is very different from marriage. It involves the ending of a life whereas marriage involves the generous sharing of life with another person. But even within the marriage one's partner limits set up one's freedom. In addition unlike in a marriage decision where one partner can be able to solicit a response from the other in the case of the fetus at this stage it is impossible to obtain consent.¹⁷⁶

The rights and interests of the mother should not be weighed against those of the fetus's right to life. If the issue involves conflict between the rights of one person and another, the person with the greatest say in the outcome should not make the judgment. In the case between the fetus and the mother the complainant is also the judge. It is highly unlikely that a fair and objective judgment will be delivered.¹⁷⁷

The uncertainty surrounding the determination of the status of the fetus, while being acknowledged, does not at all make the fetus non-human nor justify its arbitrary destruction.

Neither can abortion be said to be a private matter. On the contrary abortion affects the child, father, extended family, medical personnel. It also affects basic attitudes about life, fidelity, and responsibility.¹⁷⁸ Consequently; privacy should take precedence only when our actions affect no one but ourselves. But when our actions may affect, violate or deny the fundamental rights of others, how can they be considered strictly private? Furthermore, hardly can one find a case or incident that does not implicitly or explicitly affects others.

Conclusion

This is the crux of the matter. The demand for unrestricted abortion rights and complete reproductive freedom is not after all in the best interest of women nor their children. The claims of rights to liberty have not after all liberated women. In assuming full control over their reproductive functions and hence the familial obligations and responsibilities that go with it, the women rights claims have bound women by imposing on them the burdens which otherwise men would have carried or both of them would have happily shared.

As these demands impact negatively on women, men too get a dose of the beating as they are unfairly denied their place in the family set up by the implications of these demands when the same arise therein.

The extent, to which men are immobilized by these demands, sadly to the detriment of women, shall become clear in our discussion in the next chapter on the Right of Participation.

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CHAPTER SIX

ABORTION AND THE RIGHT OF PARTICIPATION OF THE HUSBAND/PARTNER

6.1 Introduction

This chapter attempts to examine the implications, on the part of the husband/partner, of the pro-choice argument that women should have exclusive freedom to determine when life begins and to choose whether they want to carry the pregnancy to term or not, because they are the ones who solely bear the burden of pregnancy.

The central thesis of this chapter is that abortion is not a moral question only for women or a women only affair. In most abortions some man directly or indirectly is involved in the choice or in the coming into being of the fetus, a boy friend, a husband, a father; and often the physician is a man. In this regard, the argument that abortion is a woman's right unfairly sidelines men in most cases to the detriment of women.

It is argued here that the implications arising from such a position have adverse effects not only on the intended targets, the men, but also on the very advocates, the women. This position that sees abortion as a woman's basic right gives men an excuse to abdicate their traditional obligation as bread winners and also an opportunity to engage themselves in non committal sex whose consequences the women lot will carry.

In the long run the liberty, which the women are seeking in their adoption of the position above, becomes a mirage as they find themselves entangled in the very trap they are seeking to free themselves from, male chauvinism.

6.2 The right of a man in the abortion decision

Wesley D.H. Teo, contends that, in the Roe V. Wade United State's Supreme Court ruling of 1973 and to which many pro-choice proponents turn in support of their position, the court made two points distinctly clear: in affirming the mother's right to have an

abortion during the first trimester of pregnancy. First, vis avis the mother's right, the state right is so non compelling that it is not permitted to interfere in anyway with the woman's right of privacy during this period –meaning that - against the state the woman's right is absolute; Second, since the fetus is not a person protected by the fourteenth amendment then against the fetus, the woman's right is absolute.¹

Teo, however, laments about the fact that even though the court acknowledges that the issue of the husband is not attended to in this particular case as the complainant was in the first place a single lady, the misapplication of the lower courts of the landmark ruling has created an impression that the husband has no place at all in the abortion decision. On the contrary, however, Teo argues that the woman's right to abort is not exclusive as there are certain constitutional rights, which the husband is entitled to. Consequently, to grant such an exclusive right to the woman to terminate her pregnancy would:

First, impair the husband's right of procreation. Teo argues that procreation, like marriage requires the involvement of two individuals. This means, therefore, that if the law provides that the abortion decision belongs exclusively to the wife and makes the husband a stranger to such a decision, then the talk about procreation as a basic human right loses meaning;

Second, discriminate against the husband on account of sex. The argument that the woman should have an exclusive right to abortion on the ground that the fetus is in her body and therefore must be considered as part and parcel of her body especially before viability is, according to Teo a misplaced argument. The unsoundness of such an argument arises from the fact that it overlooks the important fact that pregnancy is not normally a condition that a woman can bring about on her own. On the contrary, Teo contends, pregnancy is the product of a cooperative enterprise requiring the participation of the husband or partner. It so happens that nature, for reasons unknown to mortals, has entrusted the nurturing of the fetus to the woman. Therefore to employ this biological fact as a basis for asserting a legal right is, according to Teo, obviously to engage in sex based discrimination;

Third, deny equal protection to the husband. It is Teo's contention here that if the abortion decision belongs exclusively to the married woman, whenever there is a disagreement between her and her husband on this issue, the outcome is predetermined in favour of the wife. Teo argues, however, that the point of contention here "is not that the law favors one party rather than the other, but that it favors, in such a way as to deny equal protection to the other although both are similarly situated."²

It is apparent here that both the men's and even fetal interest are unnecessary but unavoidable side shows which can only be addressed when there is no way out. But even then, whatever decision will be made will be subject to the woman's supreme interest or rights *per se*. This abortion imperative explicitly overlooks and denies men's interests in the abortion decision.

While some feminists deny completely that men have no role to play at all in the abortion decision, some admit however, that, men are the actual people to whom women are related and that no discussion of abortion is complete without asking how much or how little men should be involved in the decision making process.³

This acknowledgement, however, is hampered by the fear of the pro-abortion advocates to the effect that if any concession is made with regard to having men have a moral right to participate in women's abortion decisions; such (unnecessary) obstacles/requirements such as spousal notification and consent laws will become the order of the day.⁴

Therefore in order to avoid such kind of obstacles that may be placed before the affected woman, the abortion decision should be left squarely to the woman in whose body the fetus resides. For, in the final analysis, some feminists argue, the fetus is in the woman's womb hence the decision regarding abortion is properly hers. Whether she or any one else likes it or not, in choosing for herself she will choose for others.⁵

According to Rosemarie Tong, the abortion debate has so preoccupied us to the extent that we have failed to pay attention to the ways in which the abortion decision, more than

any other, reveals how the act of procreation makes men and women interdependent. But the question that one may ask is that of what use or significance is this interdependence when as she contends; the abortion decision in the final analysis, is the woman's. In which way will the woman manifest that interdependence in this unilateral decision? How can the man and the woman be committed enough to see themselves as the "we" as she puts it, loving and responsible enough to make the decision together if at the outset one party is already asserting her position as one most qualified to do so.⁶

In response to the question whether the father should not have a say in the abortion decision and especially if he is willing to raise the infant to adulthood, Allison Jaggar's position is that our focus should not be on the individual who wants to have his baby but on the fact that pregnancy generally affects women in ways that it cannot possibly affect men and also on the fact that motherhood is generally a more burdensome institution than "fatherhood". It is Jaggar's position that those and only those who are importantly affected by them should make decisions. Towards this end, he writes:

Biology, law and social conditioning work together to ensure that most women's lives are totally changed as the result of the birth of a child while men can choose how much they wish to be involved. It is for this reason that the potential mother rather than the potential father should have the ultimate responsibility for deciding whether or not an abortion should be performed.⁷

Looking at Jaggar's position two things are worth mentioning. First, the institution of motherhood and fatherhood are not antagonistic but mutually complementing institutions. Whereas some of the responsibilities relating to both institutions may have something to do with the internal social situations within specific people groups hence the attendant legal and social conditionings, the biological aspects are natural.

Two, with regard to the biological aspects of the relationship, the best the two parties can do is to appreciate one another's situation and attendant responsibilities and work to see how best they can be of support to one another in the realization of their obligations. With regard to the social aspects, the best that the aggrieved party can do is to seek to advocate towards the changing of those practices that lay undue burden on the women.

The culprit in this case, is the society to which both the woman and the man belong. The fetus is not a visitor or a potential visitor but a new entrant into the society of men and women, but now in the early stages of this worldly life, a stage that nature dictates that it is in the womb. It is true “that pregnancy generally affects women in ways that it cannot possibly affect men.” The reason for this discordant/imbanced effect is not that men are running away from such, though in some instances they do, but rather because nature has so designed it that they be affected differently so.

The point of action in a scenario such as this is not to deny the father an opportunity to participate on the outworking of such crucial happenings within his own family or network of relationships. As changes are being sought in regard to the conventions regarding the degree of parental responsibility or the tougher enforcement of the law prescribing paternal child support the father should, share with the mother both in the abortion decision making and also in the endeavor to jointly seek to bring about the desired social and economic changes that come to bear on the family and societal life.

The import of Jaggar’s position with regard to the role of men in the abortion decision, and Jaggar herself acknowledges, is that the father’s “no right of interference” extends to the physicians and health-care practitioners on the ground that they play no role in raising the child to adulthood. The complexity in this position as noted by Rose Marie Tong, and even Jaggar , is that if the physicians and other health care practitioners are not entitled to interfere with the woman’s abortion decision they cannot also be required to implement a woman’s abortion decision. Even if the health/medical practitioners were to be drawn from a broader spectrum of the society so as to pre-empt a situation where some may refuse to offer abortion services the fact still remains that some of the women included may not be willing to offer such services and they have every right to, according to Jaggar’s line of argument. In addition whether they are many or few they have a right not to be forced to do that which their conscience and the law bars them from doing.⁸

Indeed abortion has often been understood to be an issue where men's interests are pitted against the interests of the downtrodden women. In such situations men are depicted as the indifferent lot who are always against anything good meant to uplift the welfare of women. This, to a large extent, explains the spirit and intent, underlying the current calls by some women for unrestricted abortion rights and complete reproductive freedom. But as Cunningham et al observes this kind of assumption is mistaken and wanting. This portrayal fails to explain why more men than women favor abortion rights in public opinion surveys. It may be that men perceive greater benefits from freely available, relatively cheap abortion.⁹

Such kind of support by men could be explained on the grounds that some men see abortion as an easy and cheaper way of avoiding the burden (financial, physical and psychological), that accompany pregnancy and child rearing. But apart from this group of men that support women out of their selfish agenda, there is a section of men who genuinely want to stand by women in their struggles. They want to see their families holding together and their offspring flourishing.

Many of such kind of men, have been denied an opportunity to exercise their love and responsibility by the negative perception that a section of women have towards them. They see them as obstacles to the attainment of their dream: the unrestricted access to abortion and complete reproductive freedom. In the exercise of the freedom to control their own bodies and whatever is entailed therein, men have no part to play, they are, just spectators. For it is the woman, and her alone, who feel the pain and burden of pregnancy and childbirth. On the contrary, however, and in negation of the claims of the said "fighters" for the women cause, men undergo a lot of pain in their hearts and minds when they remember and see the impact of their relegation to the periphery of the theatre of action. One such man, Bill Stout, painfully recounts an event that had taken place in the early years of his marriage:

We had been married two years and did not consider ourselves poor, but we were close. We had an old car, a few dollars in the bank, and I had a temporary job writing news stories for radio announcers. And she was pregnant. We had argued for more than a week after her cautious

announcement. I had adopted her young son by a previous marriage, but this would be our first baby together, and I was delighted. Minutes later I was appalled, then infuriated, by her insistence she would not go through with it. Even more hurtful I suppose, in the callowness of that encounter so long ago, was that she had talked with several women friends before telling me anything. She already had the name of the doctor and was ready to make an appointment when I would be off from work to driver her to and fro.

