

CHAPTER ONE: INTRODUCTION

1.1. Background of Study

The end of every morality and by extension every civil and criminal law is to protect and safeguard relationships that make the human society conducive for life. In other words, the aim of every law, whether written or unwritten is to protect life and the property that enhances life. When a law, national or international, derails from this objective, that law is said to be unjust and/or anti-human. Therefore, a proper understanding of the ultimate essence of law is the intensification of conditions and circumstances favourable for life and human co-existence. This is why, the primary principle of Natural law relates to the preservation of life and it is from this primary principle that other imperatives such as procreation and the inviolability of the human family are derived as secondary principles. Thus, any moral or legal system that is properly inspired by the Natural law will oppose all threats to life and living conditions of citizens.

In modern society however, one of the most aggressive challenges to human life is the question of legalization of abortion. Hence Alphonse De Valk writes that “almost everywhere in the western world, the question of abortion and its legalization is the subject of intense controversy”.¹ Here what started as modern irreligion, quest for freedom and craze for materialism have eventually snowballed into a struggle for legal affirmation of termination of life by means of legislative acts. Presently, many countries in Europe and America have succumbed to this trend by either covertly or overtly legalizing abortion. African countries traditionally known for their

conservative stance on the issue of abortion are also coming under intense pressure to join the pro-abortion campaign ravaging the world. For instance, in Nigeria, where the issue used to be a no go area, the two camps to the debate (pro-choice and pro-life advocates) are already flexing muscles for legislative recognition.²

It is our considered opinion that these changes in modern attitudes towards abortion are pointers showing that the view of yesteryears, that is that abortion was, with rare exceptions, seriously immoral is beginning to crumble, especially in mainstream philosophical and political discussions. Don Marquis shares our view here when he observes that most philosophers who are anti-religion or who are affiliated with secular institutions of higher education are reconsidering their initial opposition to abortion. According to him many of these are beginning to believe and argue that past anti-abortion moral and legal norms are either symptoms of irrational religious dogmas or conclusions generated by seriously flawed philosophical arguments.³

1.2. Statement of Problem

From personal studies and interaction with experts, it is my contention that the worldwide pro-abortion revolution which we spoke of above is inspired by two narratives. The first narrative rests on the assumption that the abortion debate is a conflict of priority between the mother's right to self-determination and the foetus right to life. As we see it, the assumption is that since the debate on the status of the foetus has been unable to establish what the foetus is and what kind of right it has, the right of the mother to personal autonomy which is already established both in local and international laws, should guide the framing of abortion legislations.

The second narrative is a direct derivative of the first and can be formulated as follows: the rights of the mother and the foetus (if there is any) are morally speaking, mutually exclusive to protect one, you will have to forgo the other. And since the mother's right to self-determination is established as against the foetus right which is still a subject of moral and legal speculation, the mother's right should therefore take pre-eminence in the consideration of the morality and legality of abortion.

It is from these two assumptions that this dissertation proposes to answer the following questions: first, is it possible to apply the philosophical doctrine of identity to the abortion debate and use it to establish that the foetus is a human being with right to life that needs to be protected by the society? Second, can it be demonstrated with the aid of the principle of double effect that the mother's right to life and personal autonomy can be protected without setting aside the foetus right to life?

A condensed discussion of how these two questions will be tackled is required in order to put our expectations in perspectives. Now, the first theory we will apply in answering the first question, is the philosophical principle of identity which holds that in spite of accidental changes, a thing is what it is and nothing else. The second theory, the doctrine of double effect, on the other hand, allows an agent to perform an action with possible positive and/or negative outcomes provided the primary aim of acting is to bring about the positive effect. Within the framework of the first principle, we shall cumulatively but particularly in the Chapter five of this dissertation, show that the foetus from conception, through its entire life is a substantive human being such that to kill foetus is murder. Applying the second principle, the conclusion the

dissertation comes to is that if we as human beings believe that the human person has an intrinsic value that should be protected by society, the only acceptable moral position and by extension legal position in the abortion debate should be one that is based on the doctrine of double effect, that is, one that strives to protect the rights of both the mother and the foetus equally.

1.3. Purpose of Study

The purpose of this study flows from the issues already articulated in the background and problem of study. As already explained in these subtitles, the dominant opinion among scholars is that the pro-life argument has been defeated on two grounds: the inability of anti-abortion advocates to prove conclusively that the foetus is a human being or rather their inability to show that the opinion of pro-choice advocates are unreasonable; and the fact that even if it is established that the foetus is a human being, the mother's right to personal autonomy is still so important to modern society that it cannot be overridden by the foetus right to life.

The purpose of the study therefore, is to demonstrate that not only is it possible to show that the foetus has a right to life that must be respected and protected by the human society but also that though the rights of the mother and that of the foetus, could come into conflict as they often do, they are not mutually exclusive as the pro-choice advocates would have us believe. As we shall be demonstrating with the aid of the principle of Double Effect, it is possible to reconcile these two fundamental rights without deliberately setting any of them aside.

1.4. Scope of Study

The abortion debate is one of the most encompassing arguments in modern discourse. It cuts across many disciplines and professions, thus, it is a moral, legal, political as well as a medical issue. As such, it can and has been approached and studied from the perspective of different disciplines. This notwithstanding, our scope in this particular study shall be limited to the ethical investigation of the various arguments scholars have put forward for and against abortion. Furthermore, since this study is in the department of philosophy, the method of analysis shall also be philosophical. We shall relate to other disciplines either by way of references or by way of making use of credible information provided by other disciplines.

1.5. Significance of Study

The abortion debate is ongoing and global. Even in those countries in Europe and North America where there are permissive abortion laws, the controversy is still raging. As it stands at the moment and in spite of the fact that the pro-choice advocates have become more vocal and have also gained more political and legislative recognition, the debate is still open-ended. Therefore, it is our intention that this piece of research will contribute to the ongoing global debate on the moral and legal permissiveness of abortion. Having said this, we shall also make haste to add that the work is particularly designed for a Nigerian audience and hence that they are the ones who will benefit mostly from the research.

Concerning how Nigerian audience is going to benefit from this study, there is the need for a brief analysis of the state of the abortion debate in the country. Now, there has been aggressive attacks in recent years on what many consider conservative and

outdated abortion laws in the country. These attacks are usually followed with a call for the liberalization of Nigeria's abortion legal system. Those making this call often anchor their arguments on utilitarian reasons. For instance, there is the belief that restrictive abortion law does not stop abortion from occurring. What it does is that it drives women, especially poor girls into the hands of quacks whose quackery in most cases cause these young women either to lose their lives or have their reproductive health organism permanently impaired. The solution then as Louis-Kennedy Osinachi Ilobinso articulates in his work 'Policy on Abortion in Nigerian Society: Ethical Consideration' is that more liberal abortion laws will not only save the lives of many Nigerian women but would also keep many Nigeria girls away from the trauma they go through while trying to procure illegal abortion.⁴

Another reason usually advanced by those who think that the abortion law in Nigeria needs revision is that the present restrictive abortion regime results in women giving birth to children who would in the long run, not be properly cared for by their families. These children because they are not properly cared for, according to this opinion, will end up as social misfits, criminals, etc., and become a menace to the society. The contention is that there is a connection between abortion laws and the high crime rate in Nigeria. In other words, a more liberal abortion laws will limit the number of unwanted pregnancies and thus, help to reduce the level of crimes in the country.

Cognizance of these dynamics in the debate on abortion in Nigeria, this work will succinctly demonstrate that these utilitarian reasons portray a somewhat high level of

ignorance of the issues at stake in the abortion debate. Particularly, the dissertation will show that allowing these reasons to stand, no matter how cogent they may appear to be, would amount to using human life as a means to an end, rather than as an end in itself; a tenet that has been the hallmark of moral philosophy since the dawn of the enlightenment. Most importantly, the dissertation will make it clear that there are other more moral and effective ways the society can control crimes and help women with unwanted pregnancies, rather than giving its seal of approval to the termination of innocent human lives.

1.6. Methodology

Data for this study was sourced from both analogue and electronic libraries. This means that the data for the work come from books, journals and the internet. In analysing the data, the method of analysis was employed in contextualizing and appraising to existential situations.

A little insight into analysis as a philosophical method of inquiry will throw some light into why we chose it here for our investigation. Etymologically, analysis comes from the Greek verb, *analyse* (ανάλυση) which means “breaking down.” Thus, as a method, analysis works under the assumption that most of the problems we encounter in communication arise due to the complex nature of the concepts we employ in our discussions, and would go away once these concepts are clarified.

Although, analysis as a method of philosophical inquiry is basically associated with the analytic school, in usage it is a concept with a long root in the history of philosophy. We find elements of it among the Ionian trios, when they grappled with

the problem of the “One and the Many”. It was a basic character of the Socratic Method expounded by Plato in his dialogues, especially in the *Republic*. In fact, we find a culmination of its usage in the Aristotelian Doctrine of definitions where Aristotle famously legislated that every discussion must begin with the definition of terms.

Nevertheless, we are going to employ analysis in this dissertation in the tradition of the analytic philosophers. Now, analytic philosophers, when they talk about objects of analysis, usually they make distinctions between linguistic phenomenon and psychological phenomenon. Foley explains this:

Some philosophers focus on analyzing linguistic phenomena, such as sentences, while others focus on psychological phenomena, such as sense data. However, arguably the most prominent analyses are of concepts or propositions, which is known as conceptual analysis.⁵

According to Beaney, “conceptual analysis consists primarily in breaking down or analyzing concepts into their constituent parts in order to gain knowledge or a better understanding of a particular philosophical issue in which the concept is involved.”⁶

Beaney gives the following example to illustrate what he means:

For example, the problem of free will in philosophy involves various key concepts, including the concepts of freedom, moral responsibility, determinism, ability, etc. The method of conceptual analysis tends to approach such a problem by breaking down the key concepts pertaining to the problem and seeing how they interact. Thus, in the long-standing debate on whether free will is compatible with the doctrine of determinism, several philosophers have proposed analyses of the relevant concepts to argue for either compatibilism or incompatibilism.⁷

What this means is that analysis in the form we will employ it here takes cognizance of the concepts that make up an idea(s) usually in the form of a problem and strives to clarify them so as to gain a better understanding of the issues at stake in order to solve the problem.

Since, the information for this work is coming from a myriad of sources, some of which are contrary or are outrightly contradictory, the tool of analysis is used to sift through the ideas in order to separate ideas that are sound from those that are not.

Additionally, analysis is employed in clarifying key ideas and concepts that are confusing and would if allowed unclarified, derail the focus of the dissertation. A good example of such clarification is the difference between sayings that a woman's right to personal autonomy gives her the right to do whatever she wants with her body and disallowing her at the same time that this right licence her to engage in abortion. Thus, while we can rightly say that a woman has the right to personal autonomy, self-ownership, personal ownership or self-determination, it will be wrong to go from this to the conclusion that this right allows her to do everything she wants with her body, even when the action in question denies another person the opportunity to express the same rights.

The dissertation is structured into Six Chapters. Chapter one is the introduction, beginning from the background of the study to the research methodology, the chapter provides a strong semantic foundation for the understanding of the entire work. The key aim of this first chapter is to introduce the problems of the research and highlight how the researcher intends to go about tackling them.

In Chapter Two, literatures relevant to our title were reviewed. The method adopted for this review is analytic. Thus, the chapter is developed in succession according to the key themes that vie for supremacy in the abortion debate. By and large, the aim of the chapter on literature review is to get both the researcher and the reader acquainted with the basic positions renowned scholars have taken on the abortion debate.

With particular focus on the concept of abortion, Chapter Three lays out the nature, kinds and methods of abortion. On the whole, the chapter in a detailed manner, without allowing itself to be bogged down with moral arguments, presents the scientific or clinical understanding of abortion. Uppermost in our mind in this chapter is to understand what abortion actually is and how it is procured.

Chapter Four will return to abortion debate in history/ legislation and some of the arguments for and against abortion already discussed in the literature review. The main difference between this chapter and the literature review is that in this chapter, these arguments will be discussed not as positions held by particular scholars but rather as the vision or tenets of notable schools or movements in the abortion debate.

Chapter Five shall follow up the findings of Chapter Four with the intention of using the principle of identity and the doctrine of double effect to demonstrate: that the foetus is a human being with equal right to life as every adult human being, and that the so called irreconcilable conflict between the mother's rights to life and personal autonomy and the foetus right to life can be reconciled without having to deliberately set aside any of these rights belonging to either parties.

Chapter Six is the evaluation and conclusion. This chapter will intensively evaluate the arguments already highlighted in the work, especially the arguments presented in Chapters Four and Five. Our purpose here is to point out the shortcomings of the arguments examined in Chapter Four as well as to state clearly, how these shortcomings are overcome by the counter-arguments presented in Chapter Five. The final section will be the conclusion. This section will commence with a recapitulation of the whole work. Done with this summation, we shall move quickly to re-emphasize the solution we have adopted in the work as the resolution to what has been considered by many as an intractable debate— the abortion debate.

1.7. Definition of Terms

As part of our determination to ensure that all necessary working tools for the success of this dissertation are assembled in this preliminary chapter, we shall in this section operationalize some of the key concepts that will be directly involved in our discussions in subsequent chapters. The terms we shall be conceptualizing here are as follows:

1.7.1. Liberty

The central concept in the abortion debate is liberty or freedom. It is about who is at liberty to do what and who has the liberty to stop who from doing what? Thus, does the mother's liberty or right to be free permit her to do away with her pregnancy? Is the society free to take away the liberty of the mother to do what she wants with her body? These questions bother on liberty and make enunciating the meaning of liberty almost indispensable to our investigation in this study.

Freedom or liberty is the most basic principle of democracy. Consequently, because of the triumph of democracy in modern times, freedom has become the most commonly used concept. Everybody including terrorists and criminals hide under ‘fighting for freedom’ to justify their atrocities. This has led to a surge in the efforts by scholars to find a standard definition of the term. Unfortunately however, like other frequently used terms a standard definition of freedom has continued to be elusive and different parties have not ceased to use it to defend their partisan purposes.

Nevertheless, majority of philosophers normally approach the definition of liberty from both negative and positive perspectives. For instance, Fagothey in his definition differentiates between negative and positive liberty. He defines negative liberty as the “absence of bonds, ties or resistance.”⁸ Bond for him would include external and internal constraints as well as moral [legal] inhibitions. While he was sure that liberty from external and internal inhibitions is essential for the realization of human potentials, he was doubtful that exemption from moral law would be in the interest of man. According to him: “It is a perfection to be free from the compulsion from external forces and from the determinism of a rigidly necessitating principle of action in one’s nature but it is no perfection for a creature to be free from all laws”.⁹

It is Fagothey’s opinion that the most essential form of human liberty or freedom is positive liberty or “liberty for.”¹⁰ This primacy of positive liberty, according to Fagothey, lies in the fact that: “the only reason why it is good for a person to be free from various restrictions and hindrances is that he or she may be free for the kind of life a person is meant to live, for the attainment of his or her ends.”¹¹ Thus

in his account positive liberty is the power of human perfectibility and therefore is essentially what makes human different from other animals. It is from this background that Fagothey sees negative and positive liberty as complementary to each other. One ensures that man is free the other helps him to use his liberty judiciously to actualize his nature.

Isaiah Berlin also approaches the definition of liberty both negatively and positively. However, unlike Fagothey who is more or less moral in his definition, Berlin's approach was both sociological and political. He defines positive liberty as "the liberty to say and do as one pleases in public without infringing on the right of others to do the same."¹² The first part of positive liberty as could be seen from this definition specifically refers to the freedom of speech. In relation to this Berlin argues that freedom dies in any society the moment citizens are no longer allowed to express their ideas in public as well as in private.

The second part of Berlin's definition of positive liberty consists in what he called the freedom "to do". Freedom to do according to Berlin would include the freedom to set up and run businesses, the freedom to choose government officials of one's choice and the freedom to travel, anywhere one wants.

This notwithstanding, like Fagothey, Berlin made haste to add that there is no place in the world where absolute positive freedom is allowed. Every government and society imposes some form of restrictions on citizens and non-citizens alike. Berlin believes that such restrictions are legitimate since it is important to control

the inbuilt negative tendencies in man that are destructive to the society when allowed expression.

Negative liberty, for Berlin is basically freedom from harassment. “It is freedom from external pressures.”¹³ Berlin particularly observed that the pressures individuals experience in societies have been changing through the ages. In our time, according to him it would include freedom from sexual harassment, interfering with one’s private life, religious freedom, pursuit of leisure and business transactions such as exchange of goods and services. It would also include the absence of all forms of psychological inhibitions such as freedom from worrying about things like crimes and terrorism.

In Berlin as in Fagothey, positive and negative liberty are seen as complementary to each other. The idea of negative and positive freedom will guide our use of the term throughout this work.

1.7.2. Abortion

In spite of all efforts by philosophers and other scholars to give a concise definition of abortion, the meaning of the term remains controversial. However, one safe way of navigating through this controversy is to approach the definition etymologically. The word abortion comes from the Latin infinitive *aboriri*, which means “to perish.” Nevertheless, when translated literally, *aboriri* means the loss of a foetus life. Therefore, in its widest sense, abortion includes all cases of foetal expulsion from the womb, whether spontaneous – miscarriage or induced – abortion on demand.¹⁴

However, in its most concise extension, abortion only refers to all cases of induced expulsion from the womb. It is within this context that Fagothey states that, “Abortion

is the expulsion of a non-viable foetus, that is, of one too young to live outside the womb.”¹⁵ In the opinion of Callaham, it is the “ending of a pregnancy before the embryo or foetus can live outside the female body.”¹⁶ H.M. Leonard, sees it as “the termination of pregnancy before independent viability of the foetus develops.”¹⁷

These definitions, especially Fagothey’s exclude the natural cases of abortion (miscarriages) because to expel or to terminate, lexically speaking suggests a human subject with an intention to achieve expulsion. Added to this is the fact that it is only induced abortion that can be of interest to morality and criminal law.

It is when viewed from this perspective that we can understand why abortion is a controversial issue for moralists and legislators and also why the conflicts between the pro-life and prochoice camps have been so intense over the years. Specifically, it is for this reason that pro-lifers see abortion as synonymous with “murder” since it does not only interferes with nature in a way that results to the death of a “person” but is also wilfully committed by those involved in the process.

