

II. ABORTION AND THE ARGUMENT FROM INNOCENCE *

There is an argument against abortion that should be rejected. It is the argument that abortion is the killing of an innocent human being, and since the killing of an innocent human being is immoral, abortion is therefore immoral. The major premise should be corrected to read: 'Generally speaking, the killing of innocent human beings is immoral'; for in some situations morality demands the killing of the innocent. Moreover, given the deep structure of English and the differences between unborn and born progeny, the question of whether a human fetus is a human being is best answered in the negative.

Of the many arguments against direct abortion,¹ there is one which makes an unusually strong prima facie case. It is the argument from innocence. 'Every living fetus,' we are told, 'regardless of its stage of development, is a human being and any act which is a deliberate and direct destruction of that innocent life is therefore an act of murder.'² Or more simply stated: The killing of an innocent human being is immoral. Abortion is the killing of an innocent human being. Therefore abortion is immoral.

Two questions must be answered. First, is it true that each and every killing of an innocent human being is immoral? And second, can we correctly say that a human fetus is a human being? I believe both questions are

* Inquiry 14: 1-2 (1971), 147-151. Reprinted in The Problem of Abortion, J. Feinberg, ed., Wadsworth, 1973, 28-32 and in The Morality of Killing, 1974, 39-45.

best answered in the negative and that the argument from innocence therefore must be rejected.

Law or Rule? Consider the following situation. An obstetrician discovers in the middle of delivery that he is dealing with a twin pregnancy. It is a case of locked twins; a case where the first child presents by the breech and the second by the vertex, where the two heads have locked in such a manner that the second fits into the neck of the first child making its delivery impossible. What should the physician do if he cannot displace the head of the second child? Should he decapitate the first and save the second? Or should he allow both to die?

Dissenting moralists, namely those who employ the argument from innocence, maintain that the proposed act of decapitation is a violation of the Fifth Commandment: 'Thou shalt not kill' is interpreted to mean 'Thou shalt not kill innocent human beings'. This command, we are told, is an expression of a universal, immutable, and absolute moral law. Regardless of the nobility or worthiness of the end or objective, man is never morally justified in taking an innocent human life. In the case of locked twins the physician should allow both to die.³ For while it is definitely a sin *to kill* one innocent fetus, it is not a sin *to allow* both to die. The true choice, we are told, lies between the following: (1) directly killing an innocent human being and (2) permitting (not causing) the death of both fetuses.

The first, a moral evil, is immeasurably worse than the second, a merely physical evil. Hence, even considering the physician's action as a choice between two evils, it must be condemned. It is never permissible to commit a sin, a moral evil, in order to prevent any other evil, physical or moral. *It is preferable by far that a million mothers and fetuses perish than that a physician stain his soul with murder.*⁴

It would be an injustice to reply that all who believe and act in this manner are thoroughly heartless, though at times it seems as if this is the only conclusion that can be drawn. But we might well ask why is it better that a million perish than that a physician kill an innocent human being? Does God really want it that way? If so, then can we in truth say that such a god is moral? If not, then what is the justification? What is it that proclaims it is better that a million mothers and fetuses perish than to have a physician endanger his immortal soul? Is it the voice of morality or the scintilla of self-interest?

I suspect that we are here faced not with a moral law but rather with a rule, a rule which if properly formulated would read: *generally speaking* one ought not to kill innocent human beings. The fact that it is a rule does not detract from its importance. Nor does it imply that exceptions are numerous. Nevertheless they do exist. For there are times when this rule conflicts with another moral rule, namely, that one ought to be as just as is humanly possible. In the case of locked twins, justice requires that we make exception (I almost said take exception) to the rule concerning the killing of innocent human beings. For if it is unjust to kill one innocent human being, then it is a greater injustice to kill two equally innocent human beings.

Thus far we have been assuming that a human fetus is a human being.

If this is not the case then the major premise in addition to being false is irrelevant.