There was a lot of shouting and pleading that week and a good deal of pumping up (by me) of my prospects at the radio station. She pointed out that those were prospects only. She noted the sickly condition of our bankbook, plus the fact that we had 12 payments to go on our first television set. She also made the point hammered home today by the women's pro-abortion groups: it was, after all, her body, and the decision should be hers and hers alone. I am still wondering about that first one that never was, what about other men? How many of them share my haunted feelings about children who might have been? Why are we the fathers who never were, so reluctant to talk about such feelings? And if it can be so painful for the men, how much worse must it be for the women who nurture and then give up the very fact of life itself? ¹⁰

As long as the institution of marriage still holds; as long as it remains and continues to be the framework through which the human society procreates itself, and as long as the conception process still requires the male seeds for it to be accomplished, men, we mean male, shall continue to feel pain and neglect every time an abortion decision is made. For, inherent in such decisions, is a disregard of his presence and role in the bringing into being of that child that "never was".

It is ironical that the man who could be charged, sentenced, fined or imprisoned if found guilty of rape either in a marriage relationship or outside, delinquency in alimony or child support payments, even if denied visitation right with his children, has no rights in the abortion decision. And as if this is not enough "this threat to the husband/wife relationship (which would deny the husband, like the unborn, any rights whatsoever) has now been joined by another; the parent – child relationship. Now many abortionists insist that pregnant unwed minors be "emancipated" from parental control". ¹¹ Now what the abortionists demanded of the father is now being demanded of both the mother and the father. With this, the fate of the family and society at large is put in jeopardy. It is now the survival of the fittest: everyone for himself or herself.

On the need for statutes requiring parental consent by teenagers or minors seeking abortion, Professor Tripe sees such Statutes in cases of abortion among teenagers as unnecessary. Such statutes, according to him are cruelty in the guise of compromise that serves no useful purpose. According to Trippe, many of the laws put forward to stake out what is supposedly a middle ground in the abortion debate, rather than meaningfully protecting either life or choice, randomly frustrate both and do not move us closer to a society of caring, responsible people. This they do, in that in the case of any given woman, these laws will either act as an absolute obstacle to abortion or will stand in the way. They promise abortion rights in principle but deny them in practice to those who are least able to bear the burden of motherhood- particularly the young, the uneducated and the poor.¹²

Contrary to Trippe's position, however, such statutes, especially those that require teenagers to seek parental consent in case of an abortion decision are vital for the maintenance and enhancement of societal and family values.

In the consideration of a state statute requiring a married woman to secure her husband's consent to obtain an abortion in the *Planned Parenthood of central Missouri V. Danforth*, the court ruled that the consent of the spouse might not be constitutionally required during the first twelve weeks of pregnancy. The basis of that decision was that since the state itself could not prohibit abortions during the first trimester it was not possible on that account to delegate authority to any particular person, the spouse inclusive to prevent abortion during the same period.¹³

The deliberate denial or exclusion of a spouse from having any say in the abortion decision is detrimental to the very women interests the court is seeking to guard both in the short, and long, term. This leaves the husband as a spectator in what is supposed to be a team fight, and rob him of an opportunity to exercise the responsibilities that go with fatherhood and hence leaving the woman in a very precarious position should the procedure backfire in one way or another – either through resultant family breakdowns,

medical complications and resultant financial burdens which the woman will now have to shoulder on her own.

Secondly should the need for legal redress arise later on, the husband may hide in the discriminatory court ruling and wash his hands of any obligation since, after all, the courts have declared him *persona non grata*, in 'his own game'. The irresponsible husbands would hide in this unfriendly legislation to the detriment of the supposed beneficiary, the mother.

To argue that "because only the woman is capable of pregnancy and only the woman must bear the consequences of childbirth or abortion, and because only the individual may control the destiny of her own body, the woman's right to choose between abortion and pregnancy is greater than the man's real, but ultimately lesser personal interests, is to miss the point."¹⁴

While on the one hand it is true that it is the woman who alone bears the weight of the continuously growing being in her womb and all the attendant pregnancy related medical complications and discomforts, on the other hand, it is not true that the man carries no burden or is not affected or inconvenienced in any way by the pregnancy. We can say that while the woman is physically pregnant, the man is "psychologically pregnant". The weight of his pregnancy continues to grow as the worries of maternity bills, clothing, food requirements and utility bills seemingly dawn on him. In addition the man has to adjust his working schedule and duty performance in the house either by personally giving a helping hand or by securing assistance through house helps. His being there to attend to his mate in the course of the discomforts that she has to grapple with from time to time cannot be ignored.

To contend, therefore, that to require a woman to notify her spouse of any abortion decision, is to impose an undue burden on a woman's abortion decision¹⁵ is to be unfair, not only to the man, but more so to the woman. It is unfair to the man because he is being denied a role in what he has a stake. The traditional role of a husband as an

umbrella of the family, far from being an expression of male chauvinism or an outdated belief, as some may argue, cannot be wished away without any repercussion on the family stability and by extension, the woman. Men have a moral, physical and financial responsibility to the family, which they must be allowed to exercise. Any attempt to scuttle the exercise of this responsibility by men will leave women wounded socially, financially and psychologically. The state will not be spared either. When husbands ran away women are left with additional financial and family responsibilities. This strains them to the limit in all aspects of life. When families become unstable, there is likelihood that the state will become unstable too. It is stable families that make stable societies and stable societies make stable governments.

The conclusion of the matter, therefore, is that the interests of a man or husband for that matter serve a compelling, women and state interests. All the interests have to be balanced accordingly. The following highlight our argument:

Although the state's interest in protecting traditional family structure is insufficient to justify restrictions on a woman's right to abortion, it may be argued that men have independent interests on their potential offspring and that the state may act to protect those interests. When a woman wishes to obtain an abortion, her partner might have reasons for wanting to participate in the decision. If the man and the woman are married or in an ongoing relationship, both partners have an interest in the procreative potential of that relationship. And if the woman decides to carry the fetus to term and ultimately give birth, the man who impregnated her has a legitimate interest in his offspring. Although men cannot carry fetuses or give birth, a child, when born, is in a biological, moral, social and legal senses the father's as well as the mother's. Although the woman may have good reasons for wishing to abort the fetus, the man may have good reasons for wishing to see it carried to term and born.¹⁶

The arguments above present a good case as to why the interests of the man must be taken into consideration in any abortion decision. The case is a two-way scenario and not a one-way decision as it has been made to appear. To hold the position that in spite of the above concerns "his (man's) interests can never outweigh her (woman's) constitutional provision, or the woman's interests, is to be very unfair to the man. In the light of the considerations espoused in the quotation above, it is apparent that both the man and the woman have some common interests in the unborn. And if that is the case then, the

problem may as well be in the way the constitutional provision has treated these interests against one another.

The purpose of any constitutional provision should be to take care of the interests of its beneficiaries both in the short run and the long run. As already discussed elsewhere in this study, the Roe Vs. Wade 1973 supreme court ruling in America based on its interpretation of the fifth and fourteenth amendment of constitution of the United States touching on the protection of the life, liberty and property of the citizens, appear to have over emphasized the woman's right to choose on the basis of her right to privacy. While this was done in order to protect and, so to speak, guarantee the woman her rights, it has in the process, both in the short, and long, run, impacted negatively on her well being. The banishment of her male counterpart from her life has brought with it attendant burdens and struggles which would otherwise have been shared together. And, if this constitutional provision, or its interpretation, has not brought or guaranteed the woman the intended good,, then why can't it not be revisited for the sake of this very woman?

It is worth noting here that we are not talking about reaction to emotional outbursts or appeal to sympathy, instead we are dealing with a matter that is threatening to destabilize, if not destroy, the very lives it was intended to take care of: the woman, her family and the society. Whereas not many countries of the world and especially the third world countries have adopted similar liberal abortion laws as is the case in the United States and some European countries, many of these countries, especially with the current spread of western culture and lifestyles due to the current globalization trends, may follow suit.

To acknowledge that it would be difficult to deny that a man who has impregnated a woman has interest in the ensuing fetus, and still go a head to conclude that, neither of these legitimate interests can permit a state compelled intrusion on the woman's right to choose between a abortion and pregnancy,"¹⁷ is really to downplay a very serious issue touching on man's place and role in his family. Any law passed by the state that touches on any aspect of our lives is an intrusion into those areas. The only difference here is in

the nature of the intrusion whether it is the aggrieved party or target audience. So the question of “forceful intrusion” into the woman’s private affairs does not arise.

George Harris, addresses the issue of neglect and outright indifference to the fathers’ interests and desires with regard to abortion.¹⁸ Using five different case studies as illustrations, Harris shows how abortion affects the legitimate interests of the father and how such interests as the father’s autonomy could be respected.

Harris contention is that it is morally wrong in some cases for the woman to have an abortion because it would be a wrongful harm done to the father and a violation of his autonomy.¹⁹ Using the Kantian notion of treating persons as ends as a framework for his position, Harris contends that “in the cases where abortion is claimed to be morally impermissible it is so on the grounds that it violates the father’s autonomy; that is, it invades the man’s morally legitimate interest in self determination.”²⁰

On the issue of when it is morally significant to say that the fetus is the fathers’ as well as the mothers’, Harris argues that the interest in autonomy and the interest in procreation are quite compatible and are common to both men and women. And on the same, he observes:

The significance of this, I believe, is that when a man and a woman autonomously decide to become parents together, a harm done to the fetus by a third party without the consent of both parents is a *prima facie* wrong done both to the man and to the woman because it is an interference with his autonomy as well as hers. Moreover a harm done to the fetus is a harm done to the man as well as to the woman because the fetus is both the object and the result of his pursuing a morally legitimate interest in procreation of both the father and the mother and thereby to interfere with the man's as well as the woman's autonomy.²¹

However, as Harris contends, any legitimate interest whether, it is the autonomy of the woman or the man, interests of the grandparents having additional grand children or the interest of a country in having a larger population must be pursued in morally legitimate means and ways. For any attempt to pursue them through morally illegitimate ways will

render such interests illegitimate. Thus a *prima facie* morally legitimate interest can fail to be morally legitimate *simpliciter* if it is pursued in a way that does not respect the autonomy of others to pursue their morally legitimate interests.²²

The respect of one's autonomy, however, as Harris argues, demands that everyone who claims to have a right or a claim that others respect his or her autonomy must recognize the obligation to reciprocate in taking the autonomy of other people seriously. This according to Harris is what is expected of couples (men and women) in a relationship. But unfortunately there has not been such a kind of situation due to inconsistencies in regard to the demand of equality on each other in a relationship²³ and the issue of forthrightness with regard to the sharing of information and letting one another know each other's interests and plans.²⁴

The point that needs to be noted, however, is that for a claim to be said to be legitimate it must be such that what is being claimed must have been acquired through legitimate means also. In this case, in order for a man to lay claim to the fetus being his, in a sense that the mother is obligated to respect, the fetus must be the result of his pursuing the legitimate interest in procreation in a morally legitimate way. However, when a man has satisfied the requirements of autonomy in regard to the interest in procreation both in regard to himself and to his sexual partner, the woman has *prima facie* obligation to him not to harm the fetus. And unless there is some contravening moral consideration to override this *prima facie* obligation, the abortion of the fetus is morally impermissible.²⁵

This indeed, is the truth of the matter. The man cannot be unfairly denied an opportunity to pursue his legitimate interests morally. And, neither, can he expect to have his illegitimately acquired interests honored. However this argument can not be used as it has often been done to justify abortion on the basis of rape as this concerns only the judgment regarding the actions of man and not the fate of the being of the resultant product. Whose destiny must be looked at on the basis of its unique identity and beingness.