Following the above line of thought, this dissertation is using abortion to mean all cases of artificially induced termination of pregnancy with the implicit or explicit intention of bringing about the death of the foetus and in which case the intention is realized. Seeing it this way will help to eliminate the deficiencies of the above definitions which relegated to the background, the question of intention and its realization. Most importantly, this working definition will clear the air on the difference between abortion and all cases of miscarriage, still birth, and hastened births. For instance, while abortion is a moral issue, miscarriage is an act of man and not a human act and is therefore devoid of all imputability and moral responsibility.

Endnotes

1. D.V. Alphonse, 'Christianity Reason and Human Right', No. 2, Alberstta, Life Ethics Centre, 1992, P. 1.
2. M. O. Izunwa and S. Ifemeje, *Right to Life and Abortion Debate in Nigeria: A Case for the Legislation of the Principle of Double-Effect* in Nnamdi Azikiwe University Journal of Internal Law and Jurisprudence, Vol. 2, 2001, p. 111.
3. Don Marquis, *Why Abortion is Immoral Journal of Philosophy*, Vol. 86 (April, 1989), pp. 183-20.
4. Louis-Kennedy Osinachi Ilobinso, "Policy on Abortion in the Nigerian Society: Ethical Considerations", (Master's Thesis in Applied Ethics Centre for Applied Ethics Linkopings Universitet, 2007), pp. 1-12.
5. Richard. Foley "Analysis", in *The Cambridge Dictionary of Philosophy*, 2nd, edition (New York: Cambridge University Press, 1999), p. 84.
6. Michael, Beaney, "Analysis". *The Stanford Encyclopedia of Philosophy*, (2003), <http://www.plato.stanford.edu/entries/analysis> (25/04/2017).
7. Loc. cit.
8. Fagothey, *Right and Reason: Ethics in Theory and Practice* (Columbus: Charles E. Merrill Publishing Company, 1986), p. 165.
9. Ibid.
10. Loc. Cit.
11. Loc. Cit.
12. I. Berlin, "Two Concepts of Liberty" in F.A. Adeigbo, *Readings in social and Political Philosophy*, Vol.1, (Ibadan: ClaveranumPress,1991), p.75
13. Ibid.
14. M. O. Izunwa, "Right to Life and Abortion Debate in Nigeria: A Case for the Legislation of the Principle of Double-Effect", in Nnamdi Azikiwe University Journal of International Law and Jurisprudence, Vol. 2, (2001), p. 112
15. A. Fagothey, *Right and Reason*, (Columbus, c.u. Moshby Co., 1959), p. 241
16. D. Callaham, "Abortion", *World Book Encyclopaedia*, (Chicago, Child-craft International Inc., 1979), p. 149.

17. H.M. Leonard, "Abortion", *Encyclopaedia Britannica*, (New York: William Benton Pub., 1972), p. 42.

CHAPTER TWO: LITERATURE REVIEW

One thing we tried underscoring in the previous chapter is that abortion is a very controversial moral problem. Part of the reason for this is that there are so many contrary and irreconcilable issues in the abortion debate, including religious, metaphysical, moral and political; participating scholars are hardly able to agree among themselves on the best way to move the debate forward.

In spite of these challenges, however, scholars interested in the debate can be grouped into four categories: 1. Exposers of the abortion debate—scholars who expose the positions of the contestants (pro-choice and pro-life) in the debate without supporting any of the positions themselves. 2. The conservatives—scholars who believe that the moral imperative on issues of abortion should be to protect the life of the unborn under all circumstances. 3. The liberals—scholars who maintain that the woman should have the final say on matters of abortion and 4. The Moderates—scholars who argue that circumstance and age of pregnancy should be the front burner in determining the morality of abortion.

This chapter serially group and review some preselected scholars that fall within the four categories just outlined. By and large, by the end of this review, we shall be able to pinpoint the key shortcoming(s) of available literature on abortion. Obviously, overcoming this shortcoming(s) is the contribution that this research aims at making to the ethics of abortion.

S. Ifemeje and E. Obidimma, in a brief but well-constructed article: *A Critique of Incessant Violations of Women's Health and Reproductive Rights in Nigeria*, made serious efforts to highlight the major trends in the abortion debate in Nigeria.

Situating the debate as it stands in the country the authors tell us that Nigeria from the outset practises a restrictive abortion law. Thus, both “Sections 228 and 229 of the [country’s] Criminal Code, criminalizes abortion.”¹

Consequently, the self-assigned objective of Ifemeje and Obidimma, in this article, is to sketch how the various contestants in the abortion debate have tried to respond to this restrictive abortion law.

Subsequently, the authors identified what in their account are the three main contestants in the abortion debate, namely, the conservatives or what they called those who take “uncompromising stand against liberalization of abortion, the liberals or “pro-abortionist movement”, and the moderates or those who believe that any attempt to determine the morality of abortion should take the age of the foetus and the circumstance of the mother into consideration.²

Placing the Catholic Church in the first category S. Ifemeje and E. Obidimma maintain that, “The Catholic Church is known for its rigid and uncompromising stand against liberalization of abortion....”³ Here, the authors underline the fact that the Church is a major stakeholder in the abortion debate in Nigeria and has been using its enormous influence to uphold its uncompromising stance against abortion. Unfortunately, in what appears as a deliberate attempt to evade antagonizing an

institution one does not particularly agree with but still does not want to criticize, Ifemeje, and Obidimma, did not state, any reason why the Catholic Church takes uncompromising stance against abortion.

On the liberals Ifemeje and Obidimma state that:

[The]...pro-abortionist movements demand for total liberalization of abortion law; they believe that existing abortion laws are unwarranted, unsupportable instrument against women's health and reproductive rights and their right to privacy.⁴

Thus, the liberals see abortion as a human right issue. Legalizing abortion in their view will not only protect women's health and reproductive right, it will also see to it that their personal autonomy and privacy are respected. In essence, Nigeria's restrictive abortion law for the liberals is an abuse of the fundamental right of Nigerian women and the right of free choice.

In addition, given Nigeria's high rate of mortality, in female adolescent population as a consequence of abortion, the liberals believe that there is the need for urgent and serious rethink of restrictive abortion laws in the country, in order to discourage women from resorting to quacks.⁵

S. Ifemeje and E. Obidimma, presents the moderates as scholars who strive to strike a balance between the conservatives and the liberals in the abortion debate. For the moderates, abortion is neither completely permissive nor completely forbidden. In deciding the morality of abortion, the circumstance surrounding the pregnancy, the

situation of the mother and especially the age of the foetus should be taken into cognisance.⁶

As aforementioned, a careful reading of the work of S. Ifemeje and E. Obidimma ‘ *A Critique of Incessant Violations of Women’s Health and Reproductive Rights in Nigeria* ’ gives the impression that the authors are in favour of legalization of abortion in Nigeria. Interestingly, however, this was neither the aim nor the conclusion the authors come to. Their goal, by their own admission, is to sketch the model arguments for abortion. This aim was particularly emphasized in the final paragraph of the article:

... it was time, the Nigerian legislators attempt to strike a balance between the need to preserve the sacredness of life and also to safeguard women’s health and reproductive rights in order to avoid the present high mortality rate of women as a result of unsafe abortion in the hands of quacks in consequence of Nigeria’s restrictive laws on abortion. A total unrestricted abortion on the long run will likely lead to undesired moral depravity especially harming the youths. There is therefore every need to strike a balance between the numerous conflicting interests in Nigeria.⁷

“Striking a balance” is an interesting way of recapturing what the moderates as Ifemeje and E. Obidimma , present them here stand for but, if the question is asked: how do we strike this balance? Ifemeje and E. Obidimma , never tell us.

In B. Shavy’s paper, *The Morality of Abortion: he* followed Ifemeje and E. Obidimma , in acknowledging the various trends in the debate on abortion.

After itemizing them as the pro-life and pro-choice advocates, he explains that the debate centres on the disagreement over the “moral status of the foetus.” because “if

the foetus has no rights, then abortion is a non issue it is as easy to justify as an appendectomy. But, if the foetus has rights, then abortion doesn't solely concern the freedom of women, since personal freedom is constrained by the rights of others.”⁸

Sharvy tells us that the most prevalent argument usually offered by pro-life advocates to prove that the foetus has a moral status disallowing abortion is as follows:

1. A fetus is a member of the biological species *Homo sapiens* (i.e., a human being). 2. To destroy a human being deliberately is unethical (it's murder). 3. Therefore, abortion is unethical (murder), since it constitutes the deliberate destruction of a human being.⁹

However, he explains that there are some widely granted exceptions to the rule that to destroy a human being deliberately is unethical, an example is self-defence. The question then is, can the principle of self-defence be used as a valid argument to defend abortion as some pro-choicers normally do? Sharvy think it does not. Here are his reasons:

A claim of self-defence doesn't defend against a criminal charge when it comes from the party who brought about the conflict. For example, parents can't invoke self-defence and treat their children as trespassers, because parents bring it about that there are children needing shelter. Parents also bring about pregnancy, so self-defence can't justify ending pregnancy in ways that are normally criminal, such as killing a human being.¹⁰

Other exceptions used to override the prohibition of killing and consequently abortion by pro-choicers are utilitarian reasons. War for instance, bring about the death of the innocent knowingly, nonetheless, many believe that war can be justified, if the good outweighs the evil. As such, pro-choice advocates believe that abortion

can be defended as a moral choice, even if it were murder, on the same grounds. However, Sharvy contends that any utilitarian defense of abortion by pro-choice activists would be illegitimate for it would go against the principle of free choice which in itself is the hallmark of pro-choice.¹¹

Sharvy, then examines the position of pro-choice advocates. He says that pro-choicers do not deny that murder is unethical; rather they claim that there is a difference between being a human being and having a right not to be killed. Sharvy uses two technical terms— personhood and species-hood— to explain what pro-choicers mean by the difference between being a human being and having a right not to be killed. “The collective of mental capacities needed to endow a being with rights is typically what pro-choicers call “personhood.” Personhood argument, therefore, is the position that mental capacities rather than biological species-hood determine an entity’s rights. Based on this, we are thought to have rights not because of our biological species, but because we are persons.¹² The qualities we possess as persons is what gives us access to the right not to be killed.¹³

The following analysis does not mean that the personhood argument is unchallenged by pro-lifers. Against the personhood argument, pro-lifers generally make the point that brain activity occurs in foetuses, but in Sharvy’s view their point has problems. “The conventional pro-life view needs to account for the zygote, not the foetus, and there is no brain activity in zygotes; in fact, there is no brain in zygotes.”¹⁴ Besides, the “higher” capacities that pro-choicers refer to in humans are located in the upper layers of the cerebral cortex, which is physically incapable of significant functioning

until after birth. So, going by the personhood argument, it appears that fetuses are not persons, and if the personhood view is correct, then the immorality of abortion cannot be defended.

Sharvy still thinks that there are other problems pro-choice advocates would have to deal with in order to push their personhood argument through. Now, if the personhood view is correct, neonates have the same moral status as fetuses. The implication then would be that infanticide is equally moral, since the event of birth doesn't correspond to the event of attaining personhood (significant psychological plateaus seem to occur at two to three months and one year).¹⁵

What all these show as Sharvy captures it is that:

It is not easy for most people to reject the standard pro-life argument without rejecting other beliefs they have, such as the belief that infanticide is wrong, or murder isn't justified to serve society. Most people cannot disprove the pro-life position without also disproving some other strongly held belief.¹⁶

However, the same problem exists in the pro-life camp. For instance, "More than half of conceptions are naturally aborted within a month." If the loss of zygote life is equivalent to the loss of a person's life, then the spontaneous abortion of zygotes is an enormous natural disaster, the numbers dwarfing death from any other natural cause. Yet the activism on behalf of medical research to reduce such abortions is nil, and dead zygotes (when noticed) conventionally don't receive standard ceremony. In their practices, people don't seem to care about zygotes as they do people.¹⁷

This is not all. On Sharvy's account, Pro-lifers sometimes counters the personhood argument by arguing that having the potential for personhood endows the foetus with the same rights as having personhood. However, the argument doesn't work. The general situation as Sharvy points out is that "to say that the potential for X is an example of actual X renders the distinction between potential and actual meaningless."¹⁸ Thus, there are some properties a thing must have that give it "human rights."

In the end, Sharvy is of the opinion that none of both parties involved in the abortion debate is able to provide an argument that both consistently and convincingly vacates the position of their opponent.¹⁹

Another scholar who devoted a chunk of her time to explore the contention of the contending parties in the abortion debate is Alice Ferdinand. In *Understanding the abortion debate: A Philosophical Analysis*, Ferdinand claims that "one of the ongoing question in today's society is when is it right to take the life of another being, more specifically an unborn child."²⁰ She maintains that scholars that have attempted answering this question can be grouped into two categories: pro-life and pro-choice advocates.

Ferdinand explains that pro-lifers are scholars that oppose abortion for at least three reasons: that there are alternative choices instead of getting an abortion; that there are mental and physical health risks associated with abortions and that abortion is murder because the foetus is a well-developed organism before the abortion takes place.²¹

Before presenting the position of the pro-choice advocates, Ferdinand wants to underscore a subtle distinction between been a pro-choice and a pro-abortion advocate; a difference she believes is mostly overlooked by the various interest groups in the abortion debate. She argues that:

A common assumption is that people who are pro-choice are actually pro-abortion. Many people that support women's rights could be personally against abortions. That does not mean that they allow the government to pass laws directing what women do with their bodies. Those who are pro-choice simply believe that it is the right of a woman to assess her situation and decide if a baby will benefit or be devastating to her life.²²

The underlining logic of the pro-choice position is that no government should feel that it has the right to dictate for women what road their lives should take or what to do with their bodies. Ferdinand portrays how this pro-choice position is an attempt to vacate the pro-life argument against abortion:

This means that those claiming “pro-life” are really no more than “anti-choice.” These pro-lifers crave to put the future of women into the hands of the government. Abortion, and any medical decisions women make, are very private and should never be available for debate. The question of morality can't be a valid argument concerning abortion, because it is not of morality but of option and constitutionality.²³

In addition to seeing restrictive abortion laws as a violation of a woman's right to freedom, pro-choice advocates also try to demonstrate how practically unsustainable the position of the pro-life advocates are. For them as articulated by Ferdinand,

People that are opposed to abortion don't take many things into consideration: For one, consider how the life of a teenager may be ruined if an abortion is not

available. Another thing not assessed is the severe family trauma that will result if a baby is forced, by law to be born. Those opposing abortion are unwavering with their ideas and believe that they have a solution to every situation. Try adoption! They will help you support the baby. Whatever the women's situation may be, the conservative will not bend.²⁴

But adoption for pro-choicers as Ferdinand points out is not a decent substitute. The majority of middle class white couples that are willing to adopt do not want to adopt the mixed race babies (which are the majority put up for adoption).²⁵

Furthermore, pro-choicers believe that any effort to use law to discourage abortion is ineffective and has always led to undesirable results.²⁶

The United States of 1940's is usually used by pro-choice advocates to illustrate the unworkability of restrictive abortion laws. Their key submissions are summed up by Ferdinand:

A prime example when abortion was prohibited in the 1940's, there were still cases of women seeking help elsewhere. The only alteration though, is that these women typically ended up dead because of haemorrhaging or infection. The bottom line is that if a woman wants an abortion, illegal or legal, nothing will get in her way. Why would pro-life people, who allegedly put so much significance in life, want to jeopardize the live of another person?²⁷

Even where anti-abortion laws are able to prevent abortion from occurring, pro-choice advocates sustains that:

Even if legal abortion is banned, some abortions may be prevented. A woman may not be able to fund an alley-way, black market abortion and would have to deliver.

Naturally, Mother would be depressed, and in all actuality not deliver the proper care, may drink, do drugs, or any other thing she could do to harm the life of the baby and herself. Post-delivery, the mother could very well resent the baby, realizing that it has trashed her chance of ever carrying out her objectives in life. These surplus kids, raised by the state or disregarding parents, would then give birth to yet the next generation of unwanted children.²⁸

In the face of such undesirable consequences, the pro-choice advocates would hold that: “After all of these scenarios are considered fairly by an open-minded person, abortion is the better of them.”²⁹

There are two things noticeable in Ferdinand’s article: 1. She believes that the abortion controversy is a conflict between pro-life and pro-choice advocates. 2. She set out to analyse the positions of the two parties but ended up giving all the attention to the pro-choice advocates. She only allows pro-lifers to accompany her in her interrogation of the pro-choicers.

This notwithstanding, A. Ferdinand was sure that each side of the divide in the abortion controversy has a strong case which is another way of saying that none of the parties has evidence strong enough to sack the position of their opponent.