Is a Human Fetus a Human Being? Various reasons are given in the hope of justifying an affirmative answer. Consider the argument, or at least one form of the argument, which appeals to the presence of the rational soul. Some writers conclude that, since Canon 747 of the Church states that a living aborted fetus regardless of age should be baptized unconditionally, this indicates that the Church deems a soul to be present from the moment of conception. Others follow St. Thomas and claim that there is no human being at all during the first few weeks of pregnancy.⁵ Now why should St. Thomas be considered more of an authority than Church Law or vice versa? To answer by appealing to either authority is to beg the question.

A more convincing argument is one in which it is tacitly assumed that all classification is limited to the species-genus variety. Reasons are given to explain why a human fetus must be a member of *homo sapiens*. Then it is suggested that if a fetus belongs to the category 'homo sapiens' it must be a human being. For example, St. John-Stewas maintains that, since 'there is no qualitative difference between the embryo at the moment of conception and at the moment of quickening', the embryo must be considered a human being.⁶ 'The stubborn fact,' writes Neuhaus, 'is that our contemporary understanding of the continuous process of life makes it difficult to exclude the pre-natal child from the phenomenon of man.'⁷ Apparently, *if a fetus is a member of the biological species homo sapiens it necessarily follows that that fetus is a human being.*

This problem is analogous to the problem of whether or not an acorn is an oak tree. If an acorn is destroyed, has a tree been killed? I think not. Something has been killed. Admittedly the living seed of an oak tree has been killed. But it is a muddle to suggest that the killing of a seed of a tree is the same as killing a tree. The seed and the tree may both be members of the same growth form. But the seed is a member of the class of unborn progeny; the tree is not. Hence to say that a seed of an oak tree is an oak tree is to say (at least in part) that unborn progeny are born progeny.

Despite the obvious parallel between the 'seed-tree problem' and the 'human fetus-human being problem', there is one important difference. The latter gives rise to a mistake; the former does not. The question is why?

Suppose two machines are constructed. The first has the ability of an ordinary, but not a fluent, speaker. The second has the ability of a fluent speaker, i.e. the second machine knows the language perfectly.⁸ Each machine is given the task of distinguishing between contradictory and non-contradictory sentences and then fed the following sentences:

- (1) Every oak seed is an oak tree.
- (2) Every human fetus is a human being.

The first machine, the one with the ability of an ordinary but not a fluent speaker, rejects (1) for reasons that have already been mentioned. But it does not reject (2). Instead it adds the specification *being* to the term *human fetus* and concludes that by *every human fetus being is a human being* is meant that *every fetus which is a member of homo sapiens is a member of homo sapiens.*

This machine fails as a fluent speaker to the extent that it fails to recognize the ambiguous use of *being* and the resulting contradictory sentence.

The second machine rejects both (1) and (2). There are several reasons for its rejection of (2). First, as a fluent speaker it understands that *being* is ambiguous in English: *being*₁ signifies that which has existence, while *being*₂ signifies an individual which has or has had an independent nature capable of sustaining and regulating its own metabolic pattern (in short, nonspecific being and independent being). Second, it understands that the word *being* is being used ambiguously, that sentence (2) can be paraphrased to read *every human fetus being*₁ *is a human being*₂. Finally, and most important, it realizes that the underlying structure of this assertion is self-contradictory. The fluent English speaker understands that to assert that *every human fetus being*₁ *is a human being*₂ is in essence to assert that *all unborn human progeny are born human progeny*.

Someone may object and say that this is merely an appeal to English usage and that to discuss what silly people mean when they say silly things may be amusing but can hardly be important. This objection cannot be taken seriously. Life and death are not silly matters. Furthermore, no appeal has been made to what silly people mean. An appeal has been made to what is meant by *human being* in English. An appeal has been made to the structure of a language and not merely to its use. The difference is this: Language is the depository of the accumulated body of experience to which all former ages have contributed their part. It contains a much deeper knowledge of the world than most of us suspect. Scrutiny of the structure of English reveals that all terms referring to living things convey either the idea of born or unborn progeny as part of their meaning. Just as *boy*, *bachelor* and *king* are words semantically characterized by the term *male*, the words *seed*, *egg*, and *fetus* are characterized by the term *unborn progeny*.