David Blankenhorn challenges the contemporary belief that the traditional culturally entrenched male - father figurehead is no longer necessary in the current order as advocated by the proponents of androgynous fatherhood. He challenges fathers not to transform themselves in their thinking and action to the position of mothers but rather appreciate their traditional familial responsibilities by not running a way from them, for they can as traditional men, contribute tremendously to family life. Men should therefore not allow themselves to be pushed out of the family in favor of women- dominated families or single – mother families.²⁶

Contrary to the beliefs of the proponents of the “new father view”, that see cultural beliefs and traditions as impediments in the achievement of their goal, Blackenhorn contends that effective fatherhood requires cultural conscription. As a social role, he argues, the deepest purpose of fatherhood is to socialize men by obligating them to their children and the mothers of their children.²⁷ While seeking to liberate men from their traditional breadwinning responsibilities, the “new father view” proponents also, as Blackenhorn points out, seek to unburden them from widely held norms of masculinity. However, they have not accomplished much due to reluctance of most men in society²⁸. Whereas, the traditional roles of man in the society and family setup has of late changed tremendously especially with the entry of more and more women into paid employment which has drastically brought a new perspective in regard to man’s traditional role as a bread winner it is our position here that Paternal attachment to breadwinning is neither arbitrary nor anachronistic. It is an instrumental, goal driven activity in which success derives, at least in part from aggression. Most important the provider role permits men to serve their families through competition with other men. In this sense, the ideal of paternal breadwinning encultures male aggression by directing it towards a pro-social purpose.²⁹

The way forward in this kind of situation is not really to uproot men in a bid to reinvent them and in the process deconstruct traditional masculinity, but rather to endeavor to incorporate them as they are into the gendered roles that reflect, rather than reject, their

inherited masculine norms. If we go by the former the end results will be nothing but destruction of the very family we are seeking to uphold. This will be so because:

The new father model does not merely unburden men of breadwinning as a special obligation. Ultimately, it unburdens them of fatherhood itself. For, as the example of breadwinning demonstrates, the essence of the new father model is a repudiation of gendered social roles. But fatherhood, by definition, is a gendered social role. To ungender fatherhood- to deny males any gender-based role in family life- is to deny fatherhood as a social activity. What remains may be new. But there is no more father.³⁰

According to Balckenhorn, closely related to the desire to avoid male offspring is the desire to remove masculine traits from male offspring hence the need to resocialize boys, a prominent theme in “new father model” literature. This kind of attitude also accounts in part for the tolerant and even celebratory view of mother headed or single parent homes embraced by many proponents of new father model.³⁴ At the bottom of this upsurge of the single parent homes, Balckenhorn correctly observes “... is the belief that there is nothing special about a father, that there are no fundamental tasks in family life that are properly and necessarily his work.”³¹

Under the “new father model” fatherhood as a distinct male activity is irrelevant. Instead the new father model has as it’s under girding the imperative of gender role convergence. In this set up the socially defined family males and female roles are replaced by, among others, the moral importance of personal choice - the belief that choosing freely among family behavior is not simply a possible means to something good but is itself something good and an ideal of human development based on a rejection of gendered values – especially those associated with traditional masculinity – and an embrace of gender – neutral human values.

Contrary to the belief among the new father model proponents, that the end result of such a move is happiness in the family the opposite is the case in that this social ethic demands the obliteration of precisely those cultural boundaries, limitations, and behavioral norms that valorize paternal altruism and therefore favor the well-being of the human infant. Furthermore it also denies the necessity, and even repudiates the existence of the father’s

work, which work, is irreplaceable on behalf of family that is essentially and primarily the work of fathers.³²

This work is necessarily rooted in a repertoire of inherited male values: historically and socially mediated understandings of what it means to be a good father. These values are not limited to toughness, competition, instrumentalism, and aggression – but they certainly include them. While these “hard” male values have changed and will continue to change, they will not disappear overnight or in the long run or turn into the opposites.

The insistence that the pathway to human happiness, lies in transcending the old polarities of sexual embedment in order for each individual man and woman to embrace and express all of human potentiality, within his or herself as the androgyny proponents espouse, has some far reaching implications on the parts of both the man and society as a whole. It is in effect a denial of sexual complementarity and ultimately a denial of generativity, particularly male generativity, which is, much more than the female’s, largely a social construction. Parenthood nor fatherhood, for that matter, is never a solo act. It requires a concerted effort on the part of all the stakeholders the first of which are the father and the mother.³³

In his article Joel Anderson presents a stinging criticism against what he terms, the “Neotraditionalists” a group to which according to his own classification Blackenhorn belongs. In his response to the claims that the egalitarian policies of feminists entail further social developments such as genderless parenting, selfism, individualism and competing agendas which are detrimental to a healthy family life, Anderson argues that this entailment is rarely plausible, and that even when it is, the risks of social fragmentation should not overshadow the importance of gender equality.³⁴

And on the Neo-traditionalist’s contention that it is important to recognize the distinctiveness of a fathers’ contribution to the family, especially as a good provider and

a strong protector on the grounds that: (i) If we eliminate the differences between what it means to be a father and what it means to be a mother, we will lose the benefits of diverse role models; (ii) As with many social organizations, the family benefits from functional differentiation, that is, from having a diversity of roles and functions that complement one another, rather than having everyone performing the same roles and; (iii) That by telling men that they must think of themselves as homemakers, proponents of gender equality exacerbate family disintegration by leaving men feeling they have nothing special to contribute. However:

There are several difficulties with this line of argument. To begin with, it is not entirely clear that promoting equality between men and women requires eliminating the distinctive roles of mothers and fathers. "Genderless" parenting does not deny that there will be role differences ("father" and "mother") but only that parents should not be trapped in one role or the other. Thus one can maintain the diversity of roles on which neotraditionalists insists, while keeping open the question of who must fill the roles.³⁵

According to Anderson, appeals to what is natural by the Neo-traditionalists, are generally dubious. For even if such appeals have become ingrained in the society, it might turnout that the persistence of this phenomenon may be traceable to inequalities that are the result of socialization rather than chromosomes.³⁶ Even the so called head start effect on the part of women in terms of childcare arising from their early relationship with the unborn during the nine months of pregnancy, Anderson believes that if an affirmative action were to be put in place, whereby fathers are given significant periods of time in which they have sole responsibility for the young infant, there is every reason to expect that such an imbalance will be corrected.³⁷

On the whole Anderson's position is that a stable, rewarding family life is perfectly compatible with egalitarian feminists' demands for genderless parenting, equal power, freedom of opportunity and the talked about conflict between pro-family and pro-equality position is according to him, a creation of the Neotraditionalists.³⁸

In response to Anderson's criticisms of the Neo-traditionalists position on the family set up we will raise the following issues:

First, can egalitarian feminists demand for genderless parenting and equality be truly associated with family stability? How does that stability come about if other stakeholders in the family, the father especially, is being sidelined or ignored completely in important family decisions such as doing away with the unborn baby?

Second, what kind of happiness or equality is Anderson and others talking about if it means that in order to achieve it or show that one has it, some life has to be lost?

Third, when the feminists talk of “my rights”, “My body” are they not promoting the very bias they are seeking to do away with?

Fourth, by basing their claims to unrestricted abortion rights and complete reproductive freedom on the so called right to privacy/liberty, are the women not becoming very selfish and discriminatory against men on the basis of gender while knowing very well that their reproductive functions, are uniquely granted by nature for the sake of all?

Fifth, there is no fairness at all on the side of men as Wesley Teo argues, because by granting the woman the exclusive right to make an abortion decision, the husband’s interests will be hurt because such a decision would: (i) impair the husband’s right of procreation; (ii) discriminate against him on the basis of sex; and (iii) deny him equal protection of the laws.³⁹

Sixth, once there is an inherent unfairness with regard to equal protection of the laws no genuine happiness or equality can be realized as Anderson claims.

If we accept the thesis that abortion is probably the principal means by which women throughout the world have limited their fertility and that as a method of fertility regulation it falls under the rubric of the right to family planning,⁴⁰ then we will not be exaggerating if we infer from this position that the exclusion of men from any abortion decision is one way of making sure that women shall continue to abort by always assuring them of the continuous “supply” of the object of abortion: the conceptus.

The assumption of women's primacy in fertility and contraceptive use has led to a downplaying and neglect of men's role in studies of fertility and family planning. Regardless of whether this neglect is deliberate or not, or is as a result of the "carry over" influence from the developing countries from where the funding for these studies are sourced and survey studies and instruments are formulated – the content of which in most cases are not in consonance with the cultural contexts and realities of the countries in which these studies are carried out, or is as a result of the negative perception about men who are either seen as potential or real obstacles, not relevant to the process and outcome of the studies, or not knowledgeable about the issues being looked at, one thing is undoubtedly clear: the neglect of men is bound to have an adverse effect on the quality of the findings of such studies and the quality of the policies and programs that shall be formulated on the basis of the findings arising from those studies.

By routinely excluding men from demographic analysis regardless of cultural context, research has treated husbands and wives as entirely analogous individuals in a dyad. The neglect of power relations both inside and outside the relationship has made it difficult to make sense of reproductive decisions in different contexts ⁴¹

6.3. Summary and conclusion

It is time men are perceived not as obstacles or antagonists but vital partners and resources for improving the circumstances of women and children. The personal interest and stake that men have in the success of this venture cannot be underscored. When men are treated, or are told that they have no duty, or obligation at the prevention stage, the vicious circle of women conceiving and aborting will continue *ad infinitum*. The main victims of such a scenario are the women and children. It would be in the interest of women, the very best interest for that matter, if the women themselves were to take lead in the re-examination and re-evaluation of such standpoints that at face value appear to be working for their betterment but in reality are undermining the gains they have made so far. For what liberty is there for women in the enslavement in the vicious circle of conceiving and aborting?

As it has been argued in this chapter, demand for abortion as a woman's basic right gives man an opportunity to avoid meeting what would otherwise be expected of him as the breadwinner. For if the woman can arrogate for herself the power to give or not to give life, she can as well give herself the power to take care of those siblings she has allowed to live. If man could not be involved at the critical phase then why should he be bothered at later stages? Therefore, if a man is to be of any use in the context of the marital relationship then let him be from the beginning to the end. For now the implication entailed in the position under consideration is that the woman must carry the responsibility.

Furthermore, it is worth noting here that the pro-choice proponents' claims to unrestricted abortion rights and complete reproductive freedom will not only deny men an opportunity to play their role in the family set-up to the detriment of the women lot, but will also go further than that to deny others – the infants, the mentally handicapped, the senile, physically incapacitated and the children, not their opportunities to serve or participate fruitfully in his family or partner's affairs, as is the case with the father, but their very lives.

Our discussion in the next chapter on the Abortion, infanticide, and euthanasia and child abuse connection will bring this to light.

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CHAPTER SEVEN

ABORTION AND INFANTICIDE, EUTHANASIA AND CHILD ABUSE

7.0 Introduction

The central thesis of this chapter is that the pro-choice proponents' claims to unrestricted abortion rights and complete reproductive freedom will have adverse implications on the well being of the infants, the mentally handicapped, the senile, physically incapacitated and the children.

It is argued here that the psychological criteria for personhood as formulated by such proponents as Mary Warren, Michael Tooley, Joseph Fletcher and Michael Singer by extension close out the above-mentioned sections of humanity from the cycle of protection. This it does by denying them membership in the moral community of humanity because they are not functioning like any other normal human beings or because the mother does not want them, in this case.

While some proponents try to deny the logical implication of their positions others like Michael Tooley do admit that on the basis of his position infanticide especially of defective infants is permissible. The contribution of this position to the practice of euthanasia- both voluntary and involuntary is based on the position that categorizes some lives as of value and others are of no value. For example the non-sentient and unconscious fetuses are no different from the bed ridden comatose. In addition to opening room for extermination of some "useless lives" by others, this position is also likely to make some people to take or wish that their lives be ended because according to them on the basis of the functioning humanity position it is no longer valuable both to him/her and those around.

With regard to child abuse the argument is that if the child can be unwanted while in the womb even those who were supposedly wanted while in the womb can still become unwanted even while outside the womb should they not live according to expectations. If anything the level of unwantedness may become even higher because in this case the

mother could be regretting about some children whom she may have aborted but which she now thinks in the midst of this disappointment, that may be, they would have behaved better than the previously wanted ones, but now problematic child.

On the basis of the foregoing it is concluded that abortion as a woman's basic right is neither in the interest of the women lot nor the other members of the human society. Our discussion in the following section on the Abortion, infanticide and euthanasia will bring this to light.

