

WILEY

Understanding the Abortion Argument

Author(s): Roger Wertheimer

Source: *Philosophy & Public Affairs*, Vol. 1, No. 1 (Autumn, 1971), pp. 67-95

Published by: [Wiley](#)

Stable URL: <http://www.jstor.org/stable/2265092>

Accessed: 20/02/2015 01:54

Your use of the JSTOR archive indicates your acceptance of the Terms & Conditions of Use, available at <http://www.jstor.org/page/info/about/policies/terms.jsp>

JSTOR is a not-for-profit service that helps scholars, researchers, and students discover, use, and build upon a wide range of content in a trusted digital archive. We use information technology and tools to increase productivity and facilitate new forms of scholarship. For more information about JSTOR, please contact support@jstor.org.



Wiley is collaborating with JSTOR to digitize, preserve and extend access to *Philosophy & Public Affairs*.

<http://www.jstor.org>

ROGER WERTHEIMER

Understanding the Abortion Argument

I want to understand an argument. By an argument I do not mean a concatenation of deathless propositions, but something with two sides that you have with someone, not present to him; not something with logical relations alone, but something encompassing human relations as well. We need to understand the argument in this fuller sense, for if we don't understand the human relations, we won't understand the logical ones either. For data I use a fair share of the published material plus intensive discussions with some two hundred students.¹ Here too, if we don't understand what people actually say and do, we shall never understand what they ought to say and do.

The argument is over the legalization of abortion. In its moral, as opposed to, say, its political or medical aspects, the issue is statable as a double-barreled question: At what stage of fetal development, if any, and for what reasons, if any, is abortion justifiable? Each part of the question has received diverse answers, which in turn have been combined in various ways. Thus, we have not a single argument but many, so I must subject them to considerable summary and simplification in order to handle the larger issues.

Let me list a few popular positions. According to the liberal, the fetus should be disposable upon the mother's request until it is viable; thereafter it may be destroyed only to save the mother's life. To an extreme liberal the fetus is always merely *pars viscerum matris*, like an

1. My thanks to Mrs. Marilyn Weaver of the Oregon Committee on Legal Termination of Pregnancy for providing much of the literature, and to Portland State University for providing the students.

appendix, and may be destroyed upon demand anytime before its birth. In effect, this view denies that abortion ever needs any justification at all. A moderate view is that until viability the fetus should be disposable if it is the result of felonious intercourse, or if the mother's or child's physical or mental health would probably be gravely impaired. This position is susceptible to wide variations. For example, it can be liberalized by giving more weight to the reasonably foreseeable consequences of the pregnancy for the family as a whole. The conservative position is that the fetus may be aborted before quickening but not after, unless the mother's life is at stake. For the extreme conservative, the fetus, once conceived, may not be destroyed for any reason short of saving the mother's life.

This last might be called the Catholic view, but note that it, or some close variant of it, is shared by numerous Christian sects, and is or was maintained by Jews, by Indians of both hemispheres, by a variety of tribes of diverse geographical location and cultural level, and even by some contemporary atheistical biochemists who are political liberals. Much the same can be said of any of the listed positions. I call attention to such facts for two reasons. First, they suggest that the abortion issue is in some way special, since, given any position on abortion and any position on any other issue, you can probably find a substantial group of people, many of whom are rational and intelligent, who have simultaneously held both. Second, these facts are regularly denied or distorted by the disputants. Thus, liberals habitually argue as though extreme conservatism were an invention of contemporary scholasticism with a mere century of popish heritage behind it. This in the face of the fact that that position has had the force of law in most American states for more than a century, and continues to be law even in states where Catholicism is without influence. But why should liberals want to deny that conservatism can be freed from the peculiarities of Romanist theology and from religious belief altogether? After all, wouldn't the liberal critique be even more devastating if it located the true source of its adversary's beliefs and tore those beliefs up by their roots? We shall see that these two points are not unrelated.

Now, it is commonly said that the crux of the controversy is a disagreement as to the *value* of fetal life in its various stages. But I sub-

mit that this subtly but seriously misdescribes the actual arguments, and, further, betrays a questionable understanding of morality and perhaps a questionable morality as well. Instead, I suggest, we had best take the fundamental question to be: When does a human life begin?

First off I should note that the expressions “a human life,” “a human being,” “a person” are virtually interchangeable in this context. As I use these expressions, except for monstrosities, every member of our species is indubitably a person, a human being, at the very latest at birth. The question is whether we are human lives at any time before birth. Virtually everyone, at least every party to the current controversy, *actually* does agree to this. However, we should be aware that in this area both agreement and disagreement are often merely verbal and therefore only apparent. For example, many people will *say* that it takes a month or perhaps a year or even more after birth for the infant to become a person, and they will explain themselves by saying that a human being must have self-consciousness, or a personality, or be able to recognize and consciously interact with its environment. But upon investigation this disagreement normally turns out to be almost wholly semantic, for we can agree on all the facts about child development, and furthermore we can agree, at least in a general way, in our moral judgments on the care to be accorded the child at various stages. Thus, though they deny that a day-old infant is a person, they admit that its life cannot be forfeited for any reason that would not equally apply to a two-year-old.² Still, some substantive disagreements may separate myself from someone who is disinclined to call a neonate a person, but they are subtler than any I can encompass here.

On the other hand, significant disagreements can be masked by a merely verbal agreement. Sometimes a liberal will grant that a pre-viable fetus is a human being, but investigation reveals that he means only that the fetus is a potential human being. Often he will flatly say

2. Granted, some societies practice infanticide, but their members are not parties to the present abortion dispute. And granted, further, in many of our jurisdictions infanticide, the murder of the young infant by its mother, is not punished as severely as other murders. However, this seems to be a function of our compassionate understanding of the anxiety and trauma attending the first months of motherhood; if a stranger kills the infant, the act is treated simply as murder.

that he calls it a human being because it would *become* a human being, thereby evidencing an ambiguity in his use of that expression. Or he may call it human to distinguish it from canine and feline fetuses, and call it alive or living in opposition to dead or inert. But this much can be said of any cells of the maternal organism, and the sum of these parts does not equal what he means when he uses the phrase “a human life” in connection with himself and his friends, for in that extended sense he could equally apply that expression to human terata, and, at least in extreme cases, he is inclined to deny that they are human lives, and to dispose of them accordingly.

