

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

I am inclined to agree, however, that the prospects for “drawing a line” in the development of the fetus look dim. I am inclined to think also that we shall probably have to agree that the fetus has already become a human person well before birth. Indeed, it comes as a surprise when one first learns how early in its life it begins to acquire human characteristics. By the tenth week, for example, it already has

1. I am very much indebted to James Thomson for discussion, criticism, and many helpful suggestions.

a face, arms and legs, fingers and toes; it has internal organs, and brain activity is detectable.² On the other hand, I think that the premise is false, that the fetus is not a person from the moment of conception. A newly fertilized ovum, a newly implanted clump of cells, is no more a person than an acorn is an oak tree. But I shall not discuss any of this. For it seems to me to be of great interest to ask what happens if, for the sake of argument, we allow the premise. How, precisely, are we supposed to get from there to the conclusion that abortion is morally impermissible? Opponents of abortion commonly spend most of their time establishing that the fetus is a person, and hardly any time explaining the step from there to the impermissibility of abortion. Perhaps they think the step too simple and obvious to require much comment. Or perhaps instead they are simply being economical in argument. Many of those who defend abortion rely on the premise that the fetus is not a person, but only a bit of tissue that will become a person at birth; and why pay out more arguments than you have to? Whatever the explanation, I suggest that the step they take is neither easy nor obvious, that it calls for closer examination than it is commonly given, and that when we do give it this closer examination we shall feel inclined to reject it.

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

It sounds plausible. But now let me ask you to imagine this. You wake up in the morning and find yourself back to back in bed with an unconscious violinist. A famous unconscious violinist. He has been found to have a fatal kidney ailment, and the Society of Music Lovers

2. Daniel Callahan, *Abortion: Law, Choice and Morality* (New York, 1970), p. 373. This book gives a fascinating survey of the available information on abortion. The Jewish tradition is surveyed in David M. Feldman, *Birth Control in Jewish Law* (New York, 1968), Part 5, the Catholic tradition in John T. Noonan, Jr., "An Almost Absolute Value in History," in *The Morality of Abortion*, ed. John T. Noonan, Jr. (Cambridge, Mass., 1970).

has canvassed all the available medical records and found that you alone have the right blood type to help. They have therefore kidnapped you, and last night the violinist's circulatory system was plugged into yours, so that your kidneys can be used to extract poisons from his blood as well as your own. The director of the hospital now tells you, "Look, we're sorry the Society of Music Lovers did this to you—we would never have permitted it if we had known. But still, they did it, and the violinist now is plugged into you. To unplug you would be to kill him. But never mind, it's only for nine months. By then he will have recovered from his ailment, and can safely be unplugged from you." Is it morally incumbent on you to accede to this situation? No doubt it would be very nice of you if you did, a great kindness. But do you *have* to accede to it? What if it were not nine months, but nine years? Or longer still? What if the director of the hospital says, "Tough luck, I agree, but you've now got to stay in bed, with the violinist plugged into you, for the rest of your life. Because remember this. All persons have a right to life, and violinists are persons. Granted you have a right to decide what happens in and to your body, but a person's right to life outweighs your right to decide what happens in and to your body. So you cannot ever be unplugged from him." I imagine you would regard this as outrageous, which suggests that something really is wrong with that plausible-sounding argument I mentioned a moment ago.

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

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

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

3. Where the mother's life is not at stake, the argument I mentioned at the outset seems to have a much stronger pull. "Everyone

has a right to life, so the unborn person has a right to life." And isn't the child's right to life weightier than anything other than the mother's own right to life, which she might put forward as ground for an abortion?

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

For we should now, at long last, ask what it comes to, to have a right to life. In some views having a right to life includes having a right to be given at least the bare minimum one needs for continued life. But suppose that what in fact *is* the bare minimum a man needs for continued life is something he has no right at all to be given? If I am sick unto death, and the only thing that will save my life is the touch of Henry Fonda's cool hand on my fevered brow, then all the same, I have no right to be given the touch of Henry Fonda's cool hand on my fevered brow. It would be frightfully nice of him to fly in from the West Coast to provide it. It would be less nice, though no doubt well meant, if my friends flew out to the West Coast and carried Henry Fonda back with them. But I have no right at all against anybody that he should do this for me. Or again, to return to the story I told earlier, the fact that for continued life that violinist needs the continued use of your kidneys does not establish that he has a right to be given the continued use of your kidneys. He certainly has no right against you that *you* should give him continued use of your kidneys. For nobody has any right to use your kidneys unless you give him such a right; and nobody has the right against you that you shall give him this right—if you do allow him to go on using your kidneys, this is a kindness on your part, and not something he can claim from you as his due. Nor has he any right against anybody else that *they* should give him continued use of your kidneys. Certainly he had no right against the Society of Music Lovers that they should plug him into you in the first place. And if you now start to unplug yourself, having learned that you will otherwise have to spend nine years in bed with him, there is nobody in the world who must try to prevent you, in order to see to it that he is given something he has a right to be given.