7.1 The Abortion-Infanticide-Euthanasia connection

In his introduction to the book, *Abortion and Social Justice*, George Huntston Williams, expresses his position to the effect that whilst the supporters of the espousal of abortion as a right of the woman – many of them high minded people and leaders in good causes, see their cause as representing somehow a more human stage in the evolution of society, this development instead represents a relapse into callousness about human life and a grave retrogression.¹

This, indeed, is the position and the direction the pro-choice proponents' demand for unrestricted access to abortion, is, and has taken. There need not be mass movements worldwide for people to start worrying, the humble beginnings, the tiny mustard seeds being planted here and there, are sufficient, with time, to cause havoc of unprecedented levels in the human society. From the single maize seeds we are putting down now we shall harvest maize cobs and the multiplication process continues. The content of what is being planted now shall be reflected in what shall be harvested tomorrow. For, as it is often said, "the beginning is in the end".

In reference to Nazi Germany mass euthanasia program, Virgil C. Blum *et al* draw our attention to the fact that despite what people would like to think, the program cannot be written off as a Nazi aberration or as an alien element thrust upon civilization by fanaticism or one of the storm troopers or demented sadists. The movement was a

culmination of an intellectual movement whose humble beginnings can be traced to 1920 in the publication of *The Release of the Destruction of life Devoid of value*, by the psychiatrist Alfred Hoche and the Jurist Karl Binding. Quoting Dr. Leo Alexander, Chief Counsel at Nuremberg trials, Virgil Blum writes:

Whatever proportions these crimes finally assumed, it became evident to all who investigated them that they had started from small beginnings. The beginnings at first were merely a subtle shift in emphasis in the basic attitude of the physicians. It started with the acceptance of the attitude basic in the euthanasia movement that there is such a thing as life not worthy to be lived. This attitude in the early stages concerned itself merely with the severely and chronically sick. Gradually the sphere of those to be included in the category was enlarged to encompass the socially unproductive, the ideologically unwanted, the racially unwanted and finally non-Germans. But it is important to realize that the infinitely small wedged in lever from which this entire trend of mind, received its impetus was the attitude towards the unrehabilitable sick.²

The issue of abortion has undergone a revolutionary change of attitude in recent years. What was previously a criminal offense or a therapeutic measure for the safety of the mother or a rescue for the victims of rape and incest is now widely and legally performed not only as a means to prevent the birth of possibly defective children or to reduce the horrors that women would otherwise go through in back-alley abortions but simply for the convenience to back-up other birth-control devices. And more importantly as a “right” of the woman to be exercised regardless of the reasons that led to the pregnancy or the condition of the pregnancy.

Ruth Dixon Mueller sees abortion as a family planning tool, which according to her falls clearly and logically under the rubric of “right to family planning.” Women, she contends, use abortion like other methods of family planning to regulate the timing and number of their births, that is, to try to ensure that a child is born into circumstances where it will be welcomed and cared for.³

And in response to the argument often presented by those against the use of abortion as a family planning tool on the ground that the object of abortion is to destroy the conceptus

and not to prevent conception, Dixon-Mueller, while acknowledging the fact that the act of preventing conception is clearly distinguishable in a scientific sense from the act of destroying the conceptus or developing fetus, she dismisses the sharp legal and moral distinction that some experts have made between them on the ground that it seems to impose an artificial duality on what has historically been for many women – a more graduated approach to fertility regulation.⁴

It is ironical, that in spite of the fact that Dixon-Mueller does indeed concede to the fact that there is a clear and logical scientific distinction between prevention and destruction of the conceptus, she goes a head to claim that this is an artificial imposition on women who otherwise would not be bothered by such unnecessary subtle hair splitting distinctions. The attitude underlying her position is a reflection of the general direction some sections of humanity are headed with regard to the value of human life.

The perplexing question though, is, if people of the caliber of Dixon Mueller a renown member of the academia and high flying United Nation employee and consultant, whose work touches on millions of women and men worldwide espouse such views, what shall become of the many illiterate and poor women in the rural villages and towns across the world, on whose behalf, such high flying individuals claim to represent?

While the principle behind the family planning campaigns is great, the spirit with which the concept has been taken and implemented has left a lot to be desired especially in regard to the way in which it has impacted on the meaning and value of human life.

The moment men become concerned about the quantity of life, it is only natural that they would become concerned about the quality of life. That is why population control, euthanasia and genetic engineering (whether the emphasis falls on “negative” or “positive” eugenics) cannot and will not be divorced from one another. Whenever society begins to count the number of those to be fed on one hand and the amount of food available to feed them on the other, a greater value is bound to be placed on some lives; a

lesser value, on others; the gradation of humanity begins; and each individual's claim to membership in the human society becomes subject to review.⁵

And with the individual claim to membership of the human society becoming a subject of review, the notions of the intrinsically right or wrong actions, unfortunately, have to give way. For in this new set up, right and wrong are determined only by the situation or the consequences. These are the principles upon which the theories of situation ethics and utilitarianism operate.

In these theories a principle is established in which the individual good is subordinated to the good of society. Thus all human rights are seen to be granted not by nature but conditionally by the community, as expressed through the state. What is worth noting, though, is that any right, which the state gives, including the right to life, it can in the same manner also take it away. The adverse effect on the value of human life arising from the logical and practical implications of the underlying principles of the said positions cannot be underscored. Our fear is that the logical progression of the present attack on the intrinsic value of human life may eventually lead to a general lack of respect for human life and more especially those that may, because of one reason or another, be seen as no longer contributing or adding any value to the common good.⁶

The scenario that we have before us now, though, is that in the world governments of humanity, in the Non-governmental organizations and other related institutions, in the religious and secular institutions and the women liberation and feministic movements that wholly support abortion as a primary right of a woman, there is already a legal and moral framework within and upon which the continued denigration of human life, female or male shall continue to roll. The United States 1973 Supreme Court decision in *Roe V. Wade* is one such example of legal provision. In legalizing abortion in the nine months of pregnancy, the court adopted the "quality of life" criterion with its concept of "meaningful". "The decision is of critical importance in that the court's "vague and open ended definition" of what constitutes a person, "supplies" the constitutional precedent for dehumanizing other segments of humanity by defining their lives as meaningless or incomplete."⁷

Though many women abortionists deny the fact that the unborn is a child, with no much difference except in form from the newly born infant, written confessions of some of these women reveal that even though they deny that the fetus is a child similar in essence from the infant, deep inside the woman's heart, she indeed knows that there is no substantial difference.⁸

In his response to the argument that any liberalization of abortion laws, or a repeal of such laws, will lead in the long run to disrespect for all human life, Callahan dismisses the argument as based on speculation rather than concrete evidence. This is because according to him, apart from the difficulty in correlating abortion attitudes throughout the world with any trend toward disrespect for non fetal life, there is a prima facie case that the intention of the abortion laws is to enhance respect for the lives of women since the original intent is to promote free choice for women; second, it is unfair to accuse those who support liberal abortion laws of harboring attitudes which inevitably lead to atrocities against all forms of human life. Since in the first place most of them do not believe that fetal life is human life or a life worth social protection; third, there is no evidence to support the alleged connection of a quick move from liberalization of abortion laws to the killing of the defective, the elderly and the undesirable.⁹

The following are our reactions to Callahan's and other related arguments:

First, good intentions have often been known to sometimes lead to bad results. Cases of institutions or governments that failed to translate their excellent pieces of legislation or policy papers into action, so as to be able to bring about positive changes in the lives of the intended beneficiaries abound. So the argument that the abortion laws are designed to benefit women, therefore, they work well for them is fallacious. "The road to hell, as the saying goes, is paved with good intentions." The cars and aero planes were designed to carry passengers or cargo safely to their respective destinations, but the same gadgets, have in the process of fulfilling what they were designed to do caused massive loss of lives, incapacitation and economic ruin to many would be benefactors.

Second, abortion laws may have been designed with good intentions to benefit women, but in the process of benefiting women, they have become selfish and discriminating against men and by extension the entire humanity.

Third, there is always a common belief that a person who has committed murder may not find a problem doing it again. So if a woman has aborted several times on the basis that the fetus she is doing away with is not human life, if confronted with a situation of a similar being who does not meet the criteria of her definition of human life (person), she may treat it in the same way. Habits translate into a lifestyle.

Fourth, whereas one may find it a problem to convincingly provide proof for a connection between the negative attitude towards the fetus to negative attitude towards other sections of humanity such as the elderly or defective lot, the possibility of such a connection is not far fetched, as the Kiswahili saying goes, "*Haba na Haba hujaza kibaba*" (Little here and a little there fills the cup in the long run). Repeated acts of abortion of the unborn will eventually affect the tenor of the society with the result that doing a way with such kind of life or anything of that kind will become a matter of course. Furthermore, some proponents of the abortion rights such as Michael Tooley, openly confess the connection between support for the abortion and support for infanticide.¹⁰ The categorization of certain group of human beings- the terminally ill as, helpless zygote, comatose, the terminally ill and completely incapacitated accident victims; as vegetative life, lend support to our fears.

Fifth, the fact that somebody does not believe in what somebody else believes in, cannot be taken to mean that the other party will throw in the towel and join hands in his or her unbelief, leading to the withdrawal of the charge against him/her. Moreover, while this charge reflects the moral logic of the one leveling the charges, as Callahan observes,¹¹ the standard against which the abortion rights advocates are being charged and rallied to, is that, which ought to be for all. Hence the "challenger" of the status quo, the abortion rights advocates, are being challenged to prove their case or alternatively rise to the

occasion of the generally accepted norm by other members of the human race from both sexes: that the developing organism in the womb is indeed a human person with an inviolable right to life.

Commenting on the implication of the respect for autonomous life as a ground for a right to life and its relationship with other grounds for the right to life, McCloskey's understanding is that, respect for life as the person's possession would seem to involve that he has the right to dispose of it as he pleases. Consequently on the basis of his autonomy we must accept him as such and recognize his right to determine his destiny, to take his life if he so chooses. In this regard we must legalize suicide and voluntary euthanasia, and make them reasonably accessible to those who, with good reasons, seek the means thereto, are dictated by one of the grounds that dictate respect for life itself.¹²

On the question of euthanasia, McCloskey contends that there is a class of "unfortunate lot" among the beings with a right to life, who does not and cannot possess the right to life of such kind of being. Such beings are those who, though, are born of human parents, are neither actual nor politically autonomous beings, neither actually nor potentially rational, and others, who are made so by disease and injury. To kill or let such beings die, is, according to McCloskey, not to fail to respect their right to life for they are not or have ceased to be beings that possess such a right.¹³

Furthermore, such kinds of beings, as McCloskey contends, have no wills or powers to make rational decisions and exercise choice. As such, they can only be sustained at the expense of those who are looking after them. Consequently, what is needed of us, the possessors of the right to life, is to frankly recognize and acknowledge that such category of beings are not worthy of the struggle expected of us to sustain them for they have been valued by their misfortunes and rendered useless on the basis of their mental and physical disabilities and their lives condemned on the basis of utilitarian considerations.¹⁴

This is indeed a tragedy at the doorsteps of humanity. Our fears about the abortion, infanticide and euthanasia connection are indeed confirmed in McCloskey's assertions.

Once we subject and categorize the fetus as nothing, those who fall in the same category among the special class of “humans” will follow suit.