Implicit in my remarks is the suggestion that one way to find out how someone uses the expression “human being” and related ones is by looking at his moral judgments. I am suggesting that this is a way, sometimes the only way, of learning both what someone means by such expressions and what his conception of a human being is. So, I am tempted to call our concept of a human being a moral concept—but I wouldn’t know quite what I meant if I said that. Let me put it in more manageable, if somewhat vague, terms. It seems clear enough, at least in outline, that given that a man has a certain set of desires, we can discern his conception of something, X, by seeing what kinds of behavior he takes to be appropriate regarding X. I am saying that we may have to look at his *moral* beliefs regarding X, especially if X is a human being. And I want to say further that while some moral judgments are involved in determining whether the fetus is a human being, still, the crucial question about the fetus is not “How much is it worth?” but “What is it?” Admittedly, so far this is all horribly obscure. To get some clarity we must start examining the details of the abortion argument.

The defense of the extreme conservative position, as normally stated by Catholics, runs as follows. The key premise is that a human fetus is a human being, not a partial or potential one, but a full-fledged, actualized human life. Given that premise, the entire conservative position unfolds with a simple, relentless logic, every principle of which would be endorsed by any sensible liberal. Suppose human embryos are human beings. Their innocence is beyond question, so nothing could justify our destroying them except, perhaps, the necessity of saving some other innocent human life. That is, since similar cases

must be treated in similar ways, some consideration would justify the abortion of a prenatal child if and only if a comparable consideration would justify the killing of a postnatal child.³

This is a serious and troubling argument posing an objection in principle to abortion. It is the *only* such argument. Nothing else could possibly justify the staggering social costs of the present abortion laws. Once the Catholic premise is granted, a liberal could reasonably dissent on only three side issues, none of which is a necessary or essential feature of conservatism.⁴

It should be unmistakably obvious what the Catholic position is. Yet, and this deserves heavy emphasis, liberals seem not to understand it, for their arguments are almost invariably infelicitous. The Catholic defense of the status quo is left unfazed, even untouched, by the standard liberal critique that consists of an inventory of the calamitous effects of our abortion laws on mother and child, on family, and on society in general. Of course, were it not for those effects we would feel no press to be rid of the laws—nor any *need* to retain them. That inventory does present a conclusive rebuttal of any of the piddling objections conservatives often toss in for good measure. But still, the

3. For brevity, I use an oversimplification of the principle against killing persons. Further refinements are otiose here, because, whatever they are, the issue remains whether they are to be applied equally to prenatal and postnatal humans.

4. The first concerns the Church's use of what is called the principle of double effect, which, when applied to some special obstetrical circumstances, implies that the doctor must let the mother die if his only alternative is intentionally killing the unborn child. Jonathan Bennett ("Whatever the Consequences," *Analysis* 26, no. 3 [1966]: 83-102) and Philippa Foot ("The Problem of Abortion and the Doctrine of the Double Effect," *Oxford Review* 5 [1967]: 5-15) have, I think, shown the principle to be ultimately indefensible, but in the process they make it seem to be more enlightened and to encapsulate many more insights than liberals have credited. At any rate, the principle has ceased to have much bearing on abortion cases because medical technology usually prevents the relevant circumstances from arising. Another spot at which a liberal could diverge from a Catholic is in the particular decisions regarding the degree of deformity required to warrant the destruction of the offspring. Since the nature of this dispute is much the same as that concerning the fetus, separate discussion would prove redundant. Lastly, a liberal could argue that human beings—of whatever age—can be blamelessly killed in more circumstances than Catholics concede. (Cf. note 3.) But clearly, any conservative concessions here would lend little comfort to liberals, since even liberals are reluctant to be very permissive about such principles.

precise, scientific tabulations of grief do not add up to an argument here, for sometimes pain, no matter how considerable and how undesirable, may not be avoidable, may not stem from some injustice. I do not intend to understate that pain; the tragedies brought on by unwanted children are plentiful and serious—but so too are those brought on by unwanted parents, yet few liberals would legalize parricide as the final solution to the massive social problem of the permanently visiting parent who drains his children's financial and emotional resources. In the Church's view, these cases are fully analogous: the fetus is as much a human life as is the parent; they share the same moral status. Either can be a source of abiding anguish and hardship for the other—and sometimes there may be no escape. In this, our world, some people get stuck with the care of others, and sometimes there may be no way of getting unstuck, at least no just and decent way. Taking the other person's life is not such a way.

The very elegance of the Catholic response is maddening. The ease with which it sweeps into irrelevance the whole catalogue of sorrow has incited many a liberal libel of the Catholic clergy as callous and unfeeling monsters, denied domestic empathy by their celibacy and the simplest human sympathies by their unnatural asceticism. Of course, slander is no substitute for argument—that's what the logic books say—and yet, we cast our aspersions with care, for they must deprive the audience of the *right* to believe the speaker. What wants explanation, then, is why the particular accusation of a *warped sensibility* seems, to the liberal, both just and pertinent. I shall come back to this. For the moment, it suffices to record that the liberal's accusation attests to a misunderstanding of the Catholic defense, for it is singularly inappropriate to label a man heartless who wants only to protect innocent human lives at all costs.

There is a subsidiary approach, a peculiarly liberal one, which seeks to disarm the Catholic position not by disputing it, but by conceding the Catholic's right to believe it and act accordingly. The liberal asks only that Catholics concede him the same freedom, and thus abandon support of abortion laws. To the liberal, the proposal is sweet reasonableness itself; the only demand is that Catholics be liberals—and when his offer is spurned, the depth of his exasperation measures the

extent of his misunderstanding of the Catholic defense. The Catholic must retort that the issue is not, as the liberal supposes, one of religious ritual and self-regarding behavior, but of minority rights, the minority being not Catholics but the fetuses of all faiths, and the right being the right of an innocent human being to life itself. The liberal's proposal is predicated on abortion being a crime without a victim, like homosexuality or the use of contraceptives, but in the Catholic view the fetus is a full-scale victim and is so independent of the liberal's recognition of that fact. Catholics can no more think it wrong for themselves but permissible for Protestants to destroy a fetus than liberals can think it wrong for themselves but permissible for racists to victimize blacks. Given his premise, the Catholic is as justified in employing the power of the state to protect embryos as the liberal is to protect blacks. I shall be returning to this analogy, because the favored defense of slavery and discrimination, from Aristotle to the Civil War and beyond, takes the form of a claim that the subjugated creatures are by nature inferior to their masters, that they are *not fully human*.⁵

Now, why do liberals, even the cleverest ones, so consistently fail to make contact with the Catholic challenge?⁶ After all, as I have made plain, once premised that the fetus is a person, the entire conservative position recites the common sense of any moral man. The liberal's failure is, I suggest, due to that premise, not to some Jesuitical subtlety in the reasoning. It is the liberal's imagination, not his intellect, that is boggled. He doesn't know how to respond to the argument, because he cannot *make sense* of that premise. To him, it is not simply

5. A further instance of the liberal's befuddlement: for the Catholic, not only must a Catholic—or non-Catholic—doctor refrain from performing an abortion, he must also refuse a patient's request for a referral to a doctor who would perform it. Liberals regularly rage against this as an additional outrage by the Church, but it is an additional part of the Church's position only in being distinct, not in being separable, since, if an act constitutes a grave wrong, surely it is wrong to aid and abet that act. If it is wrong to enslave a man, it is wrong to inform a master of the whereabouts of his fugitive slave, and also wrong to refer him to someone who would so inform.