S. Larsson in *The Discourses on Induced Abortion in Ugandan Daily Newspapers: a Discourse Analysis*, (*The Discourse* henceforth), intensively perusal through pre-selected Uganda newspapers identify what they call two discourses in the abortion debate in Uganda, namely, the religious and the human right discourses.³⁰

Those on the religious side of the discourse emphasize the sanctity of life of the foetus. “This argumentation”, according to S. Larsson “is put forward by the Catholic Church which has a strong position in the Ugandan society.”³¹ Thus, several of the articles examined *The Discourse* emphasize statements by religious leaders and representatives, such as bishops, and “pro-life” activists from Catholic movements. The Catholic Church opposition to abortion consists in this:

These statements condemn abortion, referring to it as ‘murder’ and ‘an evil act’, in addition to arguing that it is not permitted according to the Bible. A central assumption in this discourse is that life begins at conception and that there exist no circumstances that can justify abortion.³²

In addition to stating that abortion is equals to murder, religious representatives, in the findings of the Discourse also urge girls and young women to restrain from being sexually active in order to avoid getting pregnant with a baby that they might feel incapable of taking care of. S. Larsson used one of the papers excerpt from a Catholic bishop to underscore this point:

(A Catholic Bishop) has said that abortion is ‘real murder’ and that it should be strongly condemned. He urged women, particularly young girls in schools to stop engaging in sexual activities which could result into several complications including cases of unplanned-for pregnancies and abortion...The time is now for school girls to stop practicing abortion, since life begins at conception. Aborting is the act of taking human life that has been conceived in a woman’s womb, so it is akin to murder. It is also a direct defiance to God’s accepted idea of the sanctity of human life, he said.³³

Larson says that most of her findings as portrayed in the quotation above show some degree of discrimination against women especially girls because the discourse rests on a moral argumentation where the problem is framed as girls' sexuality. Argumentation along the same line, urging young men to restrain from sexual activity, cannot be found within the examined articles. "Thus the responsibility for unwanted pregnancies is solely put on the young women."³⁴

The second discourse on the abortion debate found in Uganda newspapers is the human right discourse. S. Larsson characterize this discourse as revolving "on the one hand, the right to life of the unborn child and on the other [hand], the pregnant woman's right to health and life." Unfortunately, the right of the unborn child was not explored in *The Discourse*. Rather, Larson spent much of her energy exploring the position of health care professionals on Ugandan restrictive abortion law. This position on her account is that:

If abortion is legalised, many lives of mothers will be saved, a health specialist has said. Dr (...), a resident mentor at the Mulago School of Public Health, said there are over 6000 deaths every year resulting from unsafe abortions which mainly result from stigma.³⁵

These health care professionals usually use the examples of other countries with legalized abortion and hence less number of maternal death to show why abortion should be legalized in Uganda. South Africa is normally used as a perfect representation of this case in Sub-Saharan Africa:

Unsafe abortions are common in other countries in sub-Saharan Africa. In South Africa where medical abortion was legalized since 1996, maternal deaths associated

with unsafe abortion dropped from 425 recorded in 1994 to less than 30 from 1998 to date.³⁶

In the end, S. Larsson summed up her finding arguing that existing literature on abortion in Uganda portrays a polemic. On the one hand it focuses on how abortion is the termination of life and that it is such a traumatic event for the woman undergoing it that it should be avoided at all costs, on the other hand it questions what kind of life girls and women are given in Uganda when so many see themselves forced to undergo unsafe abortion.

Our review up to this point has dwelled on scholars whose primary aim is to present the abortion debate. In other words, none of the scholars we have reviewed so far made any attempt to make any moral judgement what the right position in the abortion debate is. We shall continue this review by turning our attention to the arguments of pro-choice advocates or scholars who believe that the decision to end or keep a pregnancy should be left to the discretion of the woman.

Judith Jarvis Thomson's article, *A Defense of Abortion*, is considered by many as the most compelling argument ever offered in defence of abortion. Indeed, William Parent, the editor of one of Thomson's books, tells us that this article (Thomson's) is now "the most widely reprinted essay in all of contemporary philosophy."³⁷ As we shall see shortly, Thomson bases her argument on the assumption that foetuses are persons from the moment of conception. Despite the latter assumption, Thomson argues that this does not necessarily mean that foetuses have a right to life.

Thomson begins her article by tackling the premise which she believes much of the opposition to abortion relies upon, viz. that the foetus is a human being or person from the moment of conception, to claim this, she argues, would be like claiming that an acorn is an oak tree. She does, however, concede that choosing a point in the development of the foetus where we can definitely say that a human being exists, which didn't exist before this point, is highly problematic. Indeed, she tells us that, in her view, "we shall probably have to agree that the foetus has already become a human person well before birth."³⁸ She does not, however, believe that a human being or person is present at conception. Despite the latter statement, Thomson is prepared to allow, for the purposes of her argument, the premise that the foetus is a person from the time of conception.

Thomson proceeds by outlining what she believes to be the argument which certain opponents of abortion would derive from the premise above-mentioned. The crux of this argument, as Thomson sees it, is that the right to life of the foetus outweighs the right to life of the mother "to decide what happens in and to her body."³⁹ The subsequent thought experiment which Thomson places before us is an attempt to expose the flaws which she believes exist in the latter statement.

The thought experiment involves you imagining a situation in which you wake up in a hospital bed to discover that your circulatory system has been connected up to the circulatory system of an unconscious famous violinist. The reason given for this gross abuse of your privacy is that the violinist has a serious kidney infection. Unfortunately for you the appropriate treatment consists of connecting him up to you, since both you

and the violinist have been found to possess the same rare blood type by the Society of Music Lovers. The hospital director informs you that even though the Society of Music Lovers was wrong to kidnap you and place you in this difficult position, you are morally compelled to remain as you are until such time as the violinist can function independently of you, to do otherwise, he points out, would result in the death of the violinist and to allow this, at least in the eyes of the hospital director, is patently impermissible.

Given that the time frame involved is nine months, Thomson asks you whether you would feel morally obliged to defer to the wishes and beliefs of the hospital director. Apparently worried that you will fail to see what she sees as a ludicrous situation which you are under no obligation to tolerate, Thomson stretches the time frame indefinitely. In short, she wants us to accept that the right to life of one person does not override the right of another person to choose what happens in and to his or her body, when the connection between such people resembles that expressed in the thought experiment outlined above.

Thomson acknowledges the fact that opponents of abortion can point to the involuntary nature of the relationship between the violinist and donor, and can liken such a relationship to that between the mother and foetus in a rape-induced pregnancy. She goes on to say that:

They can then make an exception for such pregnancies and 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 than others, in particular, that those who came into existence because of rape have less.⁴⁰

As it happens, Thomson tells us, most opponents of abortion do not make allowances for cases of rape.

However, Thomson is concerned with the phenomenon of unwanted pregnancies in general, and not just with the phenomenon of unwanted pregnancies arising as a result of rape. In order to explain her position on this matter, she claims that it is necessary to “distinguish between two kinds of Samaritan: the Good Samaritan and what we might call the Minimally Decent Samaritan.”⁴¹ She uses the famous biblical story to assist her in explaining the distinction. The Good Samaritan in the story, Thomson reminds us, was the person who seriously inconvenienced himself in assisting the person in need. The Minimally Decent Samaritan, had he or she been present in the story, would have been the person who would have helped the person in need by doing less for him than the Good Samaritan did. Hence, it turns out that, according to Thomson, the people in the story who did nothing to help the person in need were not even Minimally Decent Samaritans “not because they were not Samaritans, but because they were not even minimally decent.”⁴²

Even if the story of the Good Samaritan was meant to serve as an example of what we should do in similar circumstances, we are not required, according to Thomson, to do more than the Good Samaritan would do in similar circumstances. Society at present, however, she points out, requires women “to be not merely Minimally Decent Samaritans, but Good Samaritans to unborn persons inside them.”⁴³

Thomson accepts, the fact that some people might claim that all of her analogies fail to take into account the special relationship which exists between mother and foetus. She, however, contends that no such relationship exists unless one assumes responsibility for the foetus either implicitly or explicitly. Once the parents have assumed responsibility for the foetus, “they have given it rights, and they cannot now withdraw support from it at the cost of its life because they now find it difficult to go on providing for it.”⁴⁴ Hence, unprotected sex, with foreknowledge of the possible consequences, resulting in pregnancy and carried to term involves, according to Thomson, the implicit assumption of certain responsibilities which cannot be withdrawn if to do so would result in the death of the foetus.

On the other hand, if the parents have “taken all reasonable precautions against having a child, they do not simply by virtue of their biological relationship to the child who comes into existence have a special responsibility for it.”⁴⁵ What this means for Thomson is that if protected sexual intercourse results in an unwanted pregnancy, then the parents have the choice of either accepting or rejecting responsibility for the foetus but that “if assuming responsibility for it would require large sacrifices, then they may refuse.”⁴⁶ She argues that a Splendid Samaritan would assume responsibility for the foetus in the previous situation, regardless of the consequences which such a decision might have for him or her. She points out, however, that a Splendid Samaritan would also assume responsibility for the famous violinist.

Thomson continues her massive article with an explanation as to why many proponents of the right to choose will find her argument concerning abortion

somewhat lacking in terms of what it can do to assist their argument. Firstly, she points out that she has been arguing that abortion is sometimes, though not always, permissible. She has, in particular, been arguing that cases involving ‘Minimally Decent Samaritanism’ should be endured, whereas cases of pregnancy involving Good or Splendid Samaritanism needn’t necessarily be endured. Secondly, she tells us that she has not been “arguing for the right to secure the death of the unborn child.”⁴⁷

She acknowledges the fact that, given current medical capabilities, it is easy to make the mistake of taking abortion to mean the fully intended destruction of the foetus rather than the termination of a pregnancy. In other words, because most abortions are carried out when the foetus has no chance of surviving outside the womb under present medical conditions, people often tend to equate abortion with the death of the foetus instead of seeing it as the termination of a pregnancy. According to Thomson, “the desire for the child’s death is not one which anybody may gratify, should it turn out to be possible to detach the child alive.”⁴⁸

Thomson ends her article by saying that if we accept, as she does, that no person exists at conception or for a period after conception, bearing in mind that we have only been pretending throughout that the foetus is a human being from the moment of conception, “then very early abortions do not comprise the subject matter for moral debate.”⁴⁹ In other words, only when the requisite physiological development has occurred, in Thomson’s view, can we justifiably couch a discussion of the abortion of such an entity in moral terms.

Be that as it may, irrespective of Thomson's additional submissions that parents have the moral obligation to take care of any pregnancy they do not take the necessary precautions to prevent from occurring, the salient point in *A Defence of Abortion* is the believe that the choice to keep or discard a pregnancy is that of the woman to make. That she thinks that forcing the choice of keeping a pregnancy on a woman is a violation of her fundamental human right is clearly demonstrated in his famous violinist thought experiment.

Michael Tooley In his work “ *In Defense of Abortion and Infanticide*”, accords fetuses and certain infants no moral status. Thus, unlike Thomson, Tooley argues that not only abortion but also infanticide should be seen to be morally permissible on the grounds that both involve the killing of non-persons.

In an effort to better explain his position, Tooley introduces what he calls Feinberg's ‘interest principle.’ He tells us that, according to Feinberg in the ‘interest principle’, only that which has or is capable of having interests can have rights. In addition, interests are in some way related to desires. However, Tooley finds the interest principle somewhat lacking for his purposes because although it talks of things possibly having rights, it does not talk of things actually having “rights - including, in particular, a right not to be destroyed.”⁵⁰ Thus, he goes on to define a ‘particular interest principle’ which, he tells us, asserts “that an entity cannot have a particular right, R, unless it is at least capable of having some interest, I, which is furthered by its having right R.”⁵¹

This, he tells us, will help to explain why new-born kittens have a right not to be tortured but do not have a serious right to life. Kittens have a right not to be tortured, according to Tooley, because they can be said to have an interest in not experiencing pain. Kittens do not, however, have a serious right to life because they cannot be said to have an interest in their own continued existence. Tooley contends that kittens cannot have an interest in their own continued existence because they lack self-consciousness. Moreover, he argues that since not only foetuses but also new-born babies lack self-consciousness and, consequently, cannot have an interest in their own continued existence; they also do not have a serious right to life.

Tooley applies his particular interest principle to the concept of a right to life. Before doing this, however, he replaces the term “right to life” with the term “right of a subject of experiences and other mental states to continue to exist.” He makes the point that interests presuppose desires and that desires “existing at different times can belong to a single continuing subject of consciousness only if that subject of consciousness possesses, at some time, the concept of a continuing self or mental substance.”⁵² The latter point, together with the ‘particular interest principle’, are used to argue for the necessary condition, viz. that the entity have, at least once, “the concept of a continuing self or mental substance,” which something must fulfil in order that it possess a right to life.⁵³

Tooley then explores the implications which the latter statement has for the morality of abortion and infanticide. He points out that if, as most philosophers do, one sees the mind and brain as being closely related, then “when human development, both

behavioural and neurophysiological, is closely examined, it is seen to be most unlikely that human foetuses, or even new-born babies, possess any concept of a continuing self.”⁵⁴ What this means, according to Tooley, is that neither new-born babies nor foetuses have a right to life.

If, however, one chooses to hold that the mind is distinct from the brain, then, according to Tooley, this commits one either to the belief “that it is possible to establish, by means of a purely metaphysical argument, that a human mind, with its mature capacities, is present in a human from conception onward” or to the belief “that it is a divinely revealed truth that human beings have minds from conception onward.”⁵⁵ He denies the validity of the former belief and points out that doubts about the existence of God create uncertainty about the validity of the latter belief. In addition, Tooley points out that the latter belief does not enjoy widespread acceptance either among religions or within the religion to which it belongs.

Interestingly, Tooley argues that adult members of certain nonhuman species have a right to life because he is of the view that:

Some nonhuman animals are capable of envisaging a future for themselves, and of having desires about future states for themselves... that anything which exercises these capacities has an interest in its own continued existence. And... that having an interest in one’s own continued existence is not merely a necessary, but also a sufficient, condition for having a right to life.⁵⁶

On the whole, Tooley’s contention comes down to the personhood argument already explored in this chapter. He is of the opinion that the right to life is the property of a

person. Since he had ab initio denied personhood to the foetus, for him then abortion is morally permissible.

Following in the footsteps of Tooley, Mary Anne Warren in her article entitled, *On the Moral and Legal Status of Abortion*, attempts to move beyond the stalemate in the debate over who is a “human.” The typical argument against abortion, she claims, begins with the universal truism of moral consideration that it is “wrong to kill innocent human beings.” The pro-life advocate then develops, according to Warren, a simple syllogism based on this first major premise. The second premise as Warren formulates it is, “Foetuses are innocent human beings.” These two premises together force the intellect to conclude that it is “wrong to kill a fetus.”⁵⁷

Warren’s next move is not to deny the first premise. To the contrary, she allows that it is “a self-evident moral truth.”⁵⁸ Her tactic in creating doubt on the conclusion is to allow premise one but to suggest that the second premise switches the meaning of the term “human being” and the syllogism is then a case of equivocation. If the terms change meaning, one can no longer have confidence in the conclusion drawn from their use.

She suggests that there are really two senses in which the term “human” is used. The first sense is with regard to those who are “full-fledged members of the moral community.” She claims that this is the moral sense of the term. The second is the mere genetic sense of the term. If one is then simply saying that a foetus genetically moves towards becoming a human in the moral sense, then Warren has no particular problem. Her problem, however, is with regard to the application of the first premise

to those who are only genetically human. Who are members of that “community” of humans to whom the premise, “It is wrong to kill innocent human beings, applies?”⁵⁹

The question that then remains for Warren concerns how one will define this “moral community” for which the first premise of the argument has meaning and relevance. Her conclusion is simple and, she claims, “self-evident.”⁶⁰ Only people belong to the moral community. In order to see the truth of this claim, we are then directed to a consideration of what a person actually is. A good starting point, she suggests, is that we consider what elements we might look for in an alien form of life as evidences of personhood. Five distinct criteria are listed. First, consciousness of internal and external objects, especially the ability to feel pain. Second, reasoning. Here she emphasizes the true sense of the term as she intends it to be understood: “the *developed* capacity to solve new and relatively complex problems.” Third, self-motivated activity. Fourth, capacity to communicate. This criterion is also elaborated as a complex and indefinitely varied ability. And fifth, presence of self-concepts and self-awareness.⁶¹

Conceding that much debate could be brought forth regarding these criteria, both with respect to what is found here and what is not, Warren is willing to accept criteria 1-3 as a sufficient basis for her theory. However, she says that if an entity is unable to fulfil any of these five criteria, it should be self-evident that it is not a person. Her conclusion, then, is quite clear. “Genetic” Humanity, the second sense of the term human, is simply insufficient as a basis for including one in the “moral community” of persons to whom the moral maxim, “It is wrong to kill

innocent human life,”⁶² applies. In the light of all this, the conclusion Warren comes to is that, from a purely moral perspective, there is nothing really wrong with abortion.

Susan Sherwin in her work, “Abortion through a Feminist Ethics Lens” introduces her reader to an alternative way to view the abortion debate. Through her feminist perspective, Sherwin argues that what is important is not only a woman's right to choose, but instead a movement that addresses all of the conditions of women's liberation. Sherwin's article is divided into three sections. The first section introduces the feminist perspective of the abortion debate. The second section discusses the feminist view of the foetus and the third section, summarizes feminist politics and abortion.

Sherwin begins her article by outlining how most feminists believe the decision to abort should be made. This decision she argues is best left up to the pregnant woman for only she truly knows what is best in her situation. Sherwin's position on this was informed by her belief that in order to free themselves from male dominance, women must have complete control over their reproductive lives and this only begins with the right to determine whether or not to abort a fetus.⁶³ Therefore, Sherwin argues that women must have the freedom to choose abortions because in many cases women are unable to control their own sexuality. This she attributes to women's subordinate status. She went further to say that:

If women are unable to receive abortions on demand this subordination is likely to increase because of the responsibility of caring for a child, and the increased

financial need, and the decreased economic opportunities associated with child care. This dependence will imply a sexual loyalty on her part, restricting her sexuality, and further perpetuating the cycle of oppression.⁶⁴

According to Sherwin, feminist analysis of abortion differs from most other perspectives because feminist analysis focuses on how the woman got pregnant. She points out that the pro-life movements have argued that women can avoid unwanted pregnancies by simply avoiding sexual intercourse. Sherwin believes that currently and historically women have little control over their sex lives, and therefore have little control over the decision to become pregnant. She adds that women are often subject to rape by strangers and those known to them. The way we are socialized determines whether or not we will participate in sexual intercourse is rarely desired, but is instead the result of force, compliance, or accommodation.

Sherwin goes even further to argue that birth control alone cannot be expected to prevent pregnancy. She contends that there is no form of birth control available that is both safe and reliable. The most effective means available, namely the birth control pill or the IUD, are known to involve health hazards for women, and therefore she cannot be expected to spend her reproductive years on these medications. As for the safer methods, being diaphragms and condoms combined with a spermicidal foam or jelly are inaccurate, awkward, and expensive. This, she argues leaves only one safe and fully effective form of birth control, the use of a barrier method with the back-up option of abortion.⁶⁵

Sherwin subsequently discusses the feminist view of the foetus. As the debate currently stands a competition has been established between the rights of the women and the value of the foetus. Sherwin argues however, that there are other accounts of foetal value that are more plausible and less oppressive to the lives of women.⁶⁶ The feminist perspective examines foetal development in the context in which it occurs. “In women's bodies.”⁶⁷ In the feminist perspective the value of the foetus is relational rather than absolute. The feminist perspective argues that “what is valued about persons is not existence, but instead personality.”⁶⁸ Therefore foetuses must not be viewed as morally significant because they have not developed sufficiently in a social relationship. Sherwin concludes this section by saying that because of “the status of the foetus is within and dependent on a woman, the responsibility and privilege of determining it’s social status and value lies within the women.”⁶⁹

In her final section, Sherwin discusses feminist politics and abortion. In this section she states that feminists are not concerned only with free access to abortions, but they are also concerned with the factors that make women choose to abort a wanted fetus. An example of these factors would be a lack of financial and social supports. Sherwin adds that feminists are not pro-abortion. Instead they support reproductive freedoms defined as “the condition under which women are able to make truly voluntary choices about their reproductive lives, and these dimensions are implicit in the ideal.”⁷⁰

In spite of all the intricacies and the grey areas Sherwin brings into focus in her work, the underlining message from her analysis is that the choice of bringing a pregnancy

to terms or not should be left for the woman to make not in the hand of what she considers as the male dominated society.