The issue of infanticide-abortion connection becomes clear also as McCloskey concedes that there is a category of infants whose death is morally justifiable. He sees in the principles relating to certain forms of euthanasia a parallel with those that apply to certain kinds of justifiable abortion. It is his contention that the use of medical expertise to keep alive, to prolong useless suffering of organic life which falls far short of existence as a person is an irresponsible act which must of necessity be faced frankly and fearlessly.¹⁵

Jeffrey Reiman, after examining Mary Warren’s, Michael Tooley’s and L W Sumner’s arguments for the exclusion of the fetus from the circle of protection, finally concluded that it is neither Mary Warren’s list of traits of personhood, Michael Tooley’s logic of rights” nor L.W Sumner’s sentience’s that can successfully account for why it is not morally wrong to kill a fetus, but rather, the subjective awareness that one is already alive and counting on staying alive.¹⁶

On the question of infants who are not yet in a position to have this subjective awareness of themselves, Reiman argues that our protection for them is on account of our love for them. According to him the love we direct towards infants is a necessary condition of their development into beings worthy of respect. This is so at least for two reasons:

First, our love enables the infants to enter into the community of language users, which in turn brings infants to awareness of their lives, which is also a necessary condition of their caring about their lives and our respecting them for that. Second, by loving infants we communicate to them a positive valuation of their very existence, which in turn underlies their valuation of their own particular lives once they are capable of it.¹⁷ On this account then, Reiman argues, we can say that the strong belief in the wrongness of killing infants is the product of our natural love for them.¹⁸

Whereas young infants may not be much different from late term fetuses, Reiman is of the position that this kind of love and protection is not applicable to fetuses for whereas they may be objects of love, they are not of such love as can play a role in their psycho – moral development. This is because of the fact that such kind of love requires a real, interactive social relation such as can only occur after birth. But even if some consideration for the protection of the fetuses were to be granted on the ground that many people love infants and hence a justification for their protection and respect and treatment of aborted fetuses with special care this, however, is a matter of other people’s love rather than fetuses’ own worth for respect. Consequently, he argues, it won’t be enough to justify requiring women to stay pregnant against their wills.¹⁹

However, Reiman distinguishes between the reasons for the wrongness of killing children and adults on the one hand and the infants on the other hand. According to him, it is wrong to kill children and adults because it violates the respect they are due, as creatures aware of, and caring about their lives and; two, it is wrong because of properties they possess that make it wrong. The killing of infants on the other hand is wrong because it violates the love we give them as a means to making them into creatures aware of and caring about, their lives, and; two, it is wrong because of an emotional attachment that we naturally and rightly have towards infants.

On account of the above distinctions, Reiman argues that it will be harder to justify exceptions to the rule against killing adults and children than to the rule against killing infants, because adults and children possess in their own right a property that makes it wrong to kill them, infants for the moment do not have a *love for their* lives as contrasted with *our love* for the infants. Thus, ending the lives of severely handicapped newborns will be acceptable because it does not take from the newborns a life that they yet, care about and because it is arguably compatible with rather than isolative of, our natural love for infants.²⁰

Once again in Reiman, we see how a support for abortion can logically lead to support for infanticide. Once an individual has developed a position concerning a certain category of humans, it becomes inevitable for the same to hold concerning the fate of other members who may fall in similar category or circumstances. This possibility becomes even more real when one takes into consideration Gillespie's universalizability principle as discussed earlier in this study²¹ - that is, if an act is morally right for one person, then it is morally right for all relevantly similar persons. The only solution is for a change of the negative attitude, destructive categorization and selective criteria employed against the unborn and other members of the family of humans. This, for now seems to be the only likely solution capable of reversing these inevitable adverse implications of the pro-choice's position.

Mary Warren argues in her attempt to justify her claim that women rights are weightier than fetal and infant rights, that fetuses and infants do not have a sense of who they are or a desire to continue to exist.²² This argumentation is wanting. Even though the infant may not talk, it's cry when it is hungry or uncomfortable in one way or another and the resistance in case one attempts to block his/her nose and/or mouth to deny it oxygen shows clearly that the infant indeed has a desire to continue existing. Furthermore, communication is not only in words, even signs and silence for that matter communicates something. To suppose, therefore, that neither abortion nor infanticide is quite as bad as the killing of older human beings, is unreasonable, though Warren would like us to believe otherwise.²³

Taking note of the toleration of infanticide by ancient societies, using Michael Tooley's account from various ancient societies from different parts of the world- Australia, Africa, North and South America, China, India, Greece, Rome and Egypt, Warren drives home the point that infanticide after all has been less universally regarded as wrong, than most people today believe.²⁴

But to justify an action, on the basis of the fact that it has always been done, is indeed, a fallacious move on the part of Warren. A wrong action cannot be justified on the ground

that since it has always been done therefore there is no harm in continuing to do it. Two wrongs cannot make a right as the popular saying goes. Furthermore, it is ironical that the instances mentioned seemed to have targeted the female members of the human race. This, indeed, is a sad state of affairs considering the fact that the driving force of Warren's struggle, in this article and others, is the well being of the women lot. And more specifically their right to liberty – to chart their own course and direct their destiny in accordance with their own interests and rights.

Warren admits this bias against women inherent in the practice of the said societies thus:

In almost every society in which infanticide has been tolerated, female infants have been the most frequent victims.... Female infanticide probably reinforces male domination by reducing the relative number of women and dramatically reinforcing the social devaluation of females.²⁵

In a postscript to her article "On the moral and legal status of abortion", warren attempts to deny the logical connection of her argument in the said article with the permissibility of infanticide. Her main argument is that, if it is only people who have full fledged rights to life, and who can be murdered, and if the criteria of personhood are as I have derived them, then it obviously follows that killing newborn infants isn't murder. It does not follow, however, that infanticide is permissible".²⁶

It is apparent from Warren's argument above, that she does not actually deny the logical connection between her arguments and the support of infanticide. Instead, she tries to argue contrary to the logical conclusion of her position, that people need not support infanticide anyway.

The two reasons she gives for not granting infanticide are, at best, feeble. The reasons that it would be wrong because there are people who would want to have the infant who would be deprived of a great deal of pleasure by its destruction and that most people value infants and would much prefer that they be preserved are not logically derived from

her arguments but rather are positive factors existing in the society that would work in favor of the infant.²⁷

In her attempt to get herself out of the infanticide connection quagmire, Warren lands herself into another logical dilemma: the grounds presented in defense of the infant are also applicable at least in part to the fetus. Hence the need to protect the fetus from destruction, just like the case of the infant. Once again Warren comes a cropper in her attempt to deny this apparent possibility. Her argument to the effect that there is a difference between the two cases in that so long as the fetus is unborn, its preservation contrary to the wishes of the pregnant woman violets her rights to freedom, happiness and self determination and that her rights override the rights of those who would like the fetus preserved, is wanting. It would appear, since Warren herself has confessed elsewhere²⁸ that a newborn baby does not have intrinsic properties that can ground a moral right to life stronger than that of the fetus; that the fetus's only crime is that it is not born yet. Inconvenience is inconvenience whether in the womb or outside. And this alleged woman's basic right act would by extension affect all fetuses wanted or unwanted and other sections of humanity in similar situations, now and tomorrow.

After straining to deny the logically obvious, Warren finally concedes of the infanticide connection issue thus: "On the other hand, it follows from my argument that when an unwanted or defective infant is born into the society which cannot afford and/or is not willing to care for it then its destruction is possible."²⁹

In response to the question why infanticide should be discouraged rather than be treated as a matter for individual decision, Warren, argues that most people deeply care about infants and normal human adults (and children) are probably "programmed" by their biological nature to respond to human infants with care and concern.³⁰ For the mother, in particular, that response is apt to begin well before the infant is born. Another important factor according to her is that although the human newborn may have no intrinsic properties that can ground a moral right to life stronger than that of the fetus just before birth, its emergence into the social world makes it appropriate to treat it as if it had such a

stronger right. For at birth the young infant enters the human social world, where, if it lives, it becomes involved in social relationships with others, of kinds that can not be possible before birth. Another reason for condemning infanticide, according to Warren is that, at least in relatively privileged nations like the USA, infants, whose parents can not raise, can usually be placed with people who will love them and take good care of them.³¹

On the first ground we will take up two issues: (i) that “most people deeply care about infants” and, (ii) that “normal human adults (and children) are probably “programmed” by their biological nature.

Concerning the first issue, our response is that most people do not only deeply care about infants, but also the unborn. This is evident in the treatment granted expectant mothers in public transport and all other situations or circumstances where people are supposed to queue to get services. The sight of expectant women everywhere attracts our attention and sympathy. We believe this is not only because of their protruding wombs, but also because of the positive attitude and concern for the precious item they are carrying in them. With regard to the second issue, Warren admits that things to do with pregnancy, birth and children are somehow or “probably “as she puts it, ordained by nature. The care and concern with which parents and other members of the society respond to young infants is inherently inbuilt in their lives. It is almost instinctive even though society through its social network enhances such capabilities.

As we have argued elsewhere in this study, the normal reaction of human adults and even of children of playing age, to the unborn is that of care and concern. And that is why when the issue of abortion is raised it attracts a lot of attention and debate. It is in accordance with nature that once a child is conceived, it is carried in the womb for nine months and born into the world. And that is why when it does not happen that way it causes a lot of pain to many, distress to some, and uniquely, to others who we may say are acting contrary to the programmed way of things, joy or relief, however, short-lived or artificial that may be. We say “however short-lived” because we are aware that the abortion act is never safe or free as those who support it depict. There are both short term

and long term physical effects such as hemorrhage, infection, infertility or death, and also psychological and spiritual negative effects such as guilt, depression and even mental disorders in extreme cases.

On the second ground that infanticide should be discouraged in relatively wealthy countries such as the USA, it is actually in those so-called developed countries, including the said USA that cases of abortion and infanticide are being witnessed *en masse*. The babies' left to die of hunger is a constant reminder of how humanity has "hit the rocks" in its regard for human life. It is said that in this relatively wealthy countries women are claiming abortions for economic reasons hence making a mockery of their wealth in the face of the poor in the needy nations of the world.

Warren, unlike in the previous article on "legal and moral status of abortion," in her article, "the moral significance of birth," openly admit, concerning the infanticide question thus:

But have I not left the door open to the claim that infanticide may still be justified in some places e.g., where there is severe poverty and a lack of accessible adoption agencies or where women face exceptionally harsh penalties for illegitimate births? I have and deliberately. The moral case against the toleration of infanticide is contingent upon the existence of morally preferable options. Where economic hardships, the lack of contraception and abortion and other forms of sexual and political oppression have eliminated all such options, there will be instances in which infanticide is the least tragic of a tragic set of choices. In such circumstances, the enforcement of extreme sanctions against infanticide can constitute an additional injustice.³²

So the connection between abortion and infanticide, is, after all evident, even to the pro-choice proponents. The solution, in this kind of situation is a re-examination of the underlying suppositions of this position especially in regard to its attitude towards human life.

L.W Sumner argues that the liberal's view grounding of the abortion on demand position, on the basis of self-consciousness or a rationality criterion of moral standing, which the fetus is said to Lack, is such a high standard with its own difficulties, some of which will arise in contexts other than abortion.³³

According to Sumner, the mentally handicapped adults may have difficulty meeting this standard and may therefore be denied moral standing. And if this is the case, then the senile and the comatose will not be spared either. Hence the door for euthanasia will not be too far off. The newborn infant will also not be spared for if a full term fetus is neither self-conscious nor rational, so also a newborn infant is neither self-conscious nor rational. That being the case, Sumner concludes, the liberal view of abortion has become also a liberal view of infanticide.³⁴

The only clear way for the liberal view proponents, it seems, is to challenge the common conviction of the moral seriousness of infanticide as a taboo but even then, Sumner admits, the dilemma cannot be done away with easily. He observes correctly:

However, the liberal's difficulties concerning infanticide are not so easily dealt with. Both self-consciousness and rationality are sophisticated bundles of abilities; they may for instance, be beyond the reach of all non human animals. They are therefore likely to be lacked not only by newborn infants but also by all infants, and perhaps as well as young children. We would need a much fuller account of the capacities in order to be able to locate the stage in the normal course of human development when they are acquired. But it seems very likely that such a high standard will deny moral standing to all infants and at least some children.³⁵

It is true, as Sumner argues, that the infanticide and to some extent the euthanasia connection is inevitable in the liberal view. So whether it is denied or not, it is open for all to see.