6. I think it undeniable that some of the liberals' bungling can be dismissed as the unseemly sputterings and stutterings of a transparently camouflaged anti-Catholic bias—but not all of it can.

false, but wildly, madly false; it is nonsense, totally unintelligible, literally unbelievable. Just look at an embryo. It is an amorphous speck of apparently coagulated protoplasm. It has no eyes or ears, no head at all. It can't walk or talk; you can't dress it or wash it. Why, it doesn't even qualify as a Barbie doll, and yet millions of people call it a human being, just like one of us. It's as though someone were to look at an acorn and call it an oak tree, or, better, it's as though someone squirted a paint tube at a canvas and called the outcome a painting, a work of art—and people believed him. The whole thing is precisely that mad—and just that sane. The liberal is befuddled by the conservative's argument, just as Giotto would be were he to assess a Pollock production as a *painting*. If the premises make no sense, then neither will the rest of the argument, except as an exercise in abstract logic—and that is, I think, the only way in which liberals do understand the conservative argument.

The Catholic claim would be a joke were it not that millions of people take it seriously, and millions more suffer for their solemnity. Liberals need an explanation of how it is possible for the conservatives to believe what they say, for after all, conservatives are not ignorant or misinformed about the facts here—I mean, for example, the facts of embryology. To be sure, both camps have their complement of the benighted, but then again, neither side has a monopoly on competent doctors. It's not as though the antiabortionists thought embryos were homunculi in the mother's belly, just like us, only much, much smaller. If they thought something like that (and, in fact, at one time some of them did) then perhaps the liberal could understand them and dismiss their ravings with the aid of an electron microscope. So the liberal asks, "How *can* they believe what they say? How *can* they even make sense of it?" The question is forced upon the liberal because his conception of rationality is jeopardized by the possibility that a normal, unbiased observer of the relevant facts could really accept the conservative claim. It is this question, I think, that drives the liberal to attribute the whole antiabortion movement to Catholicism and to the Roman clergy in particular. For it is comforting to suppose that the conservative beliefs could take root only in a mind that had been carefully cultivated since infancy to support every extravagant dogma of an arcane theology fathered by the victims of unnatural and

unhealthy lives.⁷ But, discomfoting though it may be, people, and not just Catholics, can and sometimes do agree on all the facts about embryos and still disagree as to whether they are persons. Indeed, apparently people can agree on *every* fact and still disagree on whether it is a fact that embryos are human beings. So now one might begin to wonder: What sort of fact is it?

I hasten to add that not only can both parties agree on the scientific facts, they need not disagree on any supernatural facts either. The situation here is *not* comparable to that in which a man stands before what looks for all the world like some fermented grape juice and a biscuit and calls it the blood and body of someone who died and decomposed a couple of millennia ago. The conservative claim does not presuppose that we are invested with a soul, some sort of divine substance, at or shortly after our conception. No doubt it helps to have one's mind befogged by visions of holy hocus-pocus, but it's not necessary, since some unmuddled atheists endorse a demythologized Catholic view. Moreover, since ensoulment is an unverifiable occurrence, the theologian dates it either by means of some revelation—which, by the way, the Church does not (though some of its parishioners may accept the humanity of embryos on the Church's say-so)—or by means of the same scientifically acceptable data by which his atheistical counterpart gauges the emergence of an unbesouled human life (e.g., that at such and such a time the organism is capable of independent life, or is motile, or assumes human form, or possesses its complete genetic makeup).

The religious position derives its plausibility from independent secular considerations. It serves as an expression of them, not as a substitute for them. In brief, here as elsewhere, talk about souls involves an unnecessary shuffle. Yet, though unnecessary, admittedly it is not

7. Consequently, liberals deprive themselves of any genuine understanding of that theology by overlooking its natural attractions, which are considerable. Not a few liberals have eagerly believed that the Church's population policy was designed by devilishly clever bishops questing after worldly wealth and power via a burgeoning Catholic horde. So, it is left a mystery as perturbing as the Trinity why the wily Romanists insist that the heathen numbers keep pace, and why they persist in their plot in spite of the fact, oft-noted by liberals, that the continuing overpopulation of Catholic countries perpetuates their poverty and impotence.

without effect, for such conceptions color our perceptions and attitudes toward the world and thereby give sense and substance to certain arguments whose secular translations lack appeal. To take a pertinent instance, the official Church position (not the one believed by most of the laity or used against the liberals, but the official position) is that precisely because ensoulment is an unverifiable occurrence, we can't locate it with certainty, and hence abortion at any stage involves the *risk* of destroying a human life. But first off, it is doubtful whether this claim can support the practical conclusions the Catholic draws. For even if it is true, is abortion an *unwarrantable* risk? Always? Is it morally indefensible to fire a pistol into an uninspected barrel? After all, a child *might* be hiding in it. Secondly, though this argument has no attractive secular version, still, it derives its appeal from profane considerations. For what is it that so much as makes it seem that a blastocyst *might* be a person? If the conception of being besouled is cut loose from the conception of being human sans soul, then a human soul might reside in anything at all (or at least any living thing), and then the destruction of anything (or any living thing) would involve the risk of killing someone. This picture of the world is quite alien to the rationalist tradition of Catholicism, but some Eastern religions have adopted it, and the course of life appropriate to it. Not surprisingly, that course of life seems madly inefficient and irrational to Western liberals.

I have said that the argument from risk has no secular counterpart. But why not? Well, for example, what sense would it make to the liberal to suppose that an embryo *might* be a person? Are there any discoveries that are really (not just logically) possible which would lead him to admit he was mistaken? It is not a *hypothesis* for the liberal that embryos are not persons; *mutatis mutandis* for the conservative, who might well say of the fetus: "My attitude towards him is an attitude towards a soul. I am not of the *opinion* that he has a soul."⁸

At this juncture of the argument, a liberal with a positivistic background will announce that the whole dispute is not over a matter of fact at all; it's just a matter of definition whether the fetus is a person. If by this the liberal means that the question "Is a fetus a person?" is

8. Ludwig Wittgenstein, *Philosophical Investigations*, trans. G.E.M. Anscombe (New York, 1953), p. 178e.

equivalent to “Is it proper to call a fetus a person?”—that is, “Is it true to say of a fetus, ‘It is a person?’”—then the liberal is quite right and quite unhelpful. But he is likely to add that we can define words any way we like. And that is either true and unhelpful or flatly false. For note, both liberals and conservatives think it wrong to kill an innocent person except when other human lives would be lost. So neither party will reform their speech habits regarding the fetus unless that moral principle is reworded in a way that vouchsafes their position on abortion. Any stipulated definition can be recommended only by appealing to the very matters under dispute. Any such definition will therefore fail of universal acceptance and thus only mask the real issues, unless it is a mere systematic symbol switch. In brief, agreement on a definition will be a consequence of, not a substitute for, agreement on the facts.