Author Eileen McDonagh, is another scholar who believe that there is nothing immoral about abortion. In his book “*Breaking the Abortion Deadlock: From Choice to Consent*”, McDonagh points out that if a woman's liberty is being threatened in some fashion if she is being attacked, raped, or kidnapped the law gives her the latitude to use lethal force to repel her attacker. Pregnancy, McDonagh argues, is this kind of situation. As he makes clear, “If a woman has the right to defend herself against a rapist, she also should be able to use deadly force to expel a fetus.”⁷¹

The point McDonagh is making here is that in pregnancy, a woman is being attacked by another human being—from the inside, not from the outside. Therefore, the woman in question, has the moral liberty to repel her attacker by killing the intruder. In this instance, McDonagh creates a war-like-situation in foetus-mother relationship in which the foetus is the belligerent from whom the mother must defend herself. Looking at it this way, it does seem obvious that a woman ought to be allowed to protect herself from an attacker and use lethal force to do so, if necessary. The question however is can we legitimately equate a foetus to an attacker as McDonough does in *Breaking the Abortion Deadlock: From Choice to Consent*?

In the introduction to this chapter, we listed among the themes to be reviewed. The four groups which we say are the major contenders in the abortion debate. We have reviewed the first and the second groups. The third group in our list is the pro-life group. We shall now turn our attention to them.

The Philosopher, Peter Kreeft is one scholar who invests his intellectual energy advancing and defending that abortion is immoral. In one of his articles on this: “*Human Personhood Begins at Conception*”, Kreeft presents the arguments commonly used to explain why the unborn child is not a human person and then shows clearly and simply why each of these arguments cannot possibly be true.

Before presenting and criticising the model arguments used by pro-choice advocates to defend abortion, Kreeft highlights that the personhood of the foetus is the bone of contention in the abortion controversy. He believes that underscoring this will not only aid in understanding the model pro-choice arguments he was going to present but also help in appreciating the pro-life arguments he will be employing to counter them. He summarizes the centrality of the personhood of the foetus in the abortion argument in the following words:

The personhood of the fetus is clearly the crucial issue for abortion, for if the fetus is not a person, abortion is not the deliberate killing of an innocent person: if it is, it is. All other aspects of the abortion controversy are relative to this one; e.g., women have rights over their own bodies but not over other persons’ bodies. The law must respect a right to privacy but killing other persons is not a private but a public deed. Person has a right to life but non-persons (e.g., cells, tissues, organs, and animals) do not.⁷²

It therefore follows for Kreeft that all arguments in the abortion debate are either attempts to accept or deny the personhood of the foetus. For instance, the essential pro-life argument as he articulates it is as follows: “The major premise is: Thou shall not kill, that is all deliberate killing of innocent human beings or persons are

forbidden. The minor premise is that abortion is the deliberate killing of innocent human beings or persons. The conclusion is that abortion is wrong.”⁷³ when he established this fact, he then turns to examine, “two significantly different pro-choice answers to this argument”:

The more radical, or hard, pro-choice position denies the major premise; the less radical, or soft, pro-choice position denies the minor. Hard pro-choice denies the sanctity or inviolability of all humans; soft pro-choice denies the humanity of the fetus.⁷⁴

Kreeft did not want to be detained answering to the hard pro-choice position because according to him: “no [Christian] will take the hard pro-choice position, for Christianity clearly teaches (1) that all of us are made in the image of God and (2) that God Himself has forbidden us to kill, i.e., to murder innocent persons.” In view of this, Kreeft decided “...to confine myself to refuting the soft pro-choice position.”⁷⁵

According to Kreeft that there are at least seven reason why soft pro-choicers deny the personhood of the fetus. We shall profile Kreeft’s major ideas below:

1. The right not to be kill belongs not to life but to the person. The pro-life position confuses the sanctity of the person with the sanctity of life. Therefore, the problem of the pro-life position is the problem of linguistic confusion.
2. Pro-lifers commit the intellectual sin of biologism, idolatry of biology, by defining persons in a merely biological way. Membership in a biological species is not what makes murder wrong. Membership in the human species is no more morally relevant than membership in the subspecies.

3. The very young product of conception, the zygote, has no ability to perform any of the distinctive activities that anyone associates with personhood (reasoning, choosing, loving, communicating, etc.) for the zygote has no brain or nervous system. At first it is only a single cell. How could anyone call a single cell a person?
4. It seems it is a mistake for the pro-lifers to claim that personhood begins abruptly, at conception, for personhood develops gradually. Every one of the characteristics we use to identify personhood arises and grows gradually rather than suddenly. Pro-lifers are victims of simplistic, black-or-white thinking.
5. Pro-lifers seem to confuse potential persons with actual persons. The foetus is potentially a person, but it must grow into an actual person.
6. Personhood is not a clear concept. It is a matter of opinion where the dividing line between persons and non-persons should be located. Law should express social consensus, and there is no consensus in our society about personhoods' beginning. Thus, what is a matter of opinion should not be decided or enforced by law. One opinion should not be forced on all. Pro-choice is not pro-abortion but, precisely, pro-choice.
7. A foetus cannot be a person because it is part of another person, the mother. Persons are wholes, not parts. Therefore, the foetus is not a person.⁷⁶

In the build up to his assessments of the arguments outlined above, Kreeft, accuses pro-choice advocates of functionalism: “the error of defining a person by his or her functioning or behaviour.” He maintains that the error with functionalism is that while:

A behavioural definition is proper and practical for scientific purposes of prediction and experimentation, it is not adequate for ordinary reason and common sense, much less for good philosophy, which should be based on common sense. Why? Because common sense distinguishes between what one is and what one does, thus between being a person and functioning as a person. One cannot function as a person without being a person, but one can surely be a person without functioning as a person. In deep sleep, in coma, and in early infancy, nearly everyone will admit there are persons, but there are no specifically human functions such as reasoning, choice, or language.⁷⁷

The point Kreeft tries to make here is that pro-choice scholars fail to make the very important distinction between being a person and functioning as a person. For him, functioning as a person is a sign and an effect of being a person. It is because of what we are, because of our nature or essence or being that we can and do function in these ways. “Functionalism makes the elementary mistake of confusing the sign with the thing signified, the smoke with the fire.”

In addition to the error of functionalism, Kreeft also maintains that pro-choice advocates erred in their definition of personhood. He begins his explanation on this with the concession that “the pro-choicers are correct to claim that the person and human being are not identical”, however, they were “wrong to claim that the human being is the broader category and person the narrower subset. For him:

It is the other way round. There are persons who are not human persons: the three Persons of the Trinity, angels, and any rational and moral extra-terrestrials who may exist. But though not all persons are human, all humans are persons. Old humans are persons, very young humans are persons, and unborn humans, fetal humans, are persons too.⁷⁸

In view of these evidences, Kreeft does not understand how anyone would want to justify abortion. He believes that the facts that abortion is a cold blooded murder of the innocent, is there for anyone who is sincere with himself to see. Hence, For Kreeft, the greatest crime of all is not abortion but the continued attempt by pro-choice advocates to justify what is obviously unjustifiable.

J. P. Moreland. “In *Humanness, Personhood, and the Right to Die*”, is another scholar who argued that pro-choice activists erred in linking personhood to the foetus. Moreland took it upon himself to demonstrate that the personhood of a human reality arises from his essence not from his function. In formulating his arguments in this regard, Moreland asks us to work through the following examples with him:

Suppose your Uncle Jed is in a terrible car accident that results in him being in a coma. Imagine that he remains in this state for roughly two years and then awakens. He seems to be the same Uncle Jed that you knew before he went into the coma, even though he's lost some weight, hair, and memories. Was he a person during the coma? Could the physicians have killed Uncle Jed's body during that time because it was not functioning as a person? ⁷⁹

Moreland is sure that if one holds to the personhood criteria generally advanced by pro-choicers, it is difficult to see why it would be wrong to kill Uncle Jed while he is in the coma. Yet, it *would be* morally wrong to kill Uncle Jed while in this state. The question then is, why will it be wrong to kill Uncle Jed even though he lacks those pro-choice criteria of person while in coma? Responding to this question Moreland argues:

It is because an entity has an essence and falls within a natural kind that it can possess a unity of dispositions, capacities, parts and properties at a given time and can maintain identity through change.” Moreover, “it is the natural kind that determines what kinds of activities are appropriate and natural for that entity.⁸⁰

He goes on to write:

[A]n organism . . . has second-order capacities to have first-order capacities that may or may not obtain (through some sort of lack). These second-order capacities are grounded in the nature of the organism. For example, a child may not have the first-order capacity to speak English due to a lack of education. But because the child has humanness it has the capacity to develop the capacity to speak English. The very idea of a defect presupposes these second-order capacities. Now the natural kind “human being” or “human person” (I do not distinguish between these) is not to be understood as a mere biological concept. It is a metaphysical concept that grounds both biological functions and moral intuitions. . . .In sum, if we ask why [certain functions are] . . . both possible and morally important, the answer will be that such [functions are] . . . grounded in the kind of entity, a human person in this case, that typically can have [those functions].⁸¹

What does Moreland mean by this? First, he is saying that each kind of living organism, or substance, has a nature or essence that makes certain activities and functions possible. “A substance’s inner nature is its ordered structural unity of ultimate capacities. A substance cannot change in its ultimate capacities; that is, it cannot lose its ultimate nature and continue to exist.”⁸²

For example, a German Shepherd dog, because it has a particular nature, has the ultimate capacity to develop the ability to bark. It may die as a puppy and never develop that ability. Regardless, it is still a German Shepherd dog as long as it exists,

because it possesses a particular nature, even if it never acquires certain functions that by nature it has the capacity to develop. In contrast, a frog is not said to lack something if it cannot bark, for it is by nature not the sort of being that can have the ability to bark. A dog that lacks the ability to bark is still *a dog* because of its nature. A human person who lacks the ability to think rationally (either because she is too young or she suffers from a disability) is still a human person because of her nature. Consequently, it makes sense to speak of a human being's lack if and only if she is an actual person.

In the end, Moreland is insistent that what his argument has shown is that any attempt to either sidestep the issue of personhood or to make a distinction between human beings and human persons on the abortion controversy is not sustainable. This according to him is because we have seen that the functions of personhood are grounded in the essential nature of humanness, and because human beings are persons that maintain identity through time from the moment they come into existence (Conception). It follows then, that the unborn are human persons of great worth because they possess that nature as long as they exist.⁸³

Don Marquis made a strong case against abortion in his internationally renowned article "*Why Abortion is Immoral*". What is especially interesting about this article is that while it is obviously against abortion, which is considered the religious stance, Marquis is an atheist.

Marquis begins the article by observing that the abortion argument has already hit a standstill that seems un-resolvable. He notes how typical anti-abortion and pro-abortion arguments work thus:

The typical anti-abortion argument is that life is present from the very moment of conception and that fetuses possess necessary and sufficient characteristics to be considered a human. The anti-abortionist typically believes also that (1) the truth of that claim is obvious and (2) if the claims of personhood are proven, abortion is equivalent to murder. The typical pro-abortion argument is that “fetuses are not persons or that fetuses are not rational agents or that fetuses are not social beings. Like the anti-abortionists, they also believe that (1) the truth of these claims is obvious, and 2) that proving any of the claims against the personhood of the infant is sufficient to show that an abortion is not a wrongful killing.”⁸⁴

What we see here is two rival conceptions of personhood in disagreement, neither of which is obviously wrong, as Marquis also notes. For example, the anti-abortionist will claim support from the accepted moral principles “it is always [obviously] seriously wrong to take a human life” or “it is always [obviously] seriously wrong to end the life of a baby.”⁸⁵ In the same token, the pro-abortionist will draw from other, equally accepted moral principles such as “being a person is what gives an individual intrinsic moral worth” or “it is only [obviously] seriously wrong to take the life of a member of the human community.”⁸⁶

Both groups according to Marquis are drawing their moral ideals from the greater culture, and therein lies the problem. For him, Charles Taylor explains the issue when he argued that modern culture is in a philosophical crisis because our conception of

what a “person” is, is actually a patchwork of many different, mostly contradictory earlier views that got mixed together over time. And in Marquis view, if Taylor is right, then one’s definition of “personhood is entirely dependent on what one already believes about religion, rationality, metaphysics, and nature; change any one of those big packages of philosophy, your definition of personhood will shift dramatically with them.”⁸⁷

It follows therefore that since the anti-abortionist and the pro-abortionist have drastically different answers to these big philosophical questions, the only way to make headway in the “personhood” debate is, strangely enough, far above and outside the confines of the abortion debate: the critical questions are much more broad, theoretical, and metaphysical. Thus, Marquis believes that this battle over “personhood” and what constitutes a person will continue in a standstill indefinitely.

Meanwhile, having recognized this problematic rigging of the “personhood” side of the debate, Marquis observed that there is actually another route to be taken that sidesteps all the problems of that struggle. Accordingly, he believes that the debate hinges around 1) what a person is, and 2) what constitutes an immoral killing. Consequently, he argues that if going through the first premise is a dead-end, there is still the possibility of coming to a conclusion through the second premise:

A necessary condition of resolving the abortion controversy is a more theoretical account of the wrongness of killing. After all, if we merely believe, but do not understand, why killing adult human beings such as ourselves is wrong, how could we conceivably show that abortion is either immoral or permissible?⁸⁸

Marquis starts his exploration of this problem by considering why we personally don't want to die; something that he considers to be obvious enough to everyone, and something that he takes to be more or less universal for everyone:

We can start from the following unproblematic assumption concerning our own case: it is wrong to kill us... What primarily makes killing wrong is neither its effect on the murderer nor its effect on the victim's friends and relatives, but its effect on the victim. The loss of one's life is one of the greatest losses one can suffer. The loss of one's life deprives one of all the experiences, activities, projects and enjoyments that would otherwise have constituted one's future. Therefore, killing someone is wrong, primarily because the killing inflicts (one of) the greatest possible losses on the victim.⁸⁹

A careful assessment of Marquis Argument makes certain things clear here. He believes that it is not possible to resolve the abortion debate through the personhood argument because both the pro-choicers and pro-lifers are operating with diametrically opposed and intractable concept of personhood. To bypass the personhood argument, he tries to generate another criterion that will make killing a moral offence. In other words, it is in seeking to answer the question of why it is wrong to kill that Marquis believes he can bring fresh light to the abortion controversy. In the final analysis, he argues that what makes killing wrong is that it robs someone of a "future like ours" (or FLO); robbing someone of a future of happiness and productivity is the worst loss we could inflict on someone, thus killing (at least in some circumstances) is the ultimate evil.

Finally, Marquis in a Kantian manner thinks that the FLO principle is self-evident and as such should be understood and respected by all. This is because, since nobody wants to be deprived of their future, everybody will see depriving others of their future, including the foetus, as a grave moral evil.

Shannon M. Jordan, in an article entitled, *The Moral Community and Persons*, suggests that rather than trying to define what person is and thereby establishing which human beings are members of the moral community, we should “invert the order of reasoning to first determine the meaning of moral community, for then we will already understand who is a person.”⁹⁰ The following passage outlines Jordan’s essential characteristics of human life:

Human life is not and cannot be solitary; it is always lived in community; it is a life in which persons are bound together by rational intentions and actions which constitute their relationships with each other and thus form their moral commitments. The bond formed thereby is a fundamental moral bond which sets persons in moral relationships with each other, constituting them as moral persons. This bond is forged in those circumstances which are fundamentally constitutive of the moral life; birth, nurture, and the community in which one, normally by choice, lives shared lives. In two of these, i.e. birth and nurture, the self is constituted as a moral person through no choice of one’s own; only in the third circumstance are some capable of choosing in an autonomous or self-constituting way.⁹¹

Jordan criticises moral theories which focus on the rational autonomous individual and which hold that, as far as the foetus, the neonate, the infant, the retarded, the insane, the comatose, and the senile are concerned, we should act in such a way as to “respect the person one has been or might become, but that failure to do so cannot be

as serious an offense as failure to respect the autonomy of a fully competent or rational person.”⁹² Jordan argues that such theories fail to recognise that it is the moral community which creates persons rather than vice versa. In other words, human beings do not exist in a relational vacuum; they exist through relationships with others. In short, it can be said that the morality of nurturance governs our relationships with foetuses, infants, children and adults. Furthermore, a study of phenomenology coupled with cultural anthropology leads Jordan to conclude that “human survival, both individually and as a species, necessarily requires prescribed patterns of belief, behaviour and relationships – which is to say that human being is always being in a moral community.”⁹³

Jordan goes on to make the point that infant survival depends on human action which itself reflects rational intentions. In particular, Jordan tells us that the infant is a person not because of his future ability to exhibit rational intentionality but because “in his infant incompetency the very contingency of his existence is based on membership in a community of rationally intending persons.”⁹⁴ In other words, Jordan is saying that because the infant only possesses a non-rational self which cannot act with rational intention, it depends upon the ‘other’ self, viz. the moral community, to act with rational intention on his or her behalf. What this means is that the term ‘person’ does not refer to some grouping within the human species but that any human being “is necessarily being person-in-relation, member-of-moral-community, self-in-the-life-world-of-other-selves.”⁹⁵

We find Jordan's article highly persuasive because it seems to square strongly with our moral intuitions about the vulnerable in society. It also allows us to get around Tooley's principle which excludes fetuses and new-borns from the realm of persons due to their inability to act rationally by arguing that fetuses and new-borns are persons because we, the moral community, are their rational selves until such time as they acquire their rational selves. Moreover, if they can never be said to have acquired their rational selves, then we continue to be their rational or 'other' selves.