In the formulation and articulation of his moderate view, Sumner also found himself in the same quagmire as the liberalists. Sumner acknowledges, however, that given current technology some tests for fetal abnormalities – which according to him can be aborted, can be carried out only in the second trimester. In such situations, cases, which go

undetected or may be dangerous to abort in later pregnancy, may have to be done after birth. According to him, the status of the severely deformed post-threshold fetus is the same as the status of a severely deformed newborn infant. And that whereas the moral issues concerning the treatment of such newborns are themselves complex, there appears to be a good case for selective infanticide in some cases. And if that is the case, then there is an even better case for late abortion on eugenic grounds, since here we must also reckon with the terrible burden of carrying to term, a child that a woman knows to be deformed.³⁶

From the foregoing discussion the connection between abortion, infanticide and euthanasia can not be underscored. The pro-choice position indeed has adverse implications in regard to its negative impact on the value of human life and human dignity. The insurmountable challenges arising from the implication and ramifications of these absurd logical conclusions too stand glaringly in the face of this position. Among these, is the challenge arising from the direct support of some of these rather unpopular practices such as is the case with Mary Warren and Michael Tooley who after fruitless attempts to deny the direct relationship of their positions with the support of such practices admitted the same in the end.

7.2. The Abortion – Child Abuse Connection

The pro-choice proponents seem to attribute child battering to undesired or unplanned pregnancy. In this regard the mother who is forced to carry to term an “unplanned pregnancy” or subjected to “compulsory pregnancy” will not help but abuse that child when she or he is born.

In addition, they argue that a pregnant woman should not be forced to carry the pregnancy she does not want, because of her preference for a child of the opposite

gender. For, to ask her to carry such a pregnancy to term is to make her life very distressful, to psychologically harm her, to tax her mental and physical health by childcare after birth, and to expose the child to abuse.

As a solution to this problem, the pro-choice proponents argue that it is better to abort the child as this will save it from future frustration and suffering from unwilling parents. It is also alleged that to allow abortion when pregnancy is unplanned will benefit society because it will eliminate the problem of unwanted children.

Our response to this argument, is that though the possibility is there that the child will be abused because his/her birth was not planned, or his or his/her gender was undesired, killing children or visitors just on the basis of their unexpected or undesired appearance speaks volumes about the society's ability to cope up with the unexpected challenges of life. Furthermore, far from ending child abuse, legalized abortion may actually be promoting it. Dr Nay observes correctly:

Abortion not only increases the rate of child suffering at present, it will increase the tendency to batter and abort in succeeding generations. Abortion, producing guilt both in the mother and in the children who survive, increases the probability of displaced hostility, which results in so many battered, murdered children. More importantly, by interrupting the formation of the delicate mechanism which promotes mother-infant bonding, it puts at risks million of babies who are not aborted... evidence indicates that once implemented, abortion changes attitudes towards infants, such that birth rates do not increase even when the abortion law is lightened.³⁷

In addition to abortion destroying the life of the unborn, abortion is also likely to contribute to the deterioration of respect for all life and weakening of human relations. Abortion can not in any way be said to be in the interest of the child. What worse thing can a child face in his or her life than the brutal ending of his or her life? Furthermore rejection or unwantedness do not in any way mean that if one is unwanted in life at one point or another he or she will not be of value at all in his or her life time if allowed to live. There are indeed many a people who have gone on from degeneration, rejection, and unhappiness in childhood to have satisfactory adult lives during which they accomplished much and contributed much to their fellow men.³⁸

Furthermore, the “unwanted child” concept is based on the wrong assumption that the right to be born is based on being wanted. This is far from the truth the ever changing swinging moods of humanity can not be trusted to determine who should live and who should not among its new or anticipated entrants.

Judith Boss introduces a new dimension on the negative effect of abortion on demand: child abuse. At the outset, Boss laments about the fact that the current society is controlled by double think – a type of mental gymnastics which involves the capacity for holding two contradictory beliefs in one’s mind simultaneously and accepting both of them. Such slogans as “Pro-child/Pro-choice” according to Boss are an example of such double think.³⁹

The assumption underlying slogans such as this, Boss argues, is that the exclusion of humans prior to birth from the protection of the moral and legal community, thereby leaving the choice of carrying a pregnancy to term entirely up to the woman, benefits children. Both the fetus whose abortion will spare him or her a life of misery and born children who can enjoy a higher quality of life and parental love unhindered by the presence of burdensome siblings who were unwanted and “unchosen” by mom.⁴⁰ We are in agreement with Boss’s response to this assumption to the effect that:

While not all unwanted pregnancies are aborted, nor does the pro-choice position advocate that they should be, the first claim that abortion on demand benefits unwanted fetal children by causing their death, certainly seems like a good candidate for double think. Morally it constitutes paternalism at its worse. In no other case do we kill potential victims of a crime for their own sake. To do so contradicts all that for which our criminal justice system stands.⁴¹

In reference to a controlled study carried out by John Hopkins hospital in the US on the mothers of reported abused children, Boss observes that the easy availability of abortion for dealing with negative feelings prior to birth, consequently need to be assessed in terms of the harm that the practice may be causing when parents attempt the same problem – solving strategy with their “troublesome born children”.⁴²

Quoting psychiatrist Philip Nay, Boss suggests that by legitimating the death of the child *in utero*, we have weakened the normal instinctual restraint and social taboo against the use of violence against those dependent on our care. The slogan "every child is a wanted child" according to Boss, reflects on a belief that women only have to bear children who are wanted and that these children will be treated with respect. However it is not always the case that it is only the so-called unwanted children who are at the greatest risk of abuse, but even those whose parents expressed a significantly higher than average desire for pregnancy. One hypothesis put forth to explain this phenomena, is that parents who have higher expectation of their "wanted" children are more likely to get frustrated when their children do not live up to these expectations.⁴³

On the "every child is a wanted child" slogan, Boss argues that this slogan in the context of abortion judges the worth of a child solely in terms of its value to another person. Thus, the expression reduces children to objects, which have only instrumental worth. In this case, they have a right to exist only if someone in authority over them "wants" or is pleased by them. But even if the child is "unwanted" there is of course no basis for saying that an unborn child, would choose to be destroyed instead of being "unwanted". Self-preservation is the basic motivation of every human being.⁴⁴

The question of wanted or unwanted children is a complex one. A pregnancy may have been wanted at the time of conception but became unwanted later in the middle of pregnancy and even after birth because of changed circumstances. It may also have been wanted by one partner but not the other or wanted later but not now. Even a child who has been aborted because it is not wanted now may become wanted when it is gone already and there is no way of retrieving it or even capacity to give birth to another especially in cases where abortion related physical complications has rendered the woman barren.

The connection between child neglect, abuse and even infanticide is not far fetched, especially in a situation where the child born because it was "wanted" does not live up to the expectations of the mother or father or both. This is even more painful if the previous

pregnancy was aborted. The mother or father or the parents will be agonizing in their minds about the possibility of the child they aborted having been more “valuable” than the one they have allowed into this world.

Ruth Dixon Mueller, points out that it is possible that the higher mortality risks of infants born too early, too late, too many or too close that have been identified in studies of child survival also represent to some degree the effects of disguised infanticide resulting from the pregnancy having been unwanted. Citing a study carried out in rural Thailand, she says that children wanted by one or neither parent were twice likely to die during their first year as compared to children wanted by both parents.⁴⁵

7.3. Summary and conclusion

The unfortunate thing about the abortion – infanticide connection, is that during this time and age when we are talking about advanced civilization, the great technological studies that have taken those of our own not only to the Moon, and the Mars, but also the previously hidden mysteries of the womb, the once loathed practice of the so called dark ages, the uncivilized and barbaric societies of the past is here with us in our homes both in the backward rural villages, the modern cities, the once most envied institutions of higher learning, highest decision making organs of our countries and the seats of Justice: our courts. Joseph Stanton loathes the existence of this archaic practice in our society thus:

The awful fact is that infanticide- the killing of infants- has been in and out of human experience since the dawn of recorded history ... cited the power of the father in the Roman law to murder his children under the concept of *Patria potestas* in Roman law. How tragic that the rights of the all – powerful *pater familias* were transferred to the mother in *Roe and Doe* as far as the right to life of the unborn child is concerned. In Sparta, frail and defective infants were left exposed to the elements to die. The same practice was followed by Eskimos. Infanticide and child abandonment were common in the industrial revolution in England. In China, the killing of female offspring or their abandonment was widespread as late as 1800's. The elimination of such barbaric practices has always – up to now – been regarded as evidence of civilization's “advance” .⁴⁶

The radical wing in the women liberation and feminism movements sees the patriarchal societies and their institutions as outdated, as such they cannot fit into the modern age. But how about the revival of these archaic practices, of child abandonment, neglect and abuse and killing, not by the patriarchal or male chauvinists, but the women: their diehard critics? If both men and women have been “overrun” and now they are “overrunning” their offspring, on whom shall the destiny of the human society be entrusted?

The different factors that are at work in this day and age: philosophical subjectivism, moral utilitarianism and legal positivism, which in many countries attempt to justify laws which concede to the strongest the possibility of deciding about the life of the weakest, have yielded nothing but the denigration of the human person, and his or her dignity. The usage of the concept “person” in a discriminatory way such that some are recognized as persons, while others are not considered as such and so the way is opened for their legal elimination as is the case with some infanticide and euthanasia cases attests to this, is a clear example of human dignity has been compromised.⁴⁷

True democracy is founded on a conception of human dignity based on the fundamental right to life—from conception until natural death—a right for all and to be recognized by all. Therefore the promotion and defense of life is the pre-requisite for the struggle for the fundamental liberties, which are the basis of democracy. In this regard the pro-choice claim of abortion as a basic woman’s right is not in the betterment of true democracy as it entails in it a denial of life to some section of humanity and a consequent adverse multiplier effect on similar category of humans or those who in one way or another may happen to fit in that kind of description.⁴⁸

As long as the parameters of the value of human life remain at the level of physical efficiency or consumerist criteria, one could easily draw conclusions concerning the uselessness of some human lives, or at least of those who have reached a completely irreversible situation. In spite of the fact that the value of human life and its inviolability may be evident through right reason and conscience, unfortunately in our day it is the object of many attacks, above all at the beginning and at the end of life itself or in a

situation of weakness and suffering. While we acknowledge the difficulty in which people who suffer in these situations find themselves our position is that such hardships can not be used either by others or even the victims themselves to determine whether they should live or die.⁴⁹

Neither can we allow the 'unwanted' criteria to be used as an excuse to terminate the life of the unborn so as to "save" them from abuse and neglect ahead. If "wanting" is the measure of being allowed to be born, or whether will escape torture or not, it is likely that many unborn children will never see the light of day. This is because while in the womb the unborn children are totally dependent upon the personal "wants" of the individuals who have vested interests in them.⁵⁰

It is apparent, therefore, that the pro-choice demand for the unrestricted abortion rights and complete reproductive freedom, is not in the interest of the children, the senile, the mentally handicapped or the comatose, the terminally ill and the physically challenged members of the human race and the would be beneficiaries, women.

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CHAPTER EIGHT

SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

8.1 Summary

Many issues having been raised and discussed concerning the radical feminist's demand for unrestricted abortion rights and women's right to complete reproductive freedom, we will do well to conclude this study with a re-assertion of some of the very key issues raised in the course of the discussion and the recommendations.

First and foremost, the radical pro-choice/feminists demands are a product of a wrong prescription and misdirected overreaction by the radical feminists in their struggle for recognition in an otherwise male dominated society. It is a misdirected response: it is an attack on the wrong victim – the helpless fetus. The real target is the male; the real goal is women liberation from male dominance in the social, economic and political spheres of the woman's life. It is, indeed unfortunate that the pro-choice advocates have had to attack the symptom rather than the root cause of the problem.

The states are not spared either from this regrettable practice. Ren-Zong Qui *et al*, writing concerning China,¹ say that the Chinese ministry has promulgated a regulation which prohibits late abortion after twenty eight weeks with the purpose of protecting the health and life of the mother as well as of the fetus. While at the same time also, since the 1980's the same government has put in place a regulation of birth control which permits a couple to have only one child. Ren-Zong Qui notes that these two promulgations are conflicting, although the government's stand is that the later is more powerful as it is in the maximum interest of the maximum number of people. On the cause of this population problem which the Chinese government is apparently battling with, Qui observes that:

The case of a pregnancy in a woman who already has a child is much more complicated. It is the Confucian cultural tradition, which encourages the Chinese to have more children. Confucius said, "Among the three vices that

violate the principle of filial piety, the biggest is to be without offspring". The Chinese turned this negative warning into a positive maxim: "more children, more virtues".²

Where is the problem then? Is it in the Confucian cultural tradition or the children born? It is unfortunate that instead of attacking the root cause of the problem, the Chinese government has chosen to attack the by-product of the problem, the fetus whose production will certainly continue for as long as the tradition holds.

