

all these people-potentials into existence) because of his own carelessness, or even if he had done so deliberately, knowing the consequences. Regardless of how he got captured, he is not morally obligated to remain in captivity for *any* period of time for the sake of permitting any number of potential people to come into actuality, so great is the margin by which one actual person's right to liberty outweighs whatever right to life even a hundred thousand potential people have. And it seems reasonable to conclude that the rights of a woman will outweigh by a similar margin whatever right to life a fetus may have by virtue of its potential personhood.

Thus, neither a fetus's resemblance to a person, nor its potential for becoming a person provides any basis whatever for the claim that it has any significant right to life. Consequently, a woman's right to protect her health, happiness, freedom, and even her life,⁵ by terminating an unwanted pregnancy, will always override whatever right to life it may be appropriate to ascribe to a fetus, even a fully developed one. And thus, in the absence of any overwhelming social need for every possible child, the laws which restrict the right to obtain an abortion, or limit the period of pregnancy during which an abortion may be performed, are a wholly unjustified violation of a woman's most basic moral and constitutional rights.⁶

POSTSCRIPT ON INFANTICIDE

Since the publication of this article, many people have written to point out that my argument appears to justify not only abortion, but infanticide as well. For a newborn infant is not significantly more personlike than an advanced fetus, and consequently it would seem that if the destruction of the latter is permissible so too must be that of the former. Inasmuch as most people, regardless of how they feel about the morality of abortion, consider infanticide a form of murder, this might appear to represent a serious flaw in my argument.

Now, if I am right in holding that it is only people who have a full-fledged right to life, and who can be murdered, and if the criteria of personhood are as I have described them, then it obviously follows that killing a newborn infant isn't murder. It does *not* follow, however, that infanticide is permissible, for two reasons. In the first place, it would be wrong, at least in this country and in this period of history, and other things being equal, to kill a newborn infant, because even if its parents do not want it and would not suffer from its destruction, there are other people who would like to have it, and would, in all probability, be deprived of a great deal of pleasure by its destruction. Thus, infanticide is wrong for reasons analogous to those which make it wrong to wantonly destroy natural resources, or great works of art.

Secondly, most people, at least in this country, value infants and would much prefer that they be preserved, even if foster parents are not immediately available. Most of us would rather be taxed to support orphanages than allow unwanted infants to be destroyed. So long as there are people who want an infant preserved, and who are willing and able to provide the means of caring for it, under reasonably humane conditions, it is *ceteris paribus*, wrong to destroy it.

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But, it might be replied, if this argument shows that infanticide is wrong, at least at this time and in this country, doesn't it also show that abortion is wrong? After all, many people value fetuses, are disturbed by their destruction, and would much prefer that they be preserved, even at some cost to themselves. Furthermore, as a potential source of pleasure to some foster family, a fetus is just as valuable as an infant. There is, however, a crucial difference between the two cases: so long as the fetus is unborn, its preservation, contrary to the wishes of the pregnant woman, violates her rights to freedom, happiness, and self-determination. Her rights override the rights of those who would like the fetus preserved, just as if someone's life or limb is threatened by a wild animal, his right to protect himself by destroying the animal overrides the rights of those who would prefer that the animal not be harmed.

The minute the infant is born, however, its preservation no longer violates any of its mother's rights, even if she wants it destroyed, because she is free to put it up for adoption. Consequently, while the moment of birth does not mark any sharp discontinuity in the degree to which an infant possesses the right to life, it does mark the end of its mother's right to determine its fate. Indeed, if abortion could be performed without killing the fetus, she would never possess the right to have the fetus destroyed, for the same reasons that she has no right to have an infant destroyed.

On the other hand, it follows from my argument that when an unwanted or defective infant is born into a society which cannot afford and/or is not willing to care for it, then its destruction is permissible. This conclusion will, no doubt, strike many people as heartless and immoral; but remember that the very existence of people who feel this way, and who are willing and able to provide care for unwanted infants, is reason enough to conclude that they should be preserved.

NOTES

- 1 Of course, the principle that it is (always) wrong to kill innocent human beings is in need of many other modifications, e.g., that it may be permissible to do so to save a greater number of other innocent human beings, but we may safely ignore these complications here.
- 2 John Noonan, "Deciding Who Is Human," *Natural Law Forum*, 13 (1968), 135.
- 3 From here on, we will use "human" to mean genetically human, since the moral sense seems closely connected to, and perhaps derived from, the assumption that genetic humanity is sufficient for membership in the moral community.
- 4 Thomas L. Hayes, "A Biological View," *Commonweal*, 85 (March 17, 1967), 677-78; quoted by Daniel Callahan, in *Abortion: Law, Choice and Morality* (London: Macmillan & Co., 1970).
- 5 That is, insofar as the death rate, for the woman, is higher for childbirth than for early abortion.
- 6 My thanks to the following people, who were kind enough to read and criticize an earlier version of this paper: Herbert Gold, Gene Glass, Anne Lauterbach, Judith Thomson, Mary Mothersill, and Timothy Binkley.