Also, in "A Kantian Argument Against Abortion" Harry J. Gensler drawing on the earlier work of philosopher R. M. Hare argues that since each of us was at one point a fetus and since one can rather safely presume that each of us will now oppose the idea of having been aborted as a fetus abortion fails the universality test and is therefore immoral. In building this Kantian argument against the morality of abortion Gensler depends heavily on the concept of logical consistency, as well as on Kant's Supreme Principle of the Doctrine of Virtue (which he refers to as the universality principle).⁹⁶ As we shall see, Gensler's argument against abortion strongly "stress consistency." He fairly states that one cannot accept a principle without accepting its recognized logical consequences."⁹⁷

Further, Gensler also justifies his argument by using Kant's Supreme Principle of the Doctrine of Virtue, which says that one must "act in accordance with the maxim of ends that can be a universal law for everyone to have." Gensler appropriately interprets this Supreme Principle as demanding "that we make similar ethical

judgment about the same sort of situation regardless of the individuals involved.”⁹⁸ To believe otherwise would be inconsistent of me and this is what I must avoid.⁹⁹

After laying this groundwork, Gensler presents his Kantian argument against abortion:

1. If you are consistent and think that abortion is normally permissible, then you will consent to the idea of your having been aborted in normal circumstances.
2. You do not consent to the idea of your having been aborted in normal circumstances.
3. So if you are consistent, then you will not think that abortion is normally permissible.¹⁰⁰

On the whole, Gensler believes that his conclusion about abortion follows from logical consistency and the universalizability test. Since the vast majority of individuals would not consent to the idea of having been aborted while as a foetus, most people cannot rationally think abortion is morally permissible. To think otherwise is inconsistent which of course something we must avoid.

Let us now turn our attention to the moderates, the last group of abortion scholars we shall be examining their position in this review. As already indicated, proponents of the moderate view claim that the viability criterion is a morally significant break because the dependence of the nonviable foetus on the pregnant woman gives her the right to make a decision about having an abortion.

In the rank of scholars who are usually categorized as moderates in the abortion debate is Reiley Maguire. In his “*Personhood, Covenant, and Abortion*”, Maguire tries to resolve the abortion argument by providing a definition of personhood which

she thinks will bypass the personhood controversy that has dogged the abortion debate. In her definition, Maguire tells us that the point at which personhood begins is the point when the mother accepts the pregnancy. She argues that when the mother accepts the pregnancy, the foetus' "potentiality for relationality and sociality is activated, because it is brought into a personal relationship with a human person, with the only human person who can actuate this potentiality while the foetus is still in the mother's body and in a pre-viable state."¹⁰¹ Maguire echoes the remarks of Shannon M. Jordan in the following extract:

The fetus cannot become related to the human social community except through the mediation of the mother. It is the mother who makes the fetus a social being by accepting its relatedness to her. Thus, it is the mother who makes the fetus a person.¹⁰²

She goes on to tell us that she would demand that the brain and central nervous system were developed to the extent that the foetus was almost viable before she "would say that a biological reality existed which presumed consent of the mother to the pregnancy." Maguire opts for viability as the cut-off point while, at the same time, recognising that viability is itself "a shifting area and, in fact, is not even purely biological but is itself dependent on society's standards as technology allows society to take over biology."¹⁰³ She points out that when the foetus becomes viable, it no longer needs the mother to establish a relationship for it with the human social community.

The central point in Maguire's article is that a line should be drawn between when the foetus is not viable and when it is viable. It is her opinion that abortion should be

morally permissible at the former stage and prohibited at the later stage. However, instead of being specific as to the number of days, weeks or months when a foetus can be said to be viable, she maintains that the mother's acceptance should be the benchmark of measuring viability. She thinks that being specific with age would be problematic since this depends on society and advancement of technology.

In any event, Maguire, adopts a moderate or developmental approach to the issue of abortion, she acknowledges that the mother can choose to recognise the foetus as a person prior to viability. From that point on, then, we, the moral community, must also recognise this foetus as a person. In other words, we must recognise this foetus as something which is as deserving of our respect as is any other human being with which we might come in contact.

D. Boonin in his book '*A Defense of Abortion*' also adopts the via-media approach in the abortion debate. According to Boonin, the purpose of his book is to support the view that abortion is morally permissible for most of a woman's pregnancy. In order to accomplish this task and to do so in a way that Boonin believes would be persuasive to abortion opponents he critiques their arguments on grounds that he maintains they should accept. So, for example, Boonin concedes, as pro-lifers contend, that the foetus is substantially identical to its postnatal being. However, unlike abortion opponents, Boonin argues that the foetus during most of its gestation lacks certain value-making properties that its future postnatal being possesses, even though they are the same substantial being. Boonin admits this at the beginning of his book, in a deeply personal passage:

On the desk in my office where most of this book was written and revised, there are several pictures of my son, Eli. In one, he is gleefully dancing on the sand along the Gulf of Mexico, the cool ocean breeze wreaking havoc with his wispy hair In the top drawer of my desk, I keep another picture of Eli. The picture was taken September 7, 1993, 24 weeks before he was born. The sonogram image is murky, but it reveals clearly enough a small head tilted back slightly, and an arm raised up and bent, with the hand pointing back toward the face and the thumb extended toward the mouth. There is no doubt in my mind that this picture, too, shows the same little boy at a very early stage in his physical development. And there is no question that the position I defend in this book entails that it would have been morally permissible to end his life at this point.¹⁰⁴

Boonin's philosophical method, *Reflective Equilibrium* (RE), is typical of what one finds in the works on moral issues penned by analytic philosophers. "It is a method, or style of moral reasoning, that has its roots in the work of the late John Rawls".¹⁰⁵ According to Rawls, we start our moral reasoning from our "considered judgments," those values and beliefs about morality with which we find ourselves and that seem to be prima facie correct at different levels of abstraction (e.g., "do good and avoid evil," "killing persons without justification is wrong," "it's wrong to torture babies for fun"). We then make moral judgments that are consistent with these considered judgments, perhaps adjusting the latter when the former provide us with new insights.

Boonin applies RE to the abortion controversy in this way. He starts with what we know: healthy adult human beings have a prima facie right to life. Because pro-lifers believe that it is prima facie wrong to kill the foetus because it has a right to life, Boonin needs to show that there are good reasons to believe that there is something about the foetus, or its relationship to its mother, that would justify his position that

abortion is morally permissible during most of the foetus's gestation because it is *not* prima facie wrong to kill the foetus at that time.

Boonin attempts to accomplish this by showing that the major arguments offered by abortion opponents fail to support two claims that are essential to justifying the impermissibility of abortion conditioned on the foetus having a right to life:

1. "The claim that the fetus (at least in typical circumstances) has a right to life, and"
2. "The claim that if the fetus has a right to life, then abortion (at least in typical circumstances) is impermissible."¹⁰⁶

Consequently, Boonin's burden is to show that the following claim is true: "The fetus is not a moral subject (i.e., it is not a being with a right to life) during the time at which virtually all abortions occur, which is prior to 25 weeks gestation."¹⁰⁷

After framing the debate, Boonin moves on to assess pro-life arguments that vary as to the time in foetal development at which the foetus possesses a right to life.

Beginning with the conception criterion, Boonin presents and critiques nine different arguments for the right to life beginning at conception: (i) the parsimony argument; (ii) the species essence argument; (iii) the kindred species argument; (iv) the sanctity of human life argument; (v) the slippery slope argument; (vi) the potentiality argument; (vii) the essential property argument; (viii) the future-like-ours argument; and (ix) the probability argument.

These arguments do not vary in the conclusion they draw, which is that the right to life begins at conception; they differ only in the reasons that support the conclusion.

Boonin counters these arguments that life begins at conception. Summarily, his counter contention consists in this: the dispute about the precise moment at which a new human organism comes into existence counts against the conception criterion. Boonin's point here is that the dispute among human embryologists concerning the precise point in the fertilization process at which a new human being comes to be invalidates any claim that life begins at conception.¹⁰⁸

The second pro-life position that comes under Boonin scrutiny are arguments for a human being's post-conception right to life. Boonin assesses seven criteria: (i) implantation; (ii) external human form; (iii) actual foetal movement; (iv) perceived foetal movement (quickening); (v) initial brain activity; (vi) organized cortical brain activity; and (vii) viability.

Unlike in the previous section, in which Boonin critiques various arguments for the same criterion (conception), in this section, he critiques various arguments for various criteria. As with the previous section many of Boonin's arguments in this section can be, and ought to be, fully embraced by pro-life advocates.

The most important part of this section is the one in which Boonin offers his own account of the right to life, arguing that this moral status arises in a human being at the point at which the foetus acquires organized cortical brain activity (25–32 weeks after conception). Boonin's claim is based on an argument that can be summarized in the following ways:

- a. Organized cortical brain activity must be present in order for a being to be capable of conscious experience,
- b. Prior to having a conscious experience, a being has no desires,
- c. Desires are necessary in order for a being to have a right to life,
- d. The foetus acquires organized cortical brain activity between 25 and 32 weeks gestation,
- e. Therefore, the foetus has no right to life prior to organized cortical brain activity.¹⁰⁹

Noticeable here is that Boonin presents an argument that grounds the right to life on desire and thus include such beings as new-borns and the temporarily comatose as rights-bearers while excluding the foetus during most of its gestation.

While agreeing with Maguire (already discussed above) that there is the need to take the abortion debate away from the personhood argument, Paul Gomberg takes up the notion of nurturance discussed by Jordan—also cited above. In *Abortion and the Morality of Nurturance* Gomberg argues that instead of being a dispute about when a foetus becomes a person, the abortion controversy is a dispute about the morality of nurturance. Gomberg suggests that “the abortion controversy derives less from disagreement about how to apply the principle prohibiting the killing of another person and more from the part of our morality that concerns parental duties of nurturance of the young: what are our duties to our offspring? When do those duties take hold?”¹¹⁰

Gomberg claims that the suggestion that the abortion controversy concerns the morality of nurturance highlights the following issues:

It gives a better articulation of the objection to abortion than the claim that abortion is murder; it allows us to understand why many believe that later abortions are morally more problematic than earlier ones; it puts the issue of abortion in the context of the morality that governs family life; and, most important, it allows us to understand why there is, on the one hand, a connection between conservatism on abortion and traditional women's roles and, on the other, a connection between liberalism and affirmation of equality between men and women.¹¹¹

According to Gomberg, it is more appropriate to describe abortion as a failure to nurture than to describe it as an act of murder, because the issue of abortion involves duties towards offspring rather than duties towards adults. In other words, moral relations between adults are characterised by a principle forbidding one person from killing another person, whereas, moral relations between parents and their offspring are characterised by a principle entailing that parents nurture their offspring until they become self-sufficient. Gomberg also makes the point that because abortion as an issue involves moral relations between adults and their offspring, philosophers such as Michael Tooley are misguided in their approach to and solution of the problems of abortion and infanticide. Gomberg himself expresses the latter point as follows:

I doubt that the morality of nurturance is derivable from principles governing moral relations between adults, the principle prohibiting killing of another person being paradigmatic of morality between adults. Hence I doubt the significance of both the attempts to derive a prohibition on abortion from potential to become an adult like ourselves, and the vindications of abortion which rely on criticisms of such arguments.¹¹²

Gomberg echoes the remarks of Marjorie Reiley Maguire when he says that the morality of nurturance takes over when a woman accepts her pregnancy. He argues

that if we accept that a woman's chief role is to bear and nurture children, then the woman is morally required to accept her pregnancy from the moment of conception. He counters however, that if we accept that a woman's chief role is not to bear and nurture children, then the woman can choose either to accept or to reject her pregnancy. On the other hand, Gomberg points out that while most of us believe that early abortions appear to be in line with the morality of nurturance, most of us "believe that later abortions are morally and emotionally more problematic" because although "there is no precise point at which it is clear that the morality of nurturance must apply to the foetus, it is clear that the longer we wait to abort, the more like a baby is the thing we destroy."¹¹³

Gomberg is highly critical of conservatives who see women as being more biologically suited to being mothers and child bearers than to being members of a world of recognised employment. This emphasis on the servile status of women is, as he points out, highly demeaning for women. Keeping the latter point in mind, Gomberg concludes his article by offering a twofold solution to the problem of abortion:

First, instead of allowing the communism of the family to be undermined by the competitiveness of the capitalist order, the egalitarianism and commitment to others that characterize family relations at their best should be spread to the larger world. Second, nurturing attitudes can represent morality rather than servility in a world where they are cultivated equally among adults; the duties of nurturance must fall equally on men. But where much of our social life is governed by market imperatives, it becomes impossible to share nurturing equally among men and women. This suggests that a satisfactory solution to the problems surrounding the

abortion issue will require changing the economic structures of our society. The moral problems of abortion are really social problems of capitalist society.¹¹⁴

Worth of note here is that Gomberg analyzes the issues of abortion as they are experienced by women. He does not parade elaborate hypothetical examples before our eyes to support his argument because, unlike Thomson discussed above, he does not need to do so. He adopts a pragmatic approach to the question of personhood which allows for variation in terms of defining the term 'person'. In other words, he accept that personhood of the foetus occurs for different people at different stages of foetal development. According to him, all are agreed that as the foetus approaches viability, it becomes less and less morally permissible for it to be aborted. Consequently, while he is prepared to accept early abortions, he is strongly disinclined to accept abortions which occur close to the point at which the foetus becomes viable.

Thus, resolving the issue of abortion for Gomberg involves, trying to look at the issue from the perspective of the beings involved, viz. the mother and foetus. When we do this, we will, he think, see that the abortion issue is not about the rights which we as adults have against each other or about the capacities which we as persons have to make rational decisions, but that it is about the duties which we as adults have towards our offspring. In the end abortion, as Gomberg points out, can only morally occur if it occurs in accordance with the morality of nurturance. According to the morality of nurturance, we have, Gomberg tells us, a duty to take care of our offspring until they become self-sufficient. When do these duties of nurturance take hold? This is a difficult question to answer as they appear to take hold at different times for different

people. Gomberg believes that an ethic of nurturance allows for a plurality of answers as opposed to one single answer to this question.

Another scholar who sees abortion debate as a complex moral problem that requires more than a yes or no answer is Susan Feldman. Feldman, made her contribution to the abortion debate within the context of responding to Gensler's already discussed above-Kantian anti-abortion stance. In his "From Occupied bodies to Pregnant Persons: How Kantian Ethic Should Treat Abortion", Feldman suggests that Gensler's classical argument against abortion is flawed and indeed falls far short of assessing the morality of abortion in Kantian terms. Feldman begins her discussion of Gensler by showing that contrary to what Gensler concludes, we can universalise the maxim of abortion. Gensler argues that I cannot be happy to be alive and also hold the view that it would have been acceptable for my mother to abort me as a foetus. For Gensler, these are mutually exclusive feelings.

However, Feldman says, that normally, rational individuals can indeed be happy to be alive while at the same time proclaiming that his or her having been aborted as a foetus would have been acceptable. "That we are happy to be alive is compatible with our willingness that history had been different and that the tragedies and exploitations leading to our births had never happened, even though that would mean that we would have never existed", asserts Feldman.¹¹⁵ In other words, we can consistently be happy to be alive while at the same time willing a different history, or a different course of life events for our mothers, even though that different course of life history will result

in our never having been born. Since we can consistently hold these two views, we can universalize the maxim of abortion, thus rendering Gensler's argument illogical.

Further, Feldman says, "when we are morally assessing actions, we are dealing with their maxims the subjective principle of an act which highlights the agents' reasons and desire."¹¹⁶ In formulating his argument against abortion, Gensler completely disregard the reason women have for aborting which are central to discussing the morality of abortion within a Kantian framework. Feldman explores some of the reasons as to why philosophers, such as Gensler, neglect to consider the reasons women have for choosing abortion in their discussion of the morality of the act. Feldman notes that society has a tendency to view pregnancy "as something a woman undergoes or suffers as a patient" and not as the active Kantian moral agent she truly is.¹¹⁷ Feldman asserts that pregnant women are typically viewed as "vessels for the foetus or 'flowerpot' in which the seed grows." She believes that these "passive metaphors for pregnancy are pervasive because of the social views" of women as not been truly moral agents not because of "the reproductive facts" of biology.¹¹⁸ Feldman says that when we view women as mere vessels for the foetus, we immorally objectify them. To avoid this objectification of pregnant women, we must emphasize their "activity and agency in pregnancy." This emphasis will lead us to a consideration of "women's will or choice and her reasons for her choices." From the Kantian perspective. this consideration of a woman's will and choices is crucial, for Kant believes that to be a moral agent is to be an agent who rationally "chooses which activities to perform and which to decline."¹¹⁹ Kant assert that human beings possess "their own lawgiving reason" that gives rise to their actions and maxims. As Feldman

says, “to be a moral agent is to make choices and to have reasons for those choices.”¹²⁰

It is because Gensler falsely conclude that we cannot universalize maxims of abortion and fails so horribly to consider women’s choices when it comes to pregnancy and abortion that his Kantian argument ruling abortion to be immoral is inappropriate and ultimately illegitimate. Contrary to what Gensler concludes, a rational individual can consistently be happy to be alive and also find the idea of his being aborted as a foetus to be acceptable. Thus, we can be true to Kantian ethics and universalize the maxim of abortion. Also the detailed Kantian treatment of abortion is the one that considers not just the foetus but also the woman who is carrying the foetus. On the whole, Feldman’s conclusion, is that when placed in the Kantian context of a woman’s duty to herself as a moral and rational and animal agent, one can prove abortion to be problematic for a moral agent, but most often morally permissible.¹²¹

Another scholar who shows that abortion is problematic within the framework of Kantian philosophy but nevertheless can be permitted in some rare circumstances is Larra Denis. In “Animality and Agency: A Kantian Approach to Abortion”, Denis much like Feldman, “situates abortion in the context of women duties to themselves.”¹²² Denis substantially addresses the moral status of the fetus, thus providing us with a more comprehensive Kantian consideration of abortion. He argues that,

Kant’s fundamental moral requirement that one respects oneself as a rational human being, combined with Kant’s view of our animal nature, forms the basis of a view of

pregnancy that focuses on women's agency and moral character without diminishing the importance of her physical aspects.¹²³

From this consideration of a woman's moral, rational and animal nature, Denis forms a Kantian view of abortion that "takes abortion to be problematic, but often permissible."¹²⁴

Denis hinges her Kantian argument on the morality of abortion on a discussion of the virtuous Kantian agent. In particular, Denis concentrates on Kant's duties of virtue. "All duties of virtue appeal explicitly to the ideas and concepts found in the formula of humanity."¹²⁵ Kant's Formula of Humanity demands that one "acts always so that one treats humanity in one's own person or in the person of another always as an end and never simply as a means." The Formula of Humanity gives rise to Kant's Supreme Principle of the Doctrine of Virtue which demands that one "acts in accordance with a maxim of ends that it can be a universal law for everyone to have."¹²⁶

Kant's duties of virtue include perfect and imperfect duties to oneself. Perfect duties to oneself "prohibit maxims of actions that expresses disrespect for one's own rational nature." In particular, perfect duties are concerned with "one's moral health and agency and the assertion of one's dignity and equality to others."¹²⁷ In regards to perfect duties, Kant notes, "I understand by a perfect duty one that admits of no expectation in favour of inclination and then, I have not merely external but also internal perfect duties."¹²⁸ In contrast, imperfect duties to oneself "requires sometimes acting on maxims for promoting ends whose adoption constitutes commitment to

realise one's rational nature." Imperfect duties to oneself must typically involve personal project of self-development.¹²⁹ While perfect and imperfect duties are both important in the life of a virtuous Kantian agent, Denis most seriously employs Kant's perfect duties in her discussion of pregnancy and abortion.