The Japanese case is no different. William R. LaFleur, observes that the current consensus in Japan is that abortion is morally justifiable. This attitude arises from the fact abortion is considered to be an important component of the preservation of family values as well as in keeping the population in check. But the question which arises, and which LaFleur did raise in his examination of the traditional Buddhist doctrine to the effect that abortion is morally justifiable, is that, if that is the case then where does retribution or guilt come in for those who have abortion? The issue is, if indeed abortion is acceptable, then the issue of the "*mizuko*" rituals, which provide rituals of memorial for aborted fetuses and for which certain entrepreneurial temples are being accused of capitalizing on for financial gain would not arise. LaFleur expounds further on this thus:

The first concern is that people not become inured to abortion and trivialize it. Many Buddhists are worried that, especially if there is no real grief and ritual a kind of personal degradation becomes the pattern: from repeated abortions to a flippant acceptance of the practice and from these to a deterioration in a person's (read: woman's) capacity for generalized sensitivity. This consists in "hardening" something serious because in the psycho ethical vocabulary of the Japanese this is a matter of the "*Kokoro*" or "heart". If too many people within society become persons who take abortion as simply a matter of course, then the tenor of the society itself will change for the worse.³

This study is premised on the idea that women are the source of life and care for humanity. And that being the case any thing that seeks or shall seek to obscure or detract women completely or partly in the fulfillment of these responsibilities shall spell doom both for the women, and by extension the entire society of humans. Humanity is already reeling under the cares and pressures of this world in the form of natural disasters such as earthquakes, typhoons, cyclones and the man made civil wars, terrorism, genocide and

lately; diseases such as HIV/AIDS, Ebola and Czsars, which diseases are taking lives by the thousands and which the physicians are yet to find a concrete cure.

In the light of this, it would be, and indeed it is tragic for humanity, the women being a special part of it, if its life line and the source of comfort and assurance is blocked, choked or cut off completely at this hour of need when there is hardly anything else left save their battered lives. The end result of this suicidal move, if unchecked, will be disastrous for humankind. For if too many women in the society become persons who take abortion as simply a matter of course then the tenor of the society will not only change for the worse and the conscience of many darkened, the fate of the entire human race will hang in the balance.

The truth is that unrestricted abortion rights are harmful to the women's cause. And that the abortion act is not as easy and harmless as it is portrayed to be. The fetus after all is not just a thing that can be dispensed with anyhow. The abortion after all is not just another haircut. The feminist Susan Sherwin confirms this, thus: "feminists have often felt pushed to reject claims of fetal value in order to protect women's claims. Yet, viewing abortion in this way, "tears" (it) out of the context of women's lives". There are other accounts of fetal value that are more plausible and less oppressive to women.⁴

It is worth noting that even in traditional African societies, in societies where abortion was allowed or done for one reason or another, it was not really something to celebrate or be proud of. If anything it was a very secretive affair that nobody would want to be associated with.

The question of the humanity of the fetus is easily settled on the grounds that its DNA coding is human, its parents are human, and it can only become a human and not anything else. The potentiality of the fetus as that of the newborn baby is to develop into an adult human. There is no known biological time, either before or after birth, when a definite sudden change takes place. Life is all a continuum, and as towards the end one

does not cease to be human, there is similarly no obvious start, except at the time of conception.⁵

The pro-choice claims and their argumentation especially their personhood criteria as proposed by Mary Warren, among others, are a threat to the lives of the other members of the society - the children, the comatose, physically impaired accident victims and the senile who cannot meet the high criteria. And if the comforting arms, the assuring words and the motherly touch be not found in the society, to where shall these needy sections of humanity run?

The question of the status of the fetus and more especially its personhood, and its current usage as a benchmark of the debate about the morality of abortion has to be refocused or abandoned altogether.

This supposed benchmark, and more especially the personhood criteria "exam" as presented by Michael Tooley and Mary Warren among others, confuses functional humanity- the developmentalist position, with the being of the fetus. We want to believe that these criteria are, to use Professor Judith Thompson's words, just pretensions formulated just for the sake of argumentations.⁶

The issue of the distinction of humans in the genetic and moral sense, as Warren has done, is not in the best interest of humanity. It should be rejected on account of its ulterior motive, to lock out the unborn so as to give the woman full control of her life and destiny, so they argue! Warren herself confesses that if the fetus's personhood were left intact, then, it would be impossible to justify abortion at all. So the best option, unfortunately, just as they have done, is to rob them (unborn children) of that right: the right to life.

We have argued, however, that the criteria for having moral rights, whatever it is, concerns a general area of category, with respect to which mature human beings and unborn human beings do not differ (viz., a type of thing or substance as opposed to a

property of a thing). That is, contrary to the pro-choice's position, the respects in which unborn human beings and mature human beings do differ are morally irrelevant.⁷

It is our position that abortion after all is not just a women's rights issue but rather a major human rights concern that requires attention not for the sake of one segment of the society, the women, but humanity as a whole: from the unborn to the most senior members – the elderly. Further more, contrary to the pro-choice claims abortion is a moral problem far more complex than any one-dimensional approach (e.g. right to privacy, woman's right to dispose of her body, absolute prohibition of abortion etc) would suggest.⁸

Concerning the issue of rights, the woman right's claims are not absolute. And even if they were, it is apparent that in human relationships it is not really the rights claims that sustain it but rather mutual coexistence and appreciation of one another in the cobweb of relationships within the family set up and the larger society.

Even in a marriage relationship it is not the question of who has a right to what or detailed duty rosters in the house but rather the mutual agreements, understanding and appreciation of one another's situation and the need to hold the family together and forge ahead as a unit and not in pieces, that carries the day.

If the woman was to assert her rights over her husband with no room for compromise, there is likelihood that that marriage or relationship will break down incase the husband too decides to stand his ground. The sad thing is that, in most cases, it is the woman who is disadvantaged. The point here is not that women should be scared into enduring or staying on in abusive relationships at the expense of their lives, but that apart from a few individual women who belong to the elite class or who have adequate incomes from their businesses or employment, the majority of women even in the developed countries are unable to shoulder the burden, both socially and economically, arising from broken relationships. This calls for caution and wisdom on the part of women. Otherwise, and as it has always been the case, they will end up being the victims instead of beneficiaries.

The woman's exclusive abortion right claim robs the husband of his rights too. As discussed elsewhere in this thesis, we are fully in agreement with Wesley Teo's concern to the effect that in granting the woman an exclusive right to make an abortion decision the move would (a) impair the husband's right of procreating; (b) discriminate against him on the basis of sex; and (c) deny him equal protection of the laws. The point is, as Ayn Rand puts it, "any alleged "right" of one man, which necessitates the violation of the rights of another is not and cannot be a right".⁹

Furthermore, the husband's role in the family set up will be unfairly disregarded and this may lead to family instability in the long run. In addition, such a move will give the cunning husband an opportunity and an excuse to run away from providing for the family. Ironically, the move may also work to the detriment of the woman's welfare, in situations where the woman may have to pay expensively in case of injury obtained while undergoing abortion or in situations where the husband or the partner abandons her completely, not only to meet the cost of the abortion, but also to shoulder the responsibility of providing for the family alone. So after all the diminution of the rights of other human beings threatens the rights of women as well.

8.2. Conclusions

Abortion as a basic right of women contradicts the core principles of feminism and the basic human value of protecting the weak and defenseless. By promoting the death of one's own offspring as a positive "good", abortion adversely negates the core values that are the very essence of a woman's being: nurturance, care, compassion, cooperation and inclusivity among others.

The abortion-on-demand claim, has not truly benefited women, whether examined from the perspective of women's self-perception, the psychological and physical consequences of abortion, the impact on minors or relationships between women, their families and their communities. Instead, the abortion privacy and abortion on demand position has isolated women and subjected them to physical and psychological harm.¹⁰

And if, the granting of abortion “rights” to women, has not changed their lot in anyway, but instead has brought upon them peril and grief, then we may ask, why sacrifice the lives of the unborn members of the human race if by doing so it shall lead to the destruction of the treasured mothers of the human race?

In the world today, a global campaign is being waged by the various governments, the United Nations, the Non-governmental organizations both international and national, forums and individuals, towards the preservation of our environment and endangered species of animals – the aquatic creatures, the birds of the air and the animals in the wild. But the question, is, where and how shall we be able to gather the moral energy and commitment on an international scale to protect the myriad species of other forms of life now threatened with extinction if we have failed to challenge the complacency and indifference in individual and institutional violence against the mysterious sanctuaries of human life itself.¹¹

“Charity begins at home”, so the saying goes. Before and as we look out there, let us look in here. Let us put our house in order so that even as we extend our help to the other side we may do so with conviction and courage. This is a joint effort but everyone has a part to play, a part that is uniquely theirs. In the mysteries of life there is a part that women and only women can play. Men can only try to do that which can only be done perfectly by women, but no doubt it will only be at the level of an attempt. About this part, Janeth Smith writes:

A popular saying in the women’s movement claims that “women hold up half the sky”. I would like to take that sentiment further and suggest that only women can hold up one particular half of the sky and thus it is necessary that women remain women. We cannot deny one important fact; women are the bearers of life, and thus it follows that they are entrusted with the protection and care of life, which, we might say, is their half of the sky... In a very real sense, the future of humanity is in the hands of women, or, more specifically, in their wombs. We ought not, as women, to be demanding and work towards the goal of a world where life is safe for all.¹²

With women having come to this realization and with men holding their half and both acknowledging and respecting each other; then at last we can see a ray of hope, unveiling itself in the birth of a new freedom. A new freedom: for the unborn, the cripple, the terminally ill, the aged, the poor, the women and the men. With this new freedom shall come our revived confidence; confidence, ultimately, in the dawning of a new and glorious day in which men and women shall smile at each other again; a day in which men and women shall smile at their offspring again; a day in which the cripple, the poor, the terminally ill and the aged shall have smile on their faces again; a day in which the expectant mother shall nod with joy the movement of the baby in the womb; a day in which humanity shall mourn the death of nascent life in the womb. Yes, that bright day in which law and morality will be reconciled and liberty will no longer wage war against life.¹³

When the situation demands that an abortion be procured, in such concrete situations where there is a proportionate reason for abortion, all those concerned from the mother, father, and medical personal should in good conscience exercise their stewardship of human life, as they perform the intervention. Whatever decisions are made it must be done with due regard to the general welfare of mankind considered both individually and collectively and that attention be made not only to the immediate effects of the intervention but also to its social implications and reverberating after effects.¹⁴

It is the position in this study that there is need to exercise care in any analysis of any presenting case for abortion, in any weighing and comparison of values at stake. The respect due to the unborn life, as Callahan put it, whether that life be adjudged fully human or only potentially human must be upheld. We will say like Callahan "with the possible exception of exceeding rare instances of a direct threat to the physical life of the mother, one cannot speak of general categories of abortion indications as necessitating an abortion."¹⁵

While it may be true that almost anything "illegal" can be eliminated by the simple expedience of declaring it henceforth "illegal". It is also true that not all things that have

been declared illegal like stealing or murder have in reality been eliminated. But even if it were true that abortion as a woman's basic right would eliminate back alley abortions, the substantive question still remains whether it is practical, prudent, or, most especially, right, to do so.¹⁶

The abortion imperative has overturned the basic principles upon which our law, morality and civilization have been based. Rights are apparently no longer inherent in persons; nor are anyone morally obliged to respect what were formally understood to be rights. The proposition that we may legitimately destroy an unborn person because he is unwanted asserts two things: that the rights of human persons derive from others (whether or not others "want" a particular human person). And that, there exists no prohibition independent of desire of our expediency which might forbid infringing upon the right to life of a particular "unwanted" human person.