Some people are rather stricter about the right to life. In their view, it does not include the right to be given anything, but amounts to,

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

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

4. There is another way to bring out the difficulty. In the most ordinary sort of case, to deprive someone of what he has a right to is to treat him unjustly. Suppose a boy and his small brother are jointly given a box of chocolates for Christmas. If the older boy takes the box and refuses to give his brother any of the chocolates, he is unjust to him, for the brother has been given a right to half of them. But

suppose that, having learned that otherwise it means nine years in bed with that violinist, you unplug yourself from him. You surely are not being unjust to him, for you gave him no right to use your kidneys, and no one else can have given him any such right. But we have to notice that in unplugging yourself, you are killing him; and violinists, like everybody else, have a right to life, and thus in the view we were considering just now, the right not to be killed. So here you do what he supposedly has a right you shall not do, but you do not act unjustly to him in doing it.

The emendation which may be made at this point is this: the right to life consists not in the right not to be killed, but rather in the right not to be killed unjustly. This runs a risk of circularity, but never mind: it would enable us to square the fact that the violinist has a right to life with the fact that you do not act unjustly toward him in unplugging yourself, thereby killing him. For if you do not kill him unjustly, you do not violate his right to life, and so it is no wonder you do him no injustice.

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

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

But it might be argued that there are other ways one can have acquired a right to the use of another person's body than by having been invited to use it by that person. Suppose a woman voluntarily indulges in intercourse, knowing of the chance it will issue in pregnancy, and then she does become pregnant; is she not in part responsible for the presence, in fact the very existence, of the unborn person inside her? No doubt she did not invite it in. But doesn't her partial responsibility for its being there itself give it a right to the use of her

body?⁷ If so, then her aborting it would be more like the boy's taking away the chocolates, and less like your unplugging yourself from the violinist—doing so would be depriving it of what it does have a right to, and thus would be doing it an injustice.

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

The first thing to be said about this is that it is something new. Opponents of abortion have been so concerned to make out the independence of the fetus, in order to establish that it has a right to life, just as its mother does, that they have tended to overlook the possible support they might gain from making out that the fetus is *dependent* on the mother, in order to establish that she has a special kind of responsibility for it, a responsibility that gives it rights against her which are not possessed by any independent person—such as an ailing violinist who is a stranger to her.

On the other hand, this argument would give the unborn person a right to its mother's body only if her pregnancy resulted from a voluntary act, undertaken in full knowledge of the chance a pregnancy might result from it. It would leave out entirely the unborn person whose existence is due to rape. Pending the availability of some further argument, then, we would be left with the conclusion that unborn persons whose existence is due to rape have no right to the use of their mothers' bodies, and thus that aborting them is not depriving them of anything they have a right to and hence is not unjust killing.

And we should also notice that it is not at all plain that this argument really does go even as far as it purports to. For there are cases and cases, and the details make a difference. If the room is stuffy, and I therefore open a window to air it, and a burglar climbs in, it would be absurd to say, "Ah, now he can stay, she's given him a right to the use of her house—for she is partially responsible for his presence there, having voluntarily done what enabled him to get in, in full knowledge that there are such things as burglars, and that burglars

7. The need for a discussion of this argument was brought home to me by members of the Society for Ethical and Legal Philosophy, to whom this paper was originally presented.

burglar.” It would be still more absurd to say this if I had had bars installed outside my windows, precisely to prevent burglars from getting in, and a burglar got in only because of a defect in the bars. It remains equally absurd if we imagine it is not a burglar who climbs in, but an innocent person who blunders or falls in. Again, suppose it were like this: people-seeds drift about in the air like pollen, and if you open your windows, one may drift in and take root in your carpets or upholstery. You don’t want children, so you fix up your windows with fine mesh screens, the very best you can buy. As can happen, however, and on very, very rare occasions does happen, one of the screens is defective; and a seed drifts in and takes root. Does the person-plant who now develops have a right to the use of your house? Surely not—despite the fact that you voluntarily opened your windows, you knowingly kept carpets and upholstered furniture, and you knew that screens were sometimes defective. Someone may argue that you are responsible for its rooting, that it does have a right to your house, because after all you *could* have lived out your life with bare floors and furniture, or with sealed windows and doors. But this won’t do—for by the same token anyone can avoid a pregnancy due to rape by having a hysterectomy, or anyway by never leaving home without a (reliable!) army.

It seems to me that the argument we are looking at can establish at most that there are *some* cases in which the unborn person has a right to the use of its mother’s body, and therefore *some* cases in which abortion is unjust killing. There is room for much discussion and argument as to precisely which, if any. But I think we should sidestep this issue and leave it open, for at any rate the argument certainly does not establish that all abortion is unjust killing.