A more sophisticated liberal may suggest that fetuses are borderline cases. Asking whether fetuses are persons is like asking whether viruses are living creatures: the proper answer is that they are like them in some ways but not in others; the rules of the language don't dictate one way or the other, so you can say what you will. Yet this suggests that we share a single concept of a human being, one with a fuzzy or multifaceted boundary that would make any normal person feel indecision about whether a fetus is a human being, and would enable that person, however he decided, to understand readily how someone else might decide otherwise. But at best this describes only the minds of moderates. Liberals and conservatives suffer little indecision, and, further, they are enigmatic to one another, both intellectually and as whole persons. The liberal can neither understand nor believe in the conservative's horror of abortion, especially when the conservative then so blithely accepts the consequences of prohibiting the operation. In turn, the conservative is baffled by and mistrustful of the liberal who welcomes abortion with an easy equanimity and then agonizes his soul so mightily over the poignant dilemma posed by Ivan Karamazov to Alyosha (“Rebellion”). Each side suspects the other of schizoid derangement or self-serving hypocrisy or both. And finally, precisely because with the virus you can say what you will, it is unlike the fetus. As regards the virus, scientists can manage nicely while totally ignoring the issue. Not so with the fetus, because decid-

ing what to call it is tantamount to a serious and unavoidable moral decision.

This last remark suggests that the fetus' humanity is really a moral issue, not a factual one at all. This suggestion would sit well with the positivistically minded liberals, since for them it would explain how there could be unanimity on every issue except whether a fetus is a person. But I submit that if one insists on using that raggy fact-value distinction, then one ought to say that the dispute is over a matter of fact in the sense in which it is a fact that the Negro slaves were human beings. But it would be better to say that this dispute calls that distinction into question. To see this, let us look at how people actually argue about when a human life begins.

The liberal dates hominization from birth or viability. The choice of either stage is explicable by reference to some obvious considerations. At birth the child leaves its own private space and enters the public world. He becomes an active member of the community, a physically separate and distinct individual. He begins to act and behave like a human being, not just move as he did in the womb. And he can be looked at and acted upon and interacted with. He has needs and wants independent from those of his mother. And so on. On the other hand, someone may say viability is the crucial point, because it is then that the child has the capacity to do all those things it does at birth; the sole difference is a quite inessential one of geography.

Now note about both of these sets of considerations that they are not used as proofs or parts of proofs that human life begins at birth or at viability. What would the major premise of such a proof be? The liberal does not—nor does anyone else—have a rule of the language or a definition of "human life" from which it follows that if the organism has such and such properties, then it is a human life. True, some people, especially some scholastically oriented Catholics, have tried to state the essence of human life and argue from that definition, but the correctness of any such definition must first be tested against our judgments of particular cases, and on some of those judgments people disagree; so the argument using such a definition which tries to settle that disagreement can only beg the question. Thus, it seems more accurate to say simply that the kinds of considerations I have mentioned explain why the liberal chooses to date human life in a certain

way. More accurately still, I don't think the liberal chooses or decides at all; rather, he looks at certain facts and he responds in a particular way to those facts: he dates human life from birth or from viability—and he acts and feels accordingly.⁹ There is nothing surprising in such behavior, nor anything irrational or illegitimate.

All this can be said of any of the considerations that have been used to mark the beginning of a human life. Quickening—that is, when the mother first *feels* the fetus move—could be used, because that clearly serves as a sign of life. Liberal detractors point out that the fetus moves long before the mother feels it, and biologically it is a living organism long before that. But such objections overlook the connections between our concept of a person and our concept of an agent, something that can act. It's not to be wondered at that quickening should seem a dramatic moment, especially to the mother who receives the fetus' signal that it *can now move on its own*.

Similarly, liberals always misplace the attractions of fertilization as the critical date when they try to argue that if you go back that far, you could just as well call the sperm or the egg a human being. But people call the zygote a human life not just because it contains the DNA blueprint which determines the physical development of the organism from then on, and not just because of the potential inherent in it, but also because it and it alone can claim to be the beginning of the spatio-temporal-causal chain of the physical object that is a human body. And though I think the abortion controversy throws doubt on the claim that bodily continuity is the *sole* criterion of personal identity, I think the attractions of that philosophical thesis are of a piece with the attractions of fertilization as the point marking the start of a person. Given our conceptual framework, one can't go back further. Neither the sperm nor the egg could be, by itself, a human being, any more than an atom of sodium or an atom of chlorine could by itself properly be called salt. One proof of this is that *no one* is in the least inclined to call a sperm or an egg a human life, a fact acknowledged by the liberal's very argument, which has the form of a *reductio ad absurdum*. At one time people were so inclined, but only because they thought the sperm merely triggered the develop-

9. His response has cognitive, behavioral, and affective aspects. I make no suggestion regarding their temporal or causal relations.

ment of the egg and hence the egg was a human being, or they thought that the egg was merely the seedbed for the male seed and thus the sperm was a human being.

One other dating deserves mention, since, though rarely stated, it is often used, especially by moderates: the period during which the fetus takes on a recognizably human form, the period when it begins to *look* human. The appeal of this is conveyed by Wittgenstein's remark: "The human body is the best picture of the human soul."¹⁰

These are some of the considerations, but how are they actually presented? What, for example, does the liberal say and do? Note that his arguments are usually formulated as a series of rhetorical questions. He points to certain facts, and then, quite understandably, he expects his listeners to respond in a particular way—and when they don't, he finds their behavior incomprehensible. First he will point to an infant and say, "Look at it! Aren't you inclined to say that it is one of us?" And then he will describe an embryo as I did earlier, and say, "Look at the difference between it and us! Could you call that a human being?" All this is quite legitimate, but notice what the liberal is doing. First, he has us focus our attention on the *earliest stages* of the fetus, where the contrast with us is greatest. He does not have us look at the fetus shortly before viability or birth, where the differences between it and what he is willing to call a human being are quite minimal. Still, this is not an unfair tactic when combating the view that the fertilized egg is a human life. The other side of this maneuver is that he has us compare the embryo with *us adults*. This seems fair in that we are our own best paradigms of a person. If you and I aren't to be called human beings, then what is? And yet the liberal would not say that a young child or a neonate or even a viable fetus is to be called a human life only in an extended sense. He wants to say that the infant at birth or the viable fetus is a one-hundred-percent human being, but, again, the differences between a neonate and a viable fetus or between a viable fetus and a soon-to-be-viable fetus are not impressive.