If the two assumptions above are granted, it is hard to see how we can continue to have any law, morality or civilization at all. Society cannot admit the principle that only the "wanted" have a right to life. Society does not confer that right. A woman and her doctor can no more alienate that right than the state legislature can alienate it. Indeed, if society alone confers rights, society can with equal facility withhold them.¹⁷

As for the elimination of children on the grounds of being unwanted because they are unplanned for, though we must always strive to eliminate social evils, we have no guarantee written into the nature of things that we will always succeed – and certainly no right to start eliminating people because our efforts to eliminate their problems seem to be failing. In endorsing abortion-on-demand, however, a society has in effect abandoned any pretence of a commitment to objective morality; and this abandonment of morality will have social effects, which reach far beyond the sphere of abortion. Henceforth, everything will go.¹⁸

Furthermore, if as a society, we continue to sanction the thesis that a woman has the right not to want the child she has conceived, we will only have more unwanted babies and

still more abortion. The difficulties and sacrifices inherent in carrying, and giving birth to children have been a part of humanity's lot from the beginning. It is amazing that the difficulties and sacrifices, which mothers have always had to endure, should suddenly come to seem unbearable precisely at the moment when medical and social assistance for the woman in her travail is available to a greater extent than ever before in history.¹⁹

Abortion as a basic right challenges the very core of human responsibility. The woman's "right" to decide whether to bear a child or not is forfeited as soon as she is carrying another human being inside her body. In the same manner a father's "right" to spend all his earnings on his own amusement is forfeited upon his acceptance of the obligation inherent in the marriage and trust. And even if the concerned male partner has not verbally confessed acceptance of the same, the very decision to engage in sexual intercourse whether willingly or due to some pressure is enough to obligate one on the same. To assert otherwise will be to assert the principle that people are not responsible for the consequences of acts they undertake, and this could constitute an invitation to anarchy.²⁰

To argue that it is unfair that men cannot bear children is to unfortunately ignore a rather elementary fact of biology, namely that women do conceive and bear children, and men do not. Changing the abortion laws will not change anything about this basic biological fact. Any attempt to change the *status quo* is an attempt to resist against the human condition.

Abortion-on-demand opens the door to a double tragedy. On the one hand a perfect opportunity for a man to escape his parental responsibilities for why should the man be obliged to support the child when he no longer has any say about whether the child can even be born or not? His responsibilities for the child disappear along with his parental rights over the child. And on the other hand, to the woman it is nothing more than the legal opportunity to risk *her life* and health in the process of destroying a child she has conceived in company with a man; who doesn't have to undergo anything.²¹

The argument that abortion as a basic right will avoid discrimination, by race and class, through making abortion equally available to all at low expense is not true at all. The sad part of it all however is that abortion-on-demand has failed to realize one thing; it is not the poor who are getting the abortion after all, but the affluent²².

The individual's right to life can not be determined by the whims of the society nor the parents. But even if it were to be the case that the society is charged with the responsibility of conferring, whatever rights individual's possess, society can also deny the woman the "right" to control her body on the premise of the abortionists; on the same basis that it denies the unborn child the right to life.

If we were to grant that abortion is indeed a private matter, as the pro-abortion advocates allege, even then no considerable rationalization can extend the right to "privacy" to include private killing. If anything private persons carry out most murders, stabbings and other kinds of criminal activities and yet the law does not refuse to take cognizance of them for all of that. Abortion then can not be an exception.²³

In his opening remarks at the 1995 Beijing United Nation's Women World Conference Boutros Ghali, the then United Nation's Secretary General, enthusiastically told the participants (audience) "let us work together to implement the platform for Action adopted here at Beijing. Let us tell the world and let us tell it with pride: the empowerment of women is the empowerment of all humanity"²⁴

It is with a lot of enthusiasm and optimism that we ought to set out to rebuild the broken walls, the broken hearts, the broken homes, the broken trust, love and confidence. Truly the empowerment of women is the empowerment of all humanity. In her womb she carries the burden of life, on her back she carries the beaming life, with her hands she tills the land so that there may be food for the lives surrounding her and in distant places, on her body she carries the weight of her male partner as they laboriously search for dear life and a bit of comfort if any, for the weary heart and body. And that even as she sleeps her mind and heart are in the "tomorrow", thinking not about how to enjoy the sweat of the

dying day but how to once again push through the coming day with all its challenges and expectations. And alas! The vicious circle continues.

This is the woman to whom empowerment is long overdue. But behind and besides her, and even before her, are voices, very familiar and distinct voices; two sets of them male and female voices calling not for the preservation of life but its destruction, not for mutual coexistence but independent existence. There are the voices of the radical feminists agitating for access to unrestricted abortion rights and complete reproductive freedom. To that lot we shall not respond with condemnation and blackmail but with open hands. And with a keen and alert mind we shall seek to understand their position and accompanying ramifications. All these with the hope that in deeds and words, “penned” and ‘unpenned’, we shall seek to offer wise counsel and living examples by which they shall retrace their footsteps as they seek to re-enter once again into the community of people bound together by common aspirations and goals and a desire to walk and work together. So in words and deeds, we shall with resilience and astuteness, refuse the “unwanted prejudice”. We shall refuse the arbitrary extermination and neglect of parts of our own, either still hidden in the womb and nature, but have began the journey to earthly home, or here with us already, but are still in the process of putting their acts together or are unable to do so, and therefore need our helping hand and the life giving words of hope, love and assurance.

But in and with the same words and deeds, we shall seek to change and have our hearts changed. And with open hands, extend our help and begin to deeply care. Consistency and total commitment shall be our trademarks covered in and with love. In the beauties and difficulties of this earthly life, we shall partake together. To those around us we shall open up ourselves and to our own selves the same we shall do the same. To help and to be helped, we shall avail ourselves, with fear having no place in our lives and endeavors. These we shall do as individuals, as family members, as religious forums and other related institutions and as governments all dedicated to the service of our people and fellow travelers on this earth.²⁵

8.3. Recommendations

The point is that the more we oppose abortion, the more we ought to show compassion and understanding to those who seek it. We must remember that the quest for abortion is very often, and paradoxically, a plea for life, the mother's own life, her family, her career opportunities, and her concept of the poor lifestyle she could offer her baby. Our opposition to the abortion practice should go beyond the point of rhetoric and argumentation. We should show by action that there is an alternative. We must be able to show that there is help that can result in a full life for both and that abortion, as a solution can in many instances be avoided.²⁶

Towards this end the relevant authorities, institutions and individuals should seek to undertake the following:

- I. The government must put in place stringent legal provisions that bar people or institutions from taking life, either their own or that of others arbitrarily.
- II. But even as the government seeks to formulate and reinforce penal sanctions against the infringement on the life of the fetus, it must also seek ways and means of reinforcing the mother's own determination to protect her unborn child. Such efforts will require that the following be put in place: Instead of abortion-on-demand, we should instead work towards securing fundamental changes in the structure of society.
- III. The goal for all ought to be directed towards working for a world in which power to bear children is appreciated as a gift rather than a burden. As it is now, if the pro-choice argument was to be granted- that pregnancy is the choice and responsibility of the woman, it will be inevitable that it be seen as nothing but a burden on the part of the woman.²⁷
- IV. The government should facilitate, in an attempt to improve conditions in the workplace – greater flexibility for both mothers and fathers, in its own institutions and that of other employing institutions and organizations the formulations of terms and conditions of

service that are friendly to the women employees with regard to maternity leave arrangements and child education and welfare programs where necessary;

- V. The state also ought to provide for the support of incapacitated or defective children born and kept alive in the defense of public moral standards through setting up of special educational institutions and even upkeep centers and homes in situations where the immediate and extended family members cannot be able to sustain such children in their homes;
- VI. The community members should also come in handy in relieving the affected family members of any emotional or financial stress they cannot reasonably bear, either by accepting the complete care of defective children in public institutions or by supplying medical and educational subsidies to ensure that such families do not suffer any unfair economic disadvantages from their misfortune.²⁸
- VII. A comprehensive and concrete program to get to the root causes of poverty must be developed and on the basis of this appropriate projects and programs targeting the poor should be rolled out;
- VIII. We must recognize the necessity to fight the mechanism and structures that tend to consolidate and even worsen the impoverishment of the poor. This is important in the light of the fact that in most cases it is not so much the absence of resources but the distribution of the available resources. Speaking of the American experience, Clardy Craven, quoting Grace Olivarez, writes:
- I am not impressed nor persuaded by those who express concern for low income women who may find herself carrying an unplanned pregnancy and for the future of the unplanned child who may be deprived of the benefits of a full life as a result of the parents poverty, because the fact remains that in this affluent nation of ours, pregnant cattle and horses receive better health care than pregnant poor women.²⁹
- IX. The government should also embark on the enactment of social welfare measures to support expectant mothers who have opted to carry their children to term but are faced with economic hardships. This will guarantee better pre-natal and post natal care for impoverished women

- X. There is need also to set up of counseling centers where the mothers and relevant persons will not only get counseling services but will also receive moral encouragement, material support and other forms of direct assistance to pregnant women and their families;
- XI. Families with defective children and adults born with the defects or caused later by accidents and diseases should at all times in the midst of the struggles of life strive to show love and care for their offspring. This will help deal with situations where such children and adults are subjected to widespread neglect and battering in the midst of family squabbles and alcoholism. This leave such victims emotionally wounded, especially since they are painfully aware that the struggles their families are going through, are because of them.³⁰
- XII. The woman struggling with social stigma attached to adoption need to be enabled to cope with her predicament. Favorable adoption laws with minimal bureaucratic procedures and institutions will also have to be put in place. To facilitate the adoption process, adoption centers should be set up where applicable to attend to those who want to adopt children.
- XIII. As the government endeavors to enact favorable adoption laws, the individuals, parents and family members should re-examine their attitude towards children with a view to abandoning such prejudicial terms as “unwanted and wanted children”. This re-examination is all the more necessary in the light of the following: First, those children who are being said to be “unwanted” now, may become “wanted” later and vice versa; second, children who are unwanted by their natural parents are not unwanted by potential adoptive parents and; third, the prevalent attitude where it is considered worse to give up a child who is living than to destroy the living child.³¹ But those concerned need to understand that it is better to endure until birth then give up the child for adoption than to destroy the nascent life. Janet Smith observes correctly that:

The difference between abortion and adoption for the woman herself is not that one action allows her to forget her pregnancy and the other does not. After abortion she must live with the fact that she has asserted her will over the life of another. In giving the child up for adoption she respects the life of another; she recognizes rights beyond her own.³²

- XIV. In addition to the need for the change in societal attitude towards children there is need for the same also for unmarried mothers struggling with society’s attitude towards

illegitimacy. With the risk of being accused of promoting complacency this change is imperative especially in this time and age when this phenomenon has now increasingly become a common feature in the society.

XV. There is also need for the government and any other people governing authority and institutions to put in place more stringent male responsibility laws and statutes for child support enforcement. This move will likely help reduce cases of women seeking abortion due to financial constraints and fear of abandonment by their male partners.

XVI. Perhaps, the most critical is the restoration of relationships of mutual responsibility between women and men and prompting society to affirm women and protect the fruit of their unique procreative ability: children. This can be done first and foremost, by saying no, to permissive abortion laws and selfish demands for the control of one's own body-to the detriment of the other; and regrettably oneself.

8.4. The contributions of the study

It is believed that this study will make some modest contribution to the world of scholarship. More particularly, it is hoped that it will provide useful material and information for individuals, families, organizations, academic institutions of higher learning and government policy makers.

It is also hoped that the recommendations made will help refocus the abortion debate. From the current standard of philosophical speculations and argumentation based on psychological criteria that locks out the unborn from the cycle of protection with regard to the right to life to the adoption of a simple standard derived from basic biological facts of fetal growth and development. That one only needs to be a member of the *Homo sapiens* species to qualify as a human person. That human beings and human persons are one and the same.

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