It is important to note that there are two kinds of Kantian perfect duties. On the one hand, individuals have a duty to themselves as both an animal and moral beings. "This duty prohibit acting on maxims of using one's body in a way that suggests that the being so embodied lacks dignity" or in acting in such a way that diminishes one's capacity for reason.¹³⁰ On the other hand, individuals also have a duty to themselves as moral being. "This duty prohibits acting on maxims that are contrary to one's inner freedom and dignity."¹³¹ A violation of this duty, for example would be servility. When one is servile, one becomes subordinate to the whims of others and thus is no longer a dignified human being on equal moral footing with the rest of humanity.

Denis concludes her discussion of the virtuous Kantian moral agent by noting the special relationship between a rational agents animal and moral nature. Kant believes that we must live in accordance with nature and in harmony with our animality, but that we must also value the fact that we are rational, responsible human beings. "The virtuous Kantian agent does not view pushes and pulls from her animal nature as authoritative in determining her will, she govern herself through reason."¹³²

Next Denis engages in a brief yet important discussion of the virtuous Kantian agent and pregnancy. She asserts that while pregnancy is an activity that is compatible with the life of a virtuous Kantian agent it can nonetheless be morally problematic because

much like eating, drinking, and sex, it is an activity connected to one's animal nature. "The pleasures we associate with satisfying these impulses gives rise to the temptation to act on them in ways destructive to our animal or otherwise demeaning to our rational nature."¹³³ In other words, pregnancy, like all other activities linked to our animality can sometimes interfere with our perfect duties to ourselves as animal and moral being. Pregnancy can be a threat to a woman's perfect duties to herself in a number of ways. Pregnancy, is often physically dangerous and for the majority of the world's female population, pregnancy, labour and delivery often pose a credible threat to a woman's life. These physical, and by extension emotional, demands of pregnancy can "impair a woman's flourishing as a moral agent."¹³⁴ Further, pregnancy can diminish a woman's agency, dignity and equality by, (1) making her financially dependent on others and by (2) leading others and (possibly the pregnant female herself) to see her as valuable only as the means to the end of a baby. "Pregnancy puts one in the position of having to struggle for recognition of one's ends and oneself are valuables apart from the foetus one is carrying"¹³⁵, says Denis. Since the Kantian moral agent is one who works to fulfil his perfect duties to herself, as both an animal and a moral being and since pregnancy can often interfere with a woman's perfect duties to herself, Denis concludes that the virtuous Kantian agent may avoid pregnancy and motherhood should they be incompatible to her perfect duties to herself as an animal and a moral being.¹³⁶

It is here that Denis comes to a pivotal juncture in her argument. While she has given sufficient evidence to provide that avoiding pregnancy when it is not compatible with a woman's end is moral in Kantian standard, abortion is much more than simply

avoiding pregnancy. Abortion involves both avoiding pregnancy and killing a foetus, so special attention must be given to the moral status of the foetus when we are discussing the morality of abortion in Kantian terms.¹³⁷

Denis takes “it as a plausible assumption that the human foetus should not be viewed as a rational free being and hence as an end in itself.”¹³⁸ Nevertheless, she maintains that when we are discussing the morality of abortion in Kantian terms, fetuses do have moral significance. Denis main consideration regarding the moral significance of the foetus as it relates to abortion draws us back to the importance of Kant’s agent animal not just moral nature. A woman has a duty to herself, “to show due concern for the proper functioning of her animal nature including by preserving and cultivating her morally useful sentiments, “the foetus receives derivative moral significance”, thus making abortion morally problematic.¹³⁹ In defending this assertion, Denis discusses how Kant believed human agents have duties to themselves and to others to cultivate, nurture and spread feelings of love and protectiveness in general and towards children in particular. As both moral and animal beings, the preservation of such sentiments is part of the “perfection of our nature.”¹⁴⁰ In addition, Kant believed that “we have duties to ourselves with regards to animals, for how we treat them can either bolster or dull such morally useful sentiments.”¹⁴¹

At this point, Denis notes that it is natural for woman to feel attached to and protective of a foetus she is carrying.¹⁴² She subsequently argue that if we accept Kant’s view that feelings of love and protectiveness aids us in fulfilling our duties of virtue, and if we also accept his claim that the way we treat animals can either foster or dull such

morally significant feelings, then we can logically conclude that since a fetus is also a non-rational, nonhuman being, “such morally significant feeling can be encouraged by attentiveness towards one’s foetus and weakened by destructiveness towards it.”¹⁴³

The virtuous Kantian agent values her animal nature and her tendencies towards such morally significant feelings and will do what she must to promote them in an effort to fulfil her duties to herself and others. Here, Denis make clear the problem the moral significance of the foetus possess for abortion: “Killing her developing foetus goes against a woman’s significant tendencies towards love and sympathy in general, and toward attachment to her foetus in particular.”¹⁴⁴ “Abortion is antagonistic to an important part of a woman’s moral health”, in that it is a violation of a woman’s perfect duties to herself as both a moral and animal agent because it hinders the development of her morally significant sentiment. Thus, abortion is morally problematic for a virtuous Kantian agent.

However, and this is very large, “however”, Denis maintains that simply because abortion is morally problematic for the virtuous Kantian agent, it does not mean that she can never morally choose abortion.¹⁴⁵ In the framework of Kantian ethics, a woman’s rational and moral nature must inform and shape her animal nature. So a woman can responsibly act in a manner that is contrary to her animal nature, should it be sufficiently in-line with her rational and moral nature. For Kant, our animality and emotional predisposition are important, but they should not always be the sole driving force behind our choices, reason must always govern our animal nature. Thus, abortions that protect the life, agency and self-development of a woman (all aspects of

her perfect duties to herself as both an animal and a moral being, as well as her imperfect duties to herself), are morally permissible, and sometimes even morally required, concludes Denis.¹⁴⁶

But if the question is asked what are these specific circumstances that abortion is allowed or required within the framework of Kantian ethics? Denis was not specific on this such that rather than simplifying, he complicates the abortion debate. Be that as it may, what is obvious in Denis account is that abortion is problematic but sometimes permitted within Kantian ethics.

As we approach the end of this chapter, a careful analysis of the authors reviewed concretises our initial submission that abortion is a divisive moral and legal issues among scholars. Thus, there is diversity of opinions among authors on what should really constitute an ideal resolution to both the moral and the legal problems of abortion.

The chapter begins by offering a synthesized presentation of the available literature on abortion. In this regard, four trends are identified: expository (for scholars who x-ray the various dimensions in the abortion debate), pro-choice (for those who say the woman should be allowed to decide), pro-life (for scholars who say, never to abortion) and moderates (scholars who say sometimes for abortion). Although, there are some subtle trends which may not suitably enter this general categorization— like anti-abortionists who are at the same time pro-choicers— nevertheless, the broad categorization we undertook here, is justifiable for practical purposes, especially for works of this nature.

The contributions of the authors on the expository end of the literature explored, consist in the fact that they set out in bold strokes the contentious issues in the abortion debate, underscoring the various positions taken by participating scholars and the reasons why the said scholars took such positions. This approach has two advantages. It provided useful information for both experts and those who simply wish to know what the abortion debate is all about. Also, the abortion debate is very sentimental, and sentiment is usually not a good companion of reason. Therefore, having not taken side with any of the contesting parties, it enables our authors from the expository side to act as independent researchers. This makes in a way, makes their contributions more credible.

However, two weaknesses are noticeable with authors in this category. The first weakness traceable especially to S. Ifemeje and E. Obidimma on the one hand and S. Lara on the other hand is that these authors are more legal than moral in their approach to the abortion controversy. It has to be emphasized here that abortion is primarily a moral problem. In fact, it is the moral problem that gave rise to the legal problem. Furthermore, while it can be admitted that clarification is certainly a part of the solution to a problem, nevertheless, it has to be admitted that scholarship demands that no one stands on the side-line for an important moral issue such as abortion.

The contributions of pro-choice scholars can be appreciated by underlining the two subcategories within the group. The first subcategory are those who believe that the choice of whether to abort a pregnancy or not should be left for the woman to decide. Within this subcategory are scholars like Judith Jarvis Thomson and Susan Sherwin.

By emphasizing autonomy in the abortion debate, these scholars were able to underscore the importance of free choice in moral decision making. Basically, the shortcoming of this position is their inability to see or rather to accept that there are two autonomies at stake in the abortion debate. And in absolutizing the autonomy of one party (the mother), they tend to undermine the autonomy of the other party (foetus).

The second subcategory within the pro-choice group are those who hold that the foetus is not a person and as such can be aborted. Scholars, in this group include, Michael Tooley, Mary Anne Warren and Author Eileen McDonagh. The strength of their literature consists in their contribution to the understanding of the biology of foetal development. However, their arguments failed when they employed arbitrary mental qualities, such ability to think or desire, (qualities that science itself has not been able to confirm) in foetuses to demarcate when a foetus becomes a person and when it has not.

The pro-life advocates in their opposition to abortion used many arguments to justify their position: life begins at conception as we saw in Peter Kreeft, and J. P. Moreland, “future like ours”, highlighted by Don Marquis, moral community demonstrated by M. Jordan, and the Kantian Universability Principle upheld by Harry J. Gensler . The strength of the arguments marshalled by this group lies in their overall emphasis on the sacredness of life. Their refusal to succumb to the demand that requires demarcating the point a foetus becomes a person underlines how determined they are

to ensure that human life which they believe begins at conception should not be left to the whim and caprices of human conjecturing.

Nevertheless, the shortcoming of this position as portrayed in our review is that its proponents are not able on the one hand, to develop the epistemic foundation to justify their claim that human life begins at conception. On the other hand, the focus of the emphasis of pro-life scholars is on the right to life of the foetus. Enough attention is not usually given to the right of the mother and how the tension between these rights can be reconciled when they come into conflict.

Finally, the moderates also made informed contribution to the abortion debate, particularly in their insistence that the solution to the abortion controversy should not be a matter of yes or no answer but one that takes other important factors into considerations. Thus, whether it is the contention that personhood begins at the point when the mother accepts the pregnancy as we saw in Reiley Maguire, or that it starts when the foetus has developed some psychic abilities as outlined by D. Boonin, or the call for the abortion debate to be guided by parental duties of nurturance of the young, expressed by Paul Gomberg or the spirited effort made to demonstrate that abortion is morally problematic but sometimes permissible as captured by Susan Feldman and Larra Denis, the bottom-line is that the moderates see abortion as a serious moral problem that demands not only our heads but also our hearts. More explicitly, of all the trends in the abortion debate reviewed here, the moderates are the only group who took the moral status of the mother and the foetus seriously and made corresponding effort to resolve the conflict that arose from such recognition.

Be that as it may, the moderates still apply faulty data from the human and natural sciences, especially anthropology to come to their fallacious conclusion that personhood is acquired cumulatively or conferred by some kind of social relationships. Abortion in this vision is therefore permitted when these categories are found missing.

On the whole, the review shows that there are four major trends in the available abortion literature, ranging from those who see abortion as immoral, to those who think that it's morally permissible under certain conditions. Nevertheless, while all the authors we reviewed, without exception, believe that there is basically a clash of interests—interests of the mother and the foetus— in the abortion debate, there is something these scholars failed to address: how the seeming dichotomy between the mother's right to personal autonomy and the foetus right to life can be reconciled? It is this gap in literature which this dissertation intends to fill.

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CHAPTER THREE: CONCEPTUALIZATION OF ABORTION

3. Conceptualization of Abortion

The last chapter reviews the views of some renowned authors on abortion. That chapter ends with an acknowledgement that regarding the morality of abortion, diverse opinions exist among scholars. That being said, it stands to reason that at this stage, our investigation in this dissertation cannot run smoothly without a serious attempt to appreciate the kinds and the methods used in procuring abortion. This is so because understanding the procedures of abortion is necessary and requires to be factored into the arguments on whether abortion can be morally justified which will be the title for the next chapter

The chapter commences with a general definition of abortion, navigates through the different kinds of abortion and ends with a discussion on the various methods used in procuring abortion. As indicated in the introductory part of the dissertation, the primary mandate of this chapter is to discuss abortion as a medical procedure. Arguments on the morality of abortion are outside the rudder of the chapter and will therefore not be entertained. Chapter Four will take up that obligation.

3.1. Kinds of Abortion

According to Callahan, “an abortion results to the death of the foetus and may be either spontaneous or induced.”¹ Following Callahan, we can distinguish between two major kinds of abortion-induced (that is, artificially procured by chemical, surgical or other means) and non-induced or spontaneous abortion.

3.1.1 Induced Abortion

This is also called *abortus provocatus*.² It is abortion *qua* abortion, since it is here and only here that the question of end, intention, and the presence of human act can rightly be asked and where moral responsibility and social imputability, praise or blame, could be assigned. Consequently, abortion is induced when the act is intentionally carried out throughout the period of “gestation.”³ For Niedermeyer, it is “abortion by external action,”⁴ in which case it is unnatural. This was also why Callahan noted that “in induced abortion, the foetus is removed by artificial, usually medical means.”⁵ Induced abortion is further divided into direct and indirect induction.⁶

Abortion is said to be directly induced when the foetal expulsion is the aim of the act or a means of achieving an aim, for instance an aborting to save the mother’s life. In direct induction, three conditions are fulfilled:

1. It is directly intended as an end or a means
2. It is artificially carried out
3. The end result is always the death of the foetus or embryo.⁷

Under indirect induction, the end of the action is never intended to be the death of the foetus; rather, it is permitted as an unavoidable side effect of a directly willed end. An example is where the death of the foetus results in an attempt to treat a cancerous uterine wall of the mother. Jonas captures this view when he writes: “Some medical treatment is performed for a serious purpose other than abortion but abortion results.”⁸ It is precisely in this connection that the “principle of double effect” which is

discussed in Chapter Five can intervene to justify abortion. Induced Abortion is further subcategorized into therapeutic and criminal abortion.

Abortion is therapeutic if for example, “the purpose is the saving of the mother’s life or health.”⁹ In this case, it is an intentional removal of the foetus from the uterus owing to some medical indications. For instance, a woman who has cancer of the womb has the right to be cured but to cure her it may be required that the womb be removed which may mean the death of the child.

Meanwhile, the issue of therapeutic abortion concerns not only the mother’s health but also the foetus. Jonas clarified this in the following statement “This is a case of legitimate pregnancy that is developing into a serious threat to life of the mother, the child or both.”¹⁰ Thus, we can further distinguish between direct and indirect therapeutic abortion. It is directly therapeutic if “the doctor intends the death of the child in order to cure the mother.”¹¹ That is appropriate measures are taken to eliminate the foetus. In this way, the right of the mother to be cured is believed to supersede the foetus’ right to life.

In an indirect therapeutic abortion, the termination of the foetus is not intended but its possibility is envisaged. In other words, it is not a means of treating the mother but an unavoidable consequence of her treatment. Hence, in indirect therapeutic abortion the child accidentally dies, in the doctor’s process of saving the mother. The death of the child is not directly willed, not a free act but simply permitted as an undesirable side effect.

The sticking point in direct and indirect therapeutic abortion is that it is necessary to differentiate between taking life and allowing death. In an ectopic pregnancy, for instance, the foetus cannot survive so long as it remains in the fallopian tube.¹² An emergency abdominal operation would be required to have it implanted in the womb where it can at least have a natural development. The reason being to avoid medical complications that will seriously hamper the life of the mother and the baby, it might be evident that the foetus will die during the implantation. Nonetheless, the operation is carried out. If the foetus dies it is an unavoidable accident. This is quite different from taking positive measures to eliminate the foetus, to get rid of something not wanted.

However, the question usually is, how therapeutic is that which should be enough to take away the foetal life? The principle of double effect, already mentioned shows how to mediate this difficult question without compromising either the mother's or the foetus right to life.

Another type of induced abortion is criminal abortion. Scholars usually adopt two approaches in their identification of when abortion is criminal. On the one hand, there are scholars who see it as any "induced termination of pregnancy or evacuation of the human conception from the womb through human intervention for any other intention but curative purposes."¹³ According to C. M. Ekwutosi, "The reason could be to avoid pain associated with child bearing, shame, lack of good maintenance etc." Thus he thinks that when abortion is brought about for social or other reasons but therapeutic, it is called criminal abortion.¹⁴

On the other hand, there are scholars who argue that abortion is criminal, if it is procured outside the stipulations of the law. For scholars in this group, abortion is legal and non-criminal even when it is carried out for non-therapeutic purposes but still occurs within confines of the law. Instances of this abound, like in the 1973 American Supreme Court decision, which allowed, abortion if the doctor approves the woman's intention to do so, and which must fall within the first three months of pregnancy.¹⁵

3.1.2. Non-induced Abortion

Abortion is non-induced when it occurs spontaneously, in such case as miscarriage. This may be caused by a disease or some defects or mal-functioning in the woman's physiological system. Such an abortion is neither intended nor is it aided in any way. Unless due to culpable neglect, this would not be a human act and therefore would not attract moral or legal sanctions.¹⁶

Normally, when people talk of abortion, they almost always do not mean spontaneous abortion but induced abortion. Consequently, our concern in this dissertation is on induced abortion for it is the only type that has something to do with morality.