The liberal has one other arrow in his meager quiver. He will say that if you call an embryo a human life, then presumably you think

10. *Philosophical Investigations*, p. 178e.

it is a valuable entity. But, he adds, what does it have that is of any value? Its biochemical potential to become one of us doesn't ensure that it itself is of any real value, especially if neither the mother nor any other interested party wants it to fulfill that potential. Besides, it's not as though zygotes were rare; they're all too plentiful, and normally it's no great hardship to mix another batch. And don't tell me that the zygote is of great worth because it has a divine soul, for you can't even show that such things exist, let alone that *this* entity has one.

When liberals say that an embryo is of no value if no one has a good reason to want to do anything but destroy it, I think they are on firm ground. But the conservative is not saying that the embryo has some really nifty property, so precious that it's a horrid waste to destroy it. No, he is saying that the embryo is a human being and it is wrong to kill human beings, and that is why you must not destroy the embryo. The conservative realizes that, unless he uses religious premises, premises inadmissible in the court of common morality, he has no way of categorically condemning the killing of a fetus except by arguing that a fetus is a person. And he doesn't call it a human being because its properties are valuable. The properties it has which make it a human being may be valuable, but he does not claim that it is their value which makes it a human being. Rather, he argues that it is a human being by turning the liberal's argument inside out.

The conservative points, and keeps pointing, to the similarities between each set of successive stages of fetal development, instead of pointing, as the liberal does, to the gross differences between widely separated stages. Each step of his argument is persuasive, but if this were all there was to it, his total argument would be no more compelling than one which traded on the fuzziness of the boundaries of baldness and the arbitrariness of any sharp line of demarcation to conclude that Richard M. Nixon is glabrous. If this were the whole conservative argument, then it would be open to the liberal's *reductio* argument, which says that if you go back as far as the zygote, the sperm and the egg must also be called persons. But in fact the conservative can stop at the zygote; fertilization does seem to be a non-arbitrary point marking the inception of a particular object, a human

body. That is, the conservative has *independent* reasons for picking the date of conception, just like the liberal who picks the date of birth or viability, and unlike the sophist who concludes that Nixon is bald.

But we still don't have the whole conservative argument, for on the basis of what has been said so far the conservative should also call an acorn an oak tree, but he doesn't, and the reason he uses is that, as regards a human life, it would be *morally* arbitrary to use any date other than that of conception. That is, he can ask liberals to name the earliest stage at which they are willing to call the organism a human being, something which may not be killed for any reason short of saving some other human life. The conservative will then take the stage of development immediately preceding the one the liberals choose and challenge them to point to a difference between the two stages, a difference that is a morally relevant difference, a difference that would justify the massive moral and legal difference of allowing us to kill the creature at the earlier stage while prohibiting that same act at the succeeding stage.

Suppose the liberal picks the date of birth. Yet a newborn infant is only a fetus that has suffered a change of address and some physiological changes like respiration. A neonate delivered in its twenty-fifth week lies in an incubator physically less well developed and no more independent than a normal fetus in its thirty-seventh week in the womb. What difference is there that justifies calling that neonate a person, but not that fetus? What difference is there that can be used to justify killing the prenatal child where it would be wrong to kill the postnatal child?

Or suppose the liberal uses the date of viability. But the viability of a fetus is its capacity to survive outside the mother, and *that* is totally relative to the state of the available medical technology. At present the law dates viability from the twenty-eighth week, but so late a date is now without any medical justification. In principle, eventually the fetus may be deliverable at any time, perhaps even at conception. The problems this poses for liberals are obvious, and in fact one finds that either a liberal doesn't understand what viability really is, so that he takes it to be necessarily linked to the later fetal stages; or he is an extreme liberal in disguise, who is playing along with the first kind of liberal for political purposes; or he has abandoned the viability cri-

terion and is madly scurrying about in search of some other factor in the late fetal stages which might serve as a nonarbitrary cutoff point. For example, in recent years some liberals have been purveying pious nonsense about the developing cerebral cortex in the third trimester and its relation to consciousness. But I am inclined to suppose that the conservative is right, that going back stage by stage from the infant to the zygote one will not find any differences between successive stages significant enough to bear the enormous moral burden of allowing wholesale slaughter at the earlier stage while categorically denying that permission at the next stage.

It needs to be stressed here that we are talking about life and death on a colossal scale. It has been estimated that thirty million abortions are performed yearly, one million in the United States alone. So the situation contrasts sharply with that in which a society selects a date like the eighteenth or twenty-first birthday on which to confer certain legal rights, for the social costs of using a less arbitrary measure of maturity can reasonably be held to outweigh any injustices involved in the present system. Even the choice of a birthday for military conscription, a morally ambiguous practice anyway, is not comparable for obvious reasons.

The full power and persuasiveness of the conservative argument is still not revealed until we uncover its similarities to and connections with any of the dialectical devices that have been used to widen a man's recognition of his fellowship with all the members of his biological species, regardless of their race or sex or nationality or religion or lineage or social class. To be sure, not every discriminatory injustice based on such arbitrary and morally irrelevant features as race or sex has been rationalized on the grounds that the victim is not a full-fledged human being. Still, it is a matter of record that men of good will have often failed to recognize that a certain class of fellow creatures were really human beings just like themselves.

To take but one example, the history of Negro slavery includes among the white oppressors men who were, in all other regards, essentially just and decent. Many such men sincerely defended their practice of slavery with the claim that the Negro was not a member of the moral community of men. Not only legally, but also conceptually, for the white master, the Negro was property, livestock. The manor lord

could be both benevolent and unjust with a clear Christian conscience because he regarded the slave as some sort of demiperson, a blathering beast of burden. And given the white man's background, we can understand, if not sympathize with, his perception of Negroes. For either he had never seen one before, or he had been reared in a culture in which it was an accepted practice to treat and regard them, to talk about and perceive them in a certain way. That they were full-fledged human beings, the sort of creatures that it is wrong to kill or enslave, was a claim he found incredible. He would be inclined to, and actually did, simply point to the Negroes and say: "Look at them! Can't you see the differences between them and us?" And the fact is that at one time that argument had an undeniable power, as undeniable as the perceptual differences it appealed to. Check your own perceptions. Ask yourself whether you really, in a purely phenomenological sense, *see* a member of another race in the same way you see a member of your own. Why is it that all Chinamen look alike and are so inscrutable? Add to the physiological facts the staggering cultural disparities dividing slave and master, and you may start to sense the force of the master's argument. What has been the rebuttal? We point to the similarities between Negro and white, and then step by step describe the differences and show about each one that it is not a morally relevant difference, not the kind of difference that warrants enslaving or in any way discriminating against a Negro.