This is not to deny the phenomenon of language change. It is not to deny that certain sequences of sounds keep their meaning only by virtue of the tacit agreement of the general community of speakers. Nor is it to deny that a community can, under certain conditions, revoke its consent to the rules which are in force. *Bachelor*, which signified 'a young man who has not married' has come to mean 'an unmarried person of marriageable age'. Therefore it is no longer necessary to be a male in order to be correctly called a bachelor.

But there are good reasons for this particular change. First of all, it is offensive to call a young unmarried woman a spinster. Second, apart from the word *spinster* there is no other appropriate and partially synonymous term available. Third, although *bachelor* is (or is becoming) neutral, the important male-female distinction has not been lost; when the word is used to refer to individuals, the subject of the sentence usually indicates the gender: *She is a bachelor*, *Miss Jones is a bachelor*. But a similar case cannot be made for reducing the meaning of *human being* to that of *homo sapiens*. To give a term a meaning that another term in the language already has is needless duplication. Moreover, to drop 'born progeny' as part of the meaning of *human being* while keeping 'unborn progeny' as part of the meaning of *fetus* does not make sense. And the alternative, that of changing the

meaning of *human being* and *fetus* (in effect dropping two good words), makes even less sense.

Let us, however, suppose that there is good reason for changing the meaning of *human being*. Let us assume that if abortion is immoral we are obligated to do whatever is necessary to the language in order to save lives. Now even if all this were true, we would still have to reject the argument from innocence. For it is not permissible to use a persuasive definition in order to guarantee the truth of a conclusion of an argument where the truth of the conclusion stands as the justification for the use of the persuasive definition. Or more simply put: it is not permissible to use a persuasive definition of *human being* in an argument which purports to prove that abortion is immoral and at the same time use the truth of this conclusion as the justification for the use of the persuasive definition. This procedure merely begs both questions.

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NOTES

1. Theologians, especially Roman Catholic, distinguish direct from indirect abortion. They recognize 'direct abortion in which there is the direct intention to expel a non-viable, living fetus from the uterus; also indirect abortion in which the expulsion of the fetus is not directly procured, but occurs as a consequence of some other procedure' (John Marshall, *The Ethics of Medical Practice*, Darton, Longman & Todd, London 1960, p. 103). I use 'abortion' hereafter to mean 'direct abortion'.
2. Charles J. McFadden, *Medical Ethics*, F. A. Davis, Co., Philadelphia 1961, p. 135. Also, Patrick Finney and Patrick O'Brien, *Moral Problems in Hospital Practice*, B. Herder Co., St. Louis, Mo. 1956, p. 53.
3. John Marshall, op. cit., p. 121.
4. Edwin F. Healy, S. J., *Medical Ethics*, Loyola University Press, Chicago 1956, p. 196. The emphasis is my own.
5. J. Donceel, S. J., *Continuum*, Spring 1967, pp. 167-71.
6. Norman St. John-Stevan, *The Right to Life*, Holt, Rinehart, & Winston, New York 1963, p. 32.
7. Richard John Neuhaus, 'The Dangerous Assumptions', *Commonweal*, Vol. 86, No. 15 (1967), p. 412.
8. This is not to suggest that there is a fluent speaker or that such a machine can be constructed. The notion of a fluent speaker is an idealization in exactly the same sense in which any scientific theory is. See: Noam Chomsky, *Aspects of the Theory of Syntax*, M.I.T. Press, Cambridge, Mass. 1965, pp. 3-4; Jerrold J. Katz, *The Philosophy of Language*, Harper & Row, New York 1966, pp. 115-17.