While most people hold strong opinions on the issue of abortion, there is a widespread lack of understanding surrounding the actual procedure. In the political realm, for instance, abortion is debated as an abstract concept. It's dehumanized. In other words, for many, the word evokes only a vague understanding that a "clump of cells" is being removed from a woman's uterus. Even the word "abortion" is being abandoned in favour of euphemisms like "women's reproductive rights". However, approaching the

abortion debate in a dehumanized manner as it is usually done is not proper because understanding the nuances of the controversy requires some factual knowledge about abortion practices themselves.

What this entails is that there is need to look at the debate from a new perspective that takes cognizance of the different factors that go into the process of procuring abortion. A good place to begin this is with some terminologies about stages of foetal development and methods of performing abortions. To these, we now turn to.

3.2. Foetal Development

James Fieser explains that “The nine month or 40 weeks foetal development process is commonly divided into three trimesters.” He roughly categorized the trimesters as follows: first trimester occurs between 1-12weeks, second trimester is from 13-25weeks and the third trimester happens between 26-40weeks. Fieser then explores some of the developmental features that occur at each of the trimester in line with how it can affect the abortion debate. About the first trimester, he writes:

In the first trimester the male sperm and female egg merge and become a single-cell zygote; through cell division, by the third day it grows to about 16 cells. Within a week the cell cluster attaches to the woman’s uterus and forms into an embryo. By the fifth week its brain begins to form, its heart begins to beat, and it takes on some external features of vertebrate animals. By the eighth week it is capable of some motion and its eyes begin to form.¹⁷

The second trimester begins from the 13th week. Fieser explains what happens at this stage:

At the beginning of the second trimester, at around 13 weeks, the embryo is from thereon referred to as a *fetus* and is about an inch and a half in size. As the fetus continues to grow, by week 16-20 the woman can feel some fetal movement, an event called *quickening*.¹⁸

The most important concept in this quotation is the word ‘quickening.’ Many philosophers, especially the scholastics believe that quickening signals the point when the foetus has been infused with the soul, the life giving element in man. Scholars, who advocate this view, use it to condemn abortion from quickening onward since according to them it would mean taken away life specially endowed by God with his image.

By the third trimester which commences in the 26th week, the foetus is about 8 inches long and is sufficiently developed so that it could possibly survive premature birth, thus, the foetus is said to be viable. The growth of the foetus is most rapid throughout the third trimester, and by weeks 35-40, at around 20 inches, it is fully developed and ready for birth.

Analysing these three stages, Fieser observes that there are scholars who believe that the morality of abortion is not a yes or no question but a slippery slope where every answer has to take the age of the foetus into consideration. On this ground according to him, there are authors who are of the opinion that any abortion that occurs within the first trimester is morally justifiable because at this stage the foetus has not acquired those personhood qualities that endows a being with recognizable right to

life. Going by this, any abortion that occurs from the second trimester through to the third trimester as would be seen as morally reprehensible since the foetus has at these levels developed qualities such as the ability to feel pain that can identify it as a living being capable of separate existence from the mother.¹⁹

The other way Fieser believes his analysis of the foetal age can affect the abortion debate concerns miscarriages. As he puts it “The high rate of miscarriages itself has implications on the abortion debate, particularly regarding the abortion of seriously deformed fetuses.” Continuing, he explains that:

...about half of fertilized human ova end in a live human birth, and unsuccessful ones miscarry. Almost three-quarters of these occur during the first trimester, and many take place so early on that the woman may not even know that she was pregnant. The high prevalence of miscarriages is the result of a natural screening process in the woman’s body, which rejects embryos that show indications of abnormalities. About half of these are genetic problems, and others are the result of low hormone levels in the woman. While the woman’s natural screening process filters out most genetically problematic fetuses, about five percent escape detection and ultimately result in the birth of infants with congenital problems, often very serious ones.²⁰

One could argue from the following analysis that when the woman’s natural screening mechanism fails to detect a genetically problematic foetus, it is reasonable to intervene and terminate the pregnancy, just as the woman’s natural process would have if it was fool-proof.

3.3. Methods of Procuring Abortion

There are many methods of abortion. However, according to J.C. Willike, in his book, *Abortion Questions and Answers*, all the procedures used for abortion can be brought down under three categories:

Those that invade the uterus and kill the child by instruments which enter the uterus through the cervix; those that kill the preborn child by administration of drugs and then induced labour and the delivery of a dead baby; and those that invade the uterus by abdominal surgery.²¹

Agreeing with J.C. Willike but following rather a different mode of categorization, Louis-Kennedy Osinachi Ilobinso observes that “Three common methods are normally used, [for abortion] namely, Dilation and Curettage (D & C), Prostaglandin and Suction Curettage.”²² Ilobinso also agrees with Willike that the choice of the method to be used in abortion is based on the uterine size, i.e., gestational age. Their point on this is that the choice of an abortion method for a particular pregnancy is determined by the age of the pregnancy. In other words, an abortion method that is appropriate for a pregnancy that is still within the first trimester may not be suitable for a pregnancy that has gone up to the second or third trimester.

On the whole, while the abortion methods to be explored in this section will take the three aforementioned major divisions into account, our adumbrations and discussion will be much more extensive than what is included by Willike and Ilobinso .

3.3.1. Emergency Contraception

The first possible pregnancy-termination method is the use of emergency contraception, commonly referred to as the morning after pills. A woman can take

these pills within a few days of having intercourse. J. Matt, outlines how the process works:

It consists of a drug containing high doses of hormones that disrupts the earliest stages of pregnancy in one of three ways. First, if the woman has not yet ovulated, it can prevent her from doing so while the sperm inside her is still active. Second, if the woman has ovulated, it can prevent sperm from fertilizing the ovum. Third, if the ovum is fertilized, it can prevent the zygote from implanting in the uterine wall, and thus prevent further development. It is only this third avenue that is a type of abortion, while the first two are types of contraception. The woman, though, is not in a position to know which of these is taking place.²³

Medically speaking, emergency contraception is effective for only 72 hours after intercourse, and, consequently, if the woman is indeed pregnant, the zygote will at most be a microscopic cluster of cells. Experts believe this procedure is about 75% effective, and poses no risk to embryos which survive this method.²⁴ The major practical disadvantage of the method is that it requires the woman to make a quick decision and have quick access to the drug. The reality, as Matt explains is that many women will not make such a decision and instead hope for the best. According to him also, access to emergency contraception may require a prescription, particularly for women under age 18, which in turn requires an appointment with a willing physician in a timely fashion.²⁵

One thing to be observed here is that the use of morning pill cannot be called abortion in the real sense of the word. It is more or less a preventive measure since a woman on morning pills does not intentionally go out to procure abortion which as we saw above is a necessary ingredient in the definition of abortion. In other words,

one could say that a person using morning pills is guilty not of abortion but of not allowing the natural consequences of sexual relation to take its full course.

3.3.2. Drug-induced Medical Abortions

If the woman misses the opportunity to use the morning after pill, the next possible method is an abortion-inducing drug called Mifepristone, more commonly known as RU486. The drug was developed in France, and legalized there in 1988, it was eventually approved in the U.S. with much controversy in 2000. According to “Abortion Surveillance”, this method accounts for “Approximately 7.7% of abortions”, in the world.²⁶

Unlike emergency contraception, which at most prevents the Zygote from implanting on the uterine wall, RU486 can expel embryos that are already implanted. The drug functions by breaking down the uterine lining as it would during menstruation, thus expelling the foetus. The procedure comes down to this:

The pregnant woman typically receives oral doses of mifepristone (a progesterone receptor antagonist, which results in endometrial degeneration) and misoprostol (a PGE1 analog, which induces uterine contractions). The developing embryo is torn from the uterine wall and expelled through the vagina, usually in the privacy of the woman’s home.²⁷

While the window of opportunity for use of these drugs is wider than that of emergency contraception, the timetable is still rather restrictive, and can be used only for about one month after the earliest point at which a woman could discover that she is pregnant through a pregnancy test. At the very most, the expelled embryo would be six weeks old.

The practical disadvantages of RU486 are the same as those of emergency contraception. Even after one month the woman may still not be psychologically in a position to make the decision, and, again, timely access to a willing physician may be an obstacle.

3.3.3. Vacuum Aspiration

Emergency contraception and RU486 both involve expelling embryos at very early stages. However, as already observed, once embryos and fetuses grow in size, only surgical methods can be used to remove them, and the larger the fetus, the more intrusive the procedure is. The first of these surgical methods is vacuum aspiration.

James Fieser, argues that this method is the most common abortion method in the United States accounting for 88.3% of all procedures in 2003. According to him, the method is used for both first and second trimester abortions, though the majority take place between 6-9 weeks gestation.²⁸ Other scholars are specific that the method is used for pregnancies between 6-12 weeks of age.

During this procedure:

A tube is inserted through the cervix into the uterus. Either a hand-held suction device (MVA) or a suction machine (D&C) gently empties the uterus. A separate curette may be used to help remove the tissue that lines the uterus.²⁹

The practical disadvantage of this approach is that it is a form of surgery, and although it's relatively safe with the whole procedure taking about 15 minutes, there is some

risk of infection and uterine injury. At around \$500, it is also more costly than drug-induced abortions.

For reference, it is good to note at this juncture that according to the American Pregnancy Association, a heartbeat is typically present by 5-6 weeks gestation; by weeks 8-9, that is, the time any of the surgical methods of abortion is used “everything that is present in an adult human is present in the developing embryo.” The limbs and major organ systems are in place, and the child has begun to kick and move.³⁰

3.3.4. Dilation and Curettage (D&C)

The next surgical method, performed between 6 and 16 weeks of pregnancy is dilation and curettage. Although still used, the method has been largely replaced by vacuum aspiration in many countries because of its higher costs and complication rate relative to the vacuum aspiration method.

The overall procedure is similar to a vacuum aspiration, except that a hook shaped knife (curette) is used to scrape the wall of the uterus. The small body is torn to pieces and pulled out through the cervix. As with vacuum abortions, the nurse will often be required to reassemble the arms, legs, head, and torso to ensure that the entire body has been removed.³¹

3.3.5. Dilation and Evacuation

With foetuses between 15 and 20 weeks, a variation of D&C method called dilation and evacuation, which involves dismembering and removing the foetus piece by piece with forceps, is used. The procedure is described below by Dr. Anthony Levatino,

who performed approximately 1200 abortions in the early 1980's, including 100+ dilation and evacuation abortions:

A second trimester D&E abortion is a blind procedure. The baby can be in any orientation or position inside the uterus. Picture yourself reaching in with the Sopher clamp and grasping anything you can. At twenty-four weeks gestation, the uterus is thin and soft so be careful not to perforate or puncture the walls. Once you have grasped something inside, squeeze on the clamp to set the jaws and pull hard – really hard. You feel something let go and out pops a fully formed leg about six inches long. Reach in again and grasp whatever you can. Set the jaw and pull really hard once again and out pops an arm about the same length. Reach in again and again with that clamp and tear out the spine, intestines, heart and lungs. The toughest part of a D&E abortion is extracting the baby's head. The head of a baby that age is about the size of a large plum and is now free floating inside the uterine cavity. You can be pretty sure you have hold of it if the Sopher clamp is spread about as far as your fingers will allow. You know you have it right when you crush down on the clamp and see white gelatinous material coming through the cervix. That was the baby's brains. You can then extract the skull pieces. Many times a little face may come out and stare back at you. Congratulations! You have just successfully performed a second-trimester Suction D&E abortion.³²

3.3.6. Instillation Abortion

This method, (also known as salt poisoning or saline injection) although quite common in the 1970's, has declined in popularity. It is used mainly after the 16 weeks when enough fluid has accumulated in the womb. Matt describes the mechanism involved:

A long needle is inserted through the mother's abdomen directly into the sac, and a solution of concentrated salt is injected into the amniotic fluid. The salt solution is absorbed both through the lungs and the gastrointestinal

tract, producing changes in the osmotic pressure. The outer layer of skin is burned off by the high concentration of salt. It takes about an hour to kill the baby by this slow method. The mother usually goes into labour about a day later and delivers a dead, shrivelled baby.”³³

3.3.7. Hysterectomy

This method is essentially a Caesarean section. The baby is surgically removed from the uterus, and either killed outright or allowed to die of neglect.

www.prochoice.com/abort_how.html captures the exact mechanism:

Hysterectomy is exactly the same as a caesarean section with one difference, namely, that in a caesarean section the operation is done to save the baby whereas in hysterectomy the operation is done to kill the baby. Thus, in hysterectomy the baby is either killed in the womb and expelled or is brought out alive. When it is brought out, it is allowed to die through neglect or killed by strangling or other means.³⁴

3.3.8. Intact Dilation and Extraction

In rare cases, intact dilation and extraction abortions are used. These are commonly referred to as “partial-birth abortions”, and were outlawed in the United States by the Partial-Birth Abortion Ban Act in 2003. This act was narrowly upheld by conservative Supreme Court justices in a 5-4 decision back in 2007. Medical Dictionary describes the medical process involved:

IDX first involves administration of medications to cause the cervix to dilate. Dilation usually occurs over the course of several days. Next, the physician rotates the foetus to a footling breech position. The body of the foetus is then drawn out of the uterus feet first, until only the head remains inside the uterus. The physician

then uses an instrument to puncture the base of the skull, which collapses the foetal head. Typically, the contents of the fetal head are then partially suctioned out, which results in the death of the fetus and reduces the size of the fetal head enough to allow it to pass through the cervix. The dead but otherwise intact fetus is then removed from the woman's body.³⁵

Many of the abortion methods discussed in this section are disturbing, particularly the later surgical ones. For many people, such a sense of revulsion is enough to judge these abortion practices immoral. However, revulsion alone is not always a good indicator of an action's moral worth. Consider, for example, the sense of revulsion that we might experience when witnessing similar abortion methods performed on pregnant animals, such as dogs, chimpanzees or elephants. There is something grizzly about the surgical procedures themselves that are inherently disturbing even when not performed on humans, and that must be factored into the equation.

Thus, while there may be an important place for our emotional reactions when assessing moral controversies, they are not magical indicators of where the truth lies, and they should not override our more impartial reasoning on issues. Consequently, the next Chapter will explore model arguments for and against abortion that are based on issues more fundamental than the human sense of revulsion.

Endnotes

1. D. Callaham, "Abortion", *World Book Encyclopaedia*, (Chicago, Child-craft International Inc., 1979), p. 149.
2. Hastened Birth or Premature Induction of birth.
3. Gestation: time lapse between conception and delivery.
4. A. Niedermeyer, *Compendium of Pastoral Medicine*, (New York, Joseph F.W. Inc., 1960), p. 211.
5. D. Callaham, *op. cit.*, p. 149.
6. Ibid.
7. Ibid.
8. J. Okoye, *Abortion and Euthanasia the Crime of Our Day*, (Awka, Kecena Damian press, 1987), p. 17.
9. D. Callaham, *op. cit.*, p. 149.
10. J. Okoye, p. 17.
11. Obielu, *Studies in Ethics, A moderated Research Work*, St. Joseph's Seminary, Ikot Ekpene.
12. T. J., Higgins, *Man as Man*. (U.S.A: Bruce Publishers, 1956), p. 70.
13. C. M. Ekwutosi, *Bioethics: History and Contemporary Issues*,
14. Ibid.
15. See M. O. Izunwa, "Right to Life and Abortion Debate in Nigeria: A Case for the Legislation of the Principle of Double-Effect", in *Nnamdi Azikiwe University Journal of International Law and Jurisprudence*, Vol. 2, (2001), p. 114.
16. C. M. Ekwutosi, *Bioethics: History and Contemporary Issues*,
17. James Fieser, "Moral Issues that Divide us and Applied Ethics", <http://www://utm.edu>, (20/03/2016).
18. Ibid.
19. Ibid.
20. Ibid.

21. Cited in Louis-Kennedy Osinachi Ilobinso, "Policy on Abortion in the Nigerian Society: Ethical Considerations", p. 17.
22. Ibid.
23. J. Matt, "Abortion Methods: An Overview", <http://wellspentsjourney.wordpress.org/evidence-for-christianity>, (20/03/2016).
24. Ibid.
25. "Abortion Surveillance United States, 2003 (CDC)", <http://www.cdc.gov/mmwr/preview/mmwrhtml/ss5511a1.htm>, (20/03/2016).
26. J. Matt, "Abortion Methods".
27. James Fieser, "Moral Issues that Divide us and Applied Ethics",
28. J. Matt, "Abortion Methods".
29. American Pregnancy Association, "Concerns Regarding Early Fetal Development", <http://www.americanpregnancy.org/pregnancycomplications/earlyfetaldevelopment.htm>, (20/03/2016).
30. James Fieser, "Moral Issues that Divide us and Applied Ethics".
31. Dr. Anthony Levatino testimony before US House subcommittee, May 17, 2012.
32. James Fieser, "Moral Issues that Divide us and Applied Ethics",
33. www.prochoice.com/abort_how.html, (20/03/2016).
34. Medical Dictionary The Free Dictionary. Abortion, partial birth. <http://medical-dictionary.thefreedictionary.com/partial+birth+abortion> www.utm.edu/staff/jfieser/class, (20/03/2016).

CHAPTER FOUR: THE ABORTION DEBATE

4. The Abortion Debate

It was underlined in Chapter Three of this dissertation that the medical methods used in procuring abortion involve procedures that are particularly revolting to human sense of morality. That Chapter observed that most non-experts in moral argumentation generally tend to stand on this sense of revulsion to condemn abortion as immoral. However, the Chapter was quick to add that sense of moral revulsion in itself was not enough to determine the morality of actions. To say the least, there are actions that are morally revolting to some people' killing of some animals for example but which are conventionally not judged as immoral.