The parallels with the abortion controversy are palpable. Let me extend them some more. First, sometimes a disagreement over a creature's humanity does turn on beliefs about subsidiary matters of fact—but it need not. Further, when it does not, when the disagreement develops from differing responses to the same data, the issue is still a factual one and not a matter of taste. It is not that one party prefers or approves of or has a favorable attitude or emotion toward some property, while the other party does not. Our response concerns what the thing is, not whether we like it or whether it is good. And when I say I don't *care* about the color of a man's skin, that it's not *important* to me, I am saying something quite different than when I say I don't care about the color of a woman's hair. I am saying that this property cannot be used to justify discriminatory behavior or social arrangements. It cannot be so used because it is irrelevant; neither black skin

nor white skin is, in and of itself, of any value. Skin color has no logical relation to the question of how to treat a man. The slaveholder's response is not that white skin is of intrinsic value. Rather, he replies that people with naturally black skins are niggers, and that is an inferior kind of creature. So too, the liberal does not claim that infants possess some intrinsically valuable attribute lacked by prenatal children. Rather, he says that a prenatal child is a fetus, not a human being.

In brief, when seen in its totality the conservative's argument is the liberal's argument turned completely inside out. While the liberal stresses the differences between disparate stages, the conservative stresses the resemblances between consecutive stages. The liberal asks, "What has a zygote got that is valuable?" and the conservative answers, "Nothing, but it's a human being, so it is wrong to abort it." Then the conservative asks, "What does a fetus lack that an infant has that is so valuable?" and the liberal answers, "Nothing, but it's a fetus, not a human being, so it is all right to abort it." The arguments are equally strong and equally weak, for they are the *same* argument, an argument that can be pointed in either of two directions. The argument does not itself point in either direction: it is *we* who must point it, and *we* who are led by it. If you are led in one direction rather than the other, that is not because of logic, but because you respond in a certain way to certain facts.

Recall that the arguments are usually formulated in the interrogative, not the indicative, mood. Though the answers are supposed to be absolutely obvious, they are not comfortably assertible. Why? Because an assertion is a truth claim which invites a request for a proof, but here any assertible proof presupposes premises which beg the question. If one may speak of proof here, it can lie only in the audience's response, in their acceptance of the answer and of its obviousness. The questions convince by leading us to appreciate familiar facts. The conclusion is validated not through assertible presuppositions, but through our acknowledgment that the questions are *rhetorical*. You might say that the conclusion is our seeing a certain aspect: e.g., we see the embryo as a human being. But this seems an unduly provocative description of the situation, for what is at issue is whether such an aspect is there to be seen.

Evidently, we have here a paradigm of what Wittgenstein had in mind when he spoke of the possibility of two people agreeing on the application of a rule for a long period, and then, suddenly and quite inexplicably, diverging in what they call going on in the same way. This possibility led him to insist that linguistic communication presupposes not only agreement in definitions, but also agreement in judgments, in what he called forms of life¹¹—something that seems lacking in the case at hand. Apparently, the conclusion to draw is that it is not true that the fetus is a human being, but it is not false either. Without an agreement in judgments, without a common response to the pertinent data, the assertion that the fetus is a human being cannot be assigned a genuine truth-value.

Yet, we surely want to say that Negroes are and always have been full-fledged human beings, no matter what certain segments of mankind may have thought, and no matter how numerous or unanimous those segments were. The humanity of the slaves seems unlike that of the fetus, but not because by now a monolithic majority recognizes—however grudgingly—the full human status of Negroes, whereas no position regarding the fetus commands more than a plurality. The mere fact of disagreement in judgments or forms of life would not render unsetttable statements about the humanity of fetuses, otherwise the comparable statements about Negroes, or for that matter whites, would meet a similar fate. What seems special about the fetus is that, apparently, we have no vantage point from which to criticize opposing systems of belief.

It will be said by some that a form of life is a “given,” “what has to be accepted,”¹² something not really criticizable by or from an opposing form of life. There are various long answers to that, but a couple of short ones should suffice here. First, it is also part of our form of life, and every other one I know of, that rational and justifiable criticisms of opposing forms of life can be and are made; it seems that that practice “has to be accepted” at face value as much as any other. Second, in this instance the point is without practical relevance, since

11. Caveat lector! The notion of a form of life is a swamp from whose bourn no philosopher has returned. I would fain forgo the well-known conceits of another had I but time and talent enow to conjure with my own.

12. Wittgenstein, *Philosophical Investigations*, p. 226e.

the differences between the disputants are not so systematic and entire as to block every avenue of rational discussion. Clearly, their communality is very great, their differences relatively isolated and free-floating. Thus, for example, liberals and conservatives seem quite capable of understanding this paper. At any rate, it would be self-indulgent for me to take any disagreements they may have with me to be evidence to the contrary.

At this stage of the dispute over a creature's humanity, I stand to the slaveholder in roughly the same relation I stand to the color-blind man who judges this sheet of paper to be gray. Our differing color judgments express our differing immediate responses to the same data. But his color judgment is mistaken because his vision is defective. I criticize his judgment by criticizing him, by showing him to be abnormal, deviant—which is not the same as being in the minority. In a like manner we criticize those basic beliefs and attitudes which sanction and are sustained by the slaveholder's form of life. We argue that his form of life is, so to speak, an accident of history, explicable by reference to special socio-psychological circumstances that are inessential to the natures of blacks and whites.¹³ The fact that Negroes *can* and, special circumstances aside, naturally *would* be regarded and treated no differently than Caucasians is at once a necessary and a sufficient condition for its being right to so regard and treat them. Thus, while we may in large measure understand the life-style of the slaveholder and perhaps withhold condemnation of the man, we need not and should not condone his behavior.

Liberals and conservatives rail at each other with this same canonical schema. And if, for example, antiabortionism required the perverting of natural reason and normal sensibilities by a system of superstitions, then the liberal could discredit it—but it doesn't, so he can't. As things stand, it is not at all clear what, if anything, is the normal or natural or healthy response toward the fetus; it is not clear what is to count as the special historical and social circumstances, which, if removed, would leave us with the appropriate way to regard and treat

13. This point can be overstated. We develop our concept of a human through our relations with those near us and like us, and thus, at least initially, an isolated culture will generally perceive and describe foreigners as alien, strange, and not foursquare human.

the fetus.¹⁴ And I think that the unlimited possibility of natural *responses* is simply the other side of the fact of severely limited possibilities of natural *relationships* with the fetus. After all, there isn't much we can do with a fetus; either we let it out or we do it in. I have little hope of seeing a justification for doing one thing or the other unless this situation changes. As things stand, the range of interactions is so minimal that we are not compelled to regard the fetus in any particular way. For example, respect for a fetus cannot be wrung from us as respect for a Negro can be and is, unless we are irretrievably warped or stunted.

No doubt the assumptions behind these remarks are large and complex, but I take the essential points here to be bits of moral common sense, data to be understood, and, at least at the outset, accepted, not philosophical theses to be refuted. Of course, if we discredit certain *basic* beliefs because of their causal history, we may have to redefine the so-called genetic fallacy and reassess the work of Wittgenstein and others who treat as irrelevant to the validity of such basic beliefs the explanation of how and why we come to have them.¹⁵ However that may be, we seem to be stuck with the indeterminateness of the fetus' humanity. This does not mean that, whatever you believe, it is true or true for you if you believe it. Quite the contrary, it means that,

14. I have heard many people say that they believe what they do about the fetus "because that's what I was brought up to believe." Of course this can't justify their belief, but it's also suspect as an explanation. Even if you acquired your belief by *learning*, it does not follow that you were *taught*. Ask yourself when were you taught and by whom that a human life begins at such and such a time—or have you repressed the memory of that terrifying scene? Have you told a child or seen it done? Many people (e.g., Catholics) are instructed on this matter, and many of them accept the teachings, but many people come to reject what they were taught. (Even contemporary Catholic theologians disagree.) How is that to be explained?

15. Incidentally, we might also stop balking at the *structure* of Nietzsche's critique of our morality, and start facing up to the *content* of his argument. One could concede the claim that our morality, our set of basic values is a *cause* of a sick (diseased, unhealthy, unnatural) mind (person, life, culture), for the claim leaves open whether certain values should be sacrificed for certain others. One cannot be so glib with the claim that our values are a *consequence* of our valetudinarian condition, for if the claim is granted the conclusion seems as inescapable as it is terrible. (Nietzsche spoke of "terrible truths.") Nietzsche may have made the first claim; he certainly made the second.

whatever you believe, it's not true—but neither is it false. You believe it, and that's the end of the matter.

But obviously that's not the end of the matter; the same urgent moral and political decisions still confront us. But before we run off to make our existential leaps over the liberal-conservative impasse, we might meander through the moderate position. I'll shorten the trip by speaking only of features found throughout the spectrum of moderate views. For the moderate, the fetus is not a human being, but it's not a mere maternal appendage either; it's a human fetus, and it has a separate moral status just as animals do. A fetus is not an object that we can treat however we wish, but neither is it a person whom we must treat as we would wish to be treated in return. Thus, *some* legal prohibitions on abortions *might* be justified in the name of the fetus qua human fetus, just as we accord some legal protection to animals, not for the sake of the owners, but for the benefit of the animals themselves.

The popularity of this position is, I believe, generally underestimated; ultimately, most liberals and conservatives are, in a sense, only extreme moderates. Few liberals really regard abortion, at least in the later stages, as a bit of elective surgery. Suppose a woman had her fifth-month fetus aborted purely out of curiosity as to what it looked like, and perhaps then had it bronzed. Who among us would not deem both her and her actions reprehensible? Or, to go from the lurid to the ludicrous, suppose a wealthy woman, a Wagner addict, got an abortion in her fourth month because she suddenly realized that she would come to term during the Bayreuth Festival. Only an exceptional liberal would not blanch at such behavior. Of course, in both cases one might refuse to outlaw the behavior, but still, clearly we do not respond to these cases as we would to the removal of an appendix or a tooth. Similarly, in my experience few of even the staunchest conservatives consistently regard the fetus, at least in the earlier stages, in the same way as they do a fellow adult. When the cause of grief is a miscarriage, the object of grief is the mother; rarely does anyone feel pity or sorrow for the embryo itself. So too, it is most unusual for someone to urge the same punishment for a mother who aborts a young fetus as for one who murders her grown child. Never-

theless, enough people give enough substance to the liberal and conservative positions to justify describing them as I have done, as views differing in kind rather than degree.¹⁶

The moderate position is as problematic as it is popular. (The virtue of compromise is mass appeal; coherence may not be a consideration.) The moderate is driven in two directions, liberalism and conservatism, by the very same question: Why do you make these exceptions and not those? Why, for example, single out incestuous offspring as unworthy of protection? Are they so tainted by a broken taboo, or is the exception based upon a general utilitarian consideration that would equally justify the mass of abortions that are actually desired?

The difficulty here is comparable to that regarding animals. There are dogs, pigs, mosquitoes, worms, bacteria, etc., and we kill them for food, clothing, ornamentation, sport, convenience, and out of simple irritation or unblinking inadvertence. We allow different animals to be killed for different reasons, and there are enormous differences between people on all of this. In general, for most of us, the higher the evolutionary stage of the species or the later the developmental stage of the fetus, the more restricted our permission to kill; the more a thing is like us—ontogenetically or phylogenetically—the more we are disposed to treat it like a human being. But it is far more complicated than that, and anyone with a fully consistent, let alone principled, system of beliefs on these matters is usually thought fanatical by the rest of us.

To stabilize his position, the moderate would have to *invent* a new set of moral categories and principles. A happy amalgamation of the ones we have won't do, because our principles of justice apply solely to the relations between persons,¹⁷ and our concepts of zygote, embryo, and fetus are biological, not moral, categories. But *how* is one to

16. On the other hand, the above considerations suggest that the human status of a fetus is not indeterminate for the *whole* of its gestation.

17. An oversimplification whose import remains to be gauged. Compare: I stumble in the dark over my sleeping schnauzer; I stumble over my ottoman. To *blame* either nonperson is irrational; to blame the dog is also *unfair*, but to blame the furniture is neither fair nor unfair. So too: my bitch leaves me five pups. Without special reason it would be *unfair* to apportion the food unequally among them.

invent new categories and principles? I'm not sure it can be done, especially with the scanty building materials available. Again, our interactions with fetuses are extremely limited and peripheral, which is why our normative conceptual machinery in this area is so abbreviated, unformed, and up for grabs.

But perhaps this could be otherwise. Close your eyes for a moment and imagine that, due to advances in medical technology or mutation caused by a nuclear war, the relevant cutaneous and membranous shields became transparent from conception to parturition, so that when a mother put aside her modesty and her clothing the developing fetus would be in full public view. Or suppose instead, or in addition, that anyone could at any time pluck a fetus from its womb, air it, observe it, fondle it, and then stick it back in after a few minutes. And we could further suppose that this made for healthier babies, and so maybe laws would be passed requiring that it be done regularly. And we might also imagine that gestation took nine days rather than nine months. What then would we think of aborting a fetus? What would *you* think of aborting it? And what does that say about what you *now* think?

In my experience, when such imaginative exercises are properly presented people are often, not always, moved by them, different people by different stories. They begin to talk about all of it somewhat differently than they had before, and less differently from each other. However, the role of such conjectures in or as arguments is far from clear. I'm not sure whether people find out something about themselves, or change under the impact of their own imaginations, or both—one as a consequence of the other. I don't think we discover the justifications for our beliefs by such a procedure. A liberal who is disturbed by the picture of a transparent womb may be acquiring some self-knowledge; he may come to realize how much power being visible and being hidden have for us and for him, and he may make a connection between this situation and the differing experiences of an infantryman and a bombardier. But surely the fetus' being hidden was not the liberal's *reason* for thinking it expendable.

Nor is it evident that such *Gedanken* experiments reveal the causes of our beliefs. Their results seem too unreliable to provide anything

but the grossest projections as to how we would in fact react in the imagined situations. When I present myself with such science fiction fantasies, I am inclined to respond as I do to a question posed by Hilary Putnam:¹⁸ If we build robots with a psychology isomorphic with ours and a physical structure comparable to ours, should we award them civil rights? In contrast to Putnam, who thinks we can now give a more disinterested and hence objective answer to this question, I would say that our present answer, whatever it is, is so disinterested as to count for nothing. It seems to me that such questions about the robot or the fetus can't be answered in advance. This seems so for much the same reason that some things, especially regarding moral matters, can't be told to a child. A child can of course hear the words and operate with them, but he will not really understand them without undergoing certain experiences, and maybe not even then. Odd as it may sound, I want to know exactly what the robot looks like and what it's like to live with it. I want to know how in fact we—how I—look at it, respond to it, and feel toward it. Hypothetical situations of this sort raise questions which seem answerable only when the situation is realized, and perhaps then there is no longer a real question.

I am suggesting that what our natural response to a thing is, how we naturally react to it cognitively, affectively, and behaviorally, is partly definitive of that thing, and is therefore partly definitive of how we ought to respond to that thing. Often only an actual confrontation will tell us what we need to know, and sometimes we may each respond differently, and thus have differing understandings.

Moreover, the relation of such hypothetical situations to our actual situation is problematic. My hunch is that if the fetal condition I described were realized, fewer of us would be liberals and more of us would be conservatives and moderates. But suppose that in fact we would all be hidebound conservatives and that we knew that now. Would a contemporary liberal be irrational, unjustified, or wicked if he remained adamant? Well, if a slaveholder with a conscience were shown why he feels about Negroes as he does, and that he would regard them as his equals if only he had not been reared to think

18. "Robots: Machines or Artificially Created Life?" *The Journal of Philosophy* 61, no. 21 (1964): 668-691.

otherwise, he might change his ways, and if he didn't I would unhesitatingly call him irrational and his behavior unjustified and wicked.

But now suppose that dogs or chimps could and did talk, so that they entered our lives in more significant roles than those of experimental tools, friendly playthings, or faithful servants, and we enacted antivivisectionist legislation. If we discovered all this now, the news might deeply stir us, but would we necessarily be wrong if we still used animals as we do? Here, so I am inclined to think, we might sensibly maintain that in the hypothetical case the animals and their relations with us are essentially and relevantly different from what they now are. The capacities may exist now, but their realization constitutes a crucial change like that from an infant to an adult, and unlike that from a slave to a citizen. We would no more need to revise our treatment of animals than we need to apply the same principles of reciprocity to children and adults, a practice which, even if it weren't unfair, would be pointless and self-defeating—as resentful parents discover too late.

In the abortion case my instincts are similar but shakier. Yet I think that the adamant liberal could reply that what is special about fetuses, what distinguishes them from babies, slaves, animals, robots, and the rest, is that they essentially are and relate to us as bundles of potentialities. So, obviously, if their potentialities were actualized, not singly or partially, but in sufficient number and degree, we would feel differently. But to make them and their situation in respect to us different enough so that we would naturally regard them as human beings, they would have to become what they can become: human beings. In the hypothetical situation, they are babes in a biological incubator, and therefore that situation is irrelevant to our situation. In brief, an argument based on such a situation only restates the conservative's original argument with imaginary changes instead of the actual set of changes which transforms the fetus into a human child.

Does accepting the liberal's reply scotch all further argument? I think not. One obvious candidate for investigation is the principle that it is wrong to kill a human being, a principle to which some participants in the controversy, in particular utilitarians, apparently do not subscribe. Another candidate is the topic of euthanasia, which is part replica and part mirror image of the abortion problem: patients get

described as vegetables, but their human status is elided because their capacities are exhausted rather than dormant. But such similarities may be only surface features; the substance of the two issues may lie in separate spaces. Either topic is as large and caliginous as that of abortion itself—discussable, but not here.

Instead, let me tempt you with a summary argument that the present abortion laws are illegitimate. The existence and powers of the state are legitimated through their rational acceptability to the citizenry, and it would be irrational for the citizens to grant the state any coercive power whose exercise *could* not be rationally justified to them. Thus, the state has the burden of proving that its actions are legitimate. Now, without question, the present abortion laws seriously restrict the freedom and diminish the welfare of the citizenry. A law with that effect is not *ipso facto* unjust, but the state has the burden of showing that such a law is necessary to attain the legitimate ends of the state. But the social costs of the present abortion laws are so drastic that only the preservation of human lives could justify them.¹⁹ So to justify those laws the state must demonstrate that the fetus is a human being. But if that can't be done at all, the state can't do it either, so the laws must be deemed an unjustifiable burden and hence an illegitimate exercise of power.

Note carefully how limited this argument is. It does not show that abortions are morally okay; at best it shows that the legal prohibitions are not. Nor does it work against every possible prohibition of abortion; statutes having milder social liabilities might be warranted without arguing for the fetus' humanity. Further, while the laws are illegitimate because unjustifiable, they need not therefore be unjust; they might be just or unjust or neither without being demonstrably so. Finally, it does not follow that a conservative who promotes such prohibitions is reproachable.²⁰ What I said about the state does not apply to its citizens. If anything, the burden seems on the complaining liberals to show that a conservative is reprehensible when his political or personal behavior is unacceptable to the liberals. And while any

19. The truth of this claim may be arguable but becomes ever less so as the multiplication of mankind transforms the preservation of each new life into an increasingly direct threat to every human life.

20. The issue here was brought to my attention by Thomas Nagel.

constraint of liberty or any harm to others (e.g., an abortion law) is prima facie objectionable, so that the burden of proof is on its perpetrator, it is not evident that the perpetrator is criticizable when his victims are unsatisfied by an argument they cannot refute. So, for a citizen but not a state, to act without demonstrable justification is not to act wrongly.