Based on this, the present Chapter will go beyond mere sense of moral revulsion to scrutinize some of the most cogent arguments that the proponents and opponents of abortion use to make their case for and against abortion. The Chapter begins with a presentation of the arguments of abortion advocates and cumulatively navigate to the arguments of abortion opponents. The crux of the chapter is an attempt to appraise these model pro and anti-abortion arguments. The aim is to portray these arguments as not morally compelling enough to solve the abortion controversy. This therefore will pave the way for projecting the principles of Double Effect and Principle of Identity already spoken about in the previous chapters which we shall be proposing in Chapter Five as the most viable solution to the abortion impasse.

However, as a way of introducing these arguments, let us sketch the history and current legal status of the abortion debate by presenting the data of countries around the world that have legalized abortion.

4.1. Brief Overview of the Abortion Debate in History and Legislations

A rarely quoted text in the Old Testament, namely Psalm 137, writes: “Happy shall be he who takes and dashes your little ones against the rock.” From various sources, it is well known that abortion and infanticide were practiced in the Ancient Mediterranean World. For example, the Spartans would dip the new-borns in the icy waters of the Styx to test their strength, for only the strongest did stand a chance in life. Plato, in the *Republic*, had no objections against the killing of not only of handicapped new-borns, but also of those who are the product of inferior parents or of individuals past the ideal childbearing age.¹ In the *Politics*, Aristotle holds that deformed infants should not be allowed to live.² In *Peri psuchês*, later translated in Latin under the title *De anima*, Aristotle’s theory of the distinction between living and non-living organisms was that the former did possess an animating principle something that gives the ability to *move* - which he called *psuchê*, a principle of life.³ In the *Theory of Human Generation and Reproduction*, Aristotle claimed that the male human foetus becomes animated (*viz.*, starts moving) on day-40 after conception, and that it takes the female foetus 80 days to start moving.⁴ In line with this view, before the foetus starts moving, it is not alive; therefore, abortion before 40 or 80 days is permissible. In the *Eudaimian Ethics* Aristotle wrote:

Just as we do not think: a fetus, who lives a purely vegetative existence, without awareness, lives a full human life, so we are not going to be willing to praise and congratulate the life of this hopeless inactive adult.⁵

The Stoics rejected Plato's theory of Forms. They had their own views on the *psuchê*, also called *pneuma*, as the principle of specific animal life that allows *poioun*, action. The stoic soul is a corporeal entity; it penetrates the physical body, and leaves it after death.⁶ Their concepts on human reproduction and embryology were written down by Hierocles in *Elementa ethica* (circa 200 CE.), and by the Greek physician, anatomist and philosopher Galen of Pergamon (129- circa 199 C.E.) in *De foeto formatione*. On their view, throughout most of gestation, the conceptus was just a growing thing, not really different from a growing plant. Progressively, the pure *phusis* (growth) becomes inhabited by the *pneuma*, the fiery breath, the intelligent fire. Thus, it was only at the moment of birth that, through an instantly hardening by contact with the cold air outside, the *pneuma* became *psuchê*. The stoic *psuchê* was together the rational component necessary for thought, language, and decision-making, as well as the instrument for sensation and movement. The *psuchê* was what allows us to lead an intelligent life within the boundaries of the body.⁷ Like Aristotle; the Stoics saw the foetus as an almost purely vegetative entity.

It is quite clear that the concept of *psuchê* in the classical Hellenic world had nothing in common with the later Christian concept of *soul*, which is the cornerstone of the Roman Catholic pro-life position. The misinterpretation of the Greek concept of *psuchê* is attributable to what is commonly called the problem of the *traduttore traditore* (the so-called treason committed by translators): *psuchê* was translated

anima, and *anima* was mistranslated *soul*.⁸ The roots of this interpretation are found in Augustine's adoption of Plotinus' theory of emanation that said that the Creation issues from God's thought, something like a composite of rationality and something celestial. On Plotinus' view, contrary to Plato's concept of the body as the dungeon of the soul, body and soul were supposed to live in harmony.⁹ For Augustine, God created the human soul in His image. Our soul shares with the divine mind; our body is only a repository for the soul

Aquinas shared Aristotle's view on the spark of life, the principle of motion that makes a living being alive.¹⁰ A foetus starts moving 40 days after conception - that is, when it starts to exhibit human features.¹¹ This became the official position of the Church at the Council of Vienna in 1312.¹² It remained as such until 1869 when Pope Pius IX repealed it. Early abortion was thus not morally forbidden until the second half of the nineteenth century neither by the Church nor by the common law.¹³

The thirteenth century's debates opposed the Augustinian-cum-Neoplatonist Franciscan friars to the Thomist-cum-Aristotelian Dominicans. Applied ethics was not a major concern in their debates; abortion was definitely not a matter of enquiry. In Medieval times, philosophy had not yet acquired its own status as a discipline independent from theology, but neither did sciences (then called natural philosophy).

It was not until the Reformation initiated by Augustinian friar, Martin Luther (1483-1546), that theology was set on a course independent from philosophy; the final separation is attributed to René Descartes (1569-1650).¹⁴ With Descartes, philosophy and sciences also became "unnaturally separated."¹⁵ William of Ockham's (c.1280-

1349) writings are representative of a transition from medieval thinking to a growing interest in *Man* (as essentially an individual) and in nature that would reach its stage with the Renaissance. Natural philosophy had also to be set on a course independent from theology. The Renaissance undertook this task.

Renaissance anatomist Andreas Vesalius (1514-1564) bravely debunked Galen's medical teaching that had prevailed for as long as ten centuries discovering that the sons of Adam have no missing rib.¹⁶ This was evidence that Eve must have come from elsewhere! Not only for this unholy finding but also for having located the soul in the brain, Vesalius got under attack by the theologians of the Catholic University of Louvain where he was teaching anatomy. Indeed, the hard facts of early scientific discoveries and thinking were clearly not welcomed by the ecclesiastic establishment of the time.

It was not until the first half of the seventeenth-century that Aristotle's theory, formerly supported by Aquinas and confirmed by the Council of Vienna, became discredited by Flemish physician, Thomas Feyens, alias Fienus. As a professor on the faculty of medicine at the Catholic University of Louvain, he published, in 1620, a treatise entitled *De formatione foetus in quo ostenditur animam rationalem infundi tertia die*. Fienus' thesis was that human semen needs only three days to "coagulate the menstrual blood" so that it can receive a rational soul that will take care of the further organisation of the embryo and fetus.¹⁷ The credit of the claim, made in Rome in 1621, that ensoulment does occur at the time of conception is to be attributed to the Italian physician Paolo Zacchias. In 1644, Pope Innocent X rewarded him for this

brilliant achievement bestowing on him the title of General Proto-Physician of the Whole Roman Ecclesiastic State.¹⁸ However, this did not affect the well-established and traditional view on abortion before quickening. Abortion remained still rather a sin against marriage since, following Augustine's teaching sexual intercourse was only permissible in married couples and with the sole intention of procreating.¹⁹ This remains the current official teaching of the Roman Catholic Church.

During the seventeenth-century, European Common Law did not consider that abortion was an indictable offence. It was only in 1803 that an English statute made abortion of a quickened foetus a criminal offence. From the seventeenth through the nineteenth centuries, American law followed the English Common Law.²⁰ Neither the English nor the American Common Law, prior to the nineteenth century, did recognise the existence of a foetus before quickening. And because quickening was *the* criterion to determine the presence of a foetus, pregnancy was a condition that only the pregnant woman could sense and make public, if so she wished.²¹ In the early nineteenth century, in the United States, abortion before quickening was legal and only a misdemeanour after quickening. Abortifacients were freely advertised, privately procured, and self-administered.²² Eve's herbs such as pennyroyal and silphium have been known and used from times immemorial as "emmenagogues" "to bring down the courses", to free the "suppressed menses"²³.

In 1847, however, things started to change with the creation of the American Medical Association (AMA). The AMA is said to have been created to oppose the rising success of homeopathy, and to retain the power, control, and authority of the

traditional Western medicine. This included control over abortion. There is some controversy surrounding the real motivation of the antiabortion lobbying by the AMA that started in 1857. For some, the intention was to protect women from health hazards by medicalising abortion.²⁴ Rachel, however, is of the opinion that the real motives were the prevailing Victorian mentality about illicit sex (that is, extramarital), and a feeling among the medical profession that there was something morally wrong about killing foetuses. On the other hand, Feinberg and Levenbook²⁵ attribute the AMA's position to a desire to control and contain abortion practices. Duden²⁶ adopts a similar view, namely that the medical profession wished to promote itself as the experts in charge of the procedure and decision about abortion.

Whatever the deep motives inspiring the AMA, it is quite clear that modern opposition to abortion has its root in 1869 when Pope Pius IX declared the excommunication for the sin of abortion, and, in 1870, at the First Vatican Council, he declared the Sovereign Pontiffs *ex cathedra* pronouncements infallible. Nevertheless, there is need to underscore that the medical profession initiated the opposition and that the theologians –who originally saw it as a sin– only followed suit.²⁷

It was not until 1967 that abortion became decriminalised in Britain.²⁸ In fact, it took Britain 29 years after the *Bourne case* to reach this decision. On June 14th 1938, well-respected British gynaecologist Aleck William Bourne (1886-1974) aborted a fourteen-year old girl at St Mary's Hospital in Paddington. She was six-weeks pregnant after having been gang-raped. On July 18, Bourne was indicted at the Old Bailey for “using an instrument to procure a miscarriage”, but was later acquitted by

the jury.²⁹ The United States followed the British move on abortion in 1973 with the famous or infamous *Roe v Wade*.

At stake in the *Roe v Wade* 410US113 was a State of Texas statute making it a crime to “procure an abortion” or even to attempt it, unless it was to save a pregnant woman’s life? Norma McCorvey, alias Jane Roe, was a single pregnant woman living in Dallas. She wanted a safe and legal abortion to be performed by a physician. To obtain it she challenged the constitutionality of the Texas law. Henry Wade was Dallas County’s district attorney. Justice Harry Blackmun and the US Supreme Court ruled that the “right of privacy” was guaranteed by the 14th Amendment’s concept of personal liberty, and that the right of personal liberty and of privacy was “broad enough to encompass a woman’s decision whether or not to terminate her pregnancy.”³⁰ The decision held that laws prohibiting abortion violate women’s constitutionally protected right to privacy. The Court also held the view that a foetus is not a person in the legal sense, and so has no constitutionally protected right of its own.³¹ The Court, however, recognised that the State has a right to limit abortion in the interest of either the woman’s health or the foetus’ life.

In 1973, an abortion procured after the first trimester was considered medically dangerous for a woman’s life. On the other hand, during that era, the viability of the foetus was set at twenty-eight weeks, the onset of the third trimester of pregnancy. Therefore, in line with the medical practice and technology of the time, the Court decided that a first trimester abortion is a woman’s decision and right; that a second trimester abortion should be regulated by the Court; and that a third-trimester

termination of pregnancy would be permissible only if the woman's health or life is at stake.³²

The salient points in the *Roe v Wade* Supreme Court decision were: (1) a first trimester abortion is a woman's right; (2) the unborn has no constitutionally recognised rights; and (3) the "viable" foetus has a "potential life" (potentiality being here interpreted as the ability to survive outside of the uterus). These points are important indicators of a paradigm shift. There is no mention of the intrinsic value of the unborn in any moral sense. There is strong emphasis on women's rights with no right of any sort attributed to the unborn (hence, no conflict between the woman and the foetus). The State and the medical profession through the Court, however, retain the right of decision-making after the first trimester. This has been seen "as much a reaffirmation of the rights of physicians to practice as they see fit as it has been an affirmation of women's right to control their reproduction."³³

Roe v Wade, however, was not the end of the story of the abortion debate in the US. In 1989, Chief Justice William Rehnquist (the 'loser' in *R v W*) made a significant retreat from the abortion rights that had followed from *R v W*. In *Webster v Reproductive Health Services*, he made it clear that the State has an interest in protecting life, not just after viability, but throughout pregnancy because, he claimed, life begins with conception.³⁴ This fuelled the debate about the beginning of life and the sanctity of life even outside of the courts. In 1992, *Planned Parenthood v Casey* reaffirmed the essential holding of *R v W*³⁵ and the affirmation has remained the dominant principle guiding abortion legislations in the United States.

In 1987, RU-486 (mifepristone), an anti-progestogen prescribed for various endocrinological conditions as well as for use as an early abortifacient, was approved in France. The American Food and Drug Administration (FDA) did not approve its circulation saying: “It would decentralise the role of the medical profession in abortion and remove them from public scrutiny.”³⁶ In other words, it would take us back to the era before 1857 when abortion was a private matter practiced by women themselves; and that would be problematic (mifepristone was finally approved by the FDA in the year 2000).

On the whole, prior to the beginning of the 19th century, there were no abortion laws in existence. In 1869 Pope Pius IX declared that ensoulment occurs at conception. As a result the laws were changed to prohibit any termination of pregnancy. These laws form the basis of the restrictive legislation on abortion that still exist in many developing countries. However, between 1950 and 1985, occurred the beginning of what we have come to know today as the wave of liberalization of abortion legislation.

The media have been instrumental in this regard. As Rothman³⁷ put it, the foetus has become the subject of a “cultural creation” that fascinates the general public. On her view, this started with *The Silent Cry* and with *Miracle in the Womb*, picturing the “pain” endured by aborted foetuses. Rothman also claims that the mediatization of the foetus gave birth to the so-called “foetal medicine.” And this, says Susan Sherwin³⁸ has resulted in viewing pregnant women as “generic female wombs, anti-mothers”, and the foetus as a “third-party.” Today, almost all developed countries have liberalized their abortion laws for reasons of human rights and safety. Restrictive

abortion laws in some countries such as Nigeria are often due to old colonial laws and strong religious influence, especially of the Roman Catholic Church. Nevertheless, these countries with restrictive abortion laws are in recent years continually bullied and clubbed by the developed countries of the West to liberalize the abortion laws.

The following list of 30 countries and their abortion laws are based on a research conducted in 2008 by Michelle Ralston and Elizabeth Podrebarac, for Pew Forum on Religion & Public Life³⁹ and on the latest report (2016) by WHO⁴⁰ on abortion around the world.

North America

Canada

Since 1988, when the Supreme Court of Canada ruled that existing abortion restrictions were unconstitutional, abortion has been legal for any reason at any stage of pregnancy.

Mexico

Access to abortion services in Mexico varies from state to state. Some states allow abortion only in instances when the mother's life or physical health is at stake, in pregnancies involving possible foetal abnormalities or in cases of rape. In April 2007, however, Mexico City became the first municipality to legalize abortion within the first 12 weeks of pregnancy (the first trimester). The Roman Catholic Church and abortion opponents challenged the new law in courts, but in August 2008 the Supreme Court voted to uphold the new law.

Latin America

Brazil

Abortion is legal in Brazil only in cases of rape or incest or when the mother's life is in danger. Under federal regulation, hospitals require a formal determination that a pregnancy has resulted from rape or incest before performing an abortion. Many women in Brazil illegally use the drug Cytotec to induce miscarriage, and the government estimates that more than 200,000 Brazilian women are hospitalized annually as a result of botched abortions.

Chile

In 1967, the Chilean Health Code formally legalized abortion when it was necessary to save the mother's life. The measure was reversed in 1989 by then-President Augusto Pinochet, who made abortion illegal in all circumstances. Pinochet's law is still in effect. In late 2006, President Michelle Bachelet authorized government distribution of the morning-after contraception pill to women ages 14 and older; but in April 2008, Chile's Constitutional Tribunal suspended the program.

Colombia

Abortion was illegal in all circumstances until May 2006, when Colombia's highest court ruled that the procedure can be performed in cases in which the mother's life or physical health is in danger, in cases of rape or incest, or in pregnancies involving fatal or life-threatening fetal abnormalities. This decision has been the object of strong protests by abortion opponents but remains in effect. On Aug. 25, 2006, the first legal abortion was performed on an 11-year-old girl who had been raped by her stepfather.

According to the government, more than 300,000 illegal abortions are performed annually in Colombia, where abortion is the third leading cause of maternal mortality.

El Salvador

Abortion is illegal in El Salvador in all cases, even when doctors consider the procedure to be medically necessary. Moreover, the government vigorously enforces the ban.

Nicaragua

In October 2006, the Nicaraguan National Assembly effectively banned abortion in all circumstances after voting to disallow exceptions to its already restrictive abortion laws. Previously, abortion was legal only in cases of rape or cases in which three doctors agreed that the mother's life was in danger. There were six legal abortions in 2002, the last year for which figures are available. Health experts estimate the number of illegal abortions in Nicaragua to be more than 30,000 a year.

Western Europe

Germany

Although a 1995 law makes abortion illegal, neither doctors nor women are prosecuted if the mother is a victim of rape and the procedure is performed within 12 weeks of conception. A similar waiver exists in the first trimester for cases in which the mother has received counseling to encourage carrying her baby to term but still wants an abortion. After the first trimester, abortion is available only to preserve the

life or mental or physical health of the mother. State insurance generally does not pay for the procedure except in cases of financial need.

Great Britain

Abortion is freely available in Great Britain due to a broad interpretation of the Abortion Act of 1967, which permits abortion for a variety of reasons if certified by two physicians. Within the first 24 weeks of pregnancy, these reasons may include: to save the life of the mother, to protect her physical or mental health, to terminate pregnancies involving foetal abnormality, or for social or economic reasons. In cases in which the mother's life or health is "gravely threatened" or there is significant risk for foetal abnormality, there is no time limit on when an abortion may be performed. Currently, the British Parliament is considering legislation that would eliminate the requirement of two doctors' approval before an abortion can be performed. It is estimated that about 200,000 abortions are performed in Great Britain each year.

Greece

Since 1986, abortion has been freely available in Greece during the first 12 weeks of pregnancy. In cases involving a minor, or in instances of rape or incest, the procedure is legal through the 19th week of pregnancy. Abortions also can be obtained through the 24th week of pregnancy in cases of foetal abnormality. Despite liberal abortion laws, the advertising of abortion services is illegal.

Ireland

The Offences against the Person Act of 1861 (originally enacted by the United

Kingdom but parts of which are still active in Ireland) banned abortion in all circumstances. Later court decisions established an exception to save the mother's life. In 1983, a constitutional amendment strengthened the country's abortion restrictions by establishing a foetus's right to life, equating it with a woman's right to life. The lack of access to abortion garnered attention in 1992 when a 14-year-old rape victim sought to travel to Great Britain to terminate her pregnancy. She was permitted to travel to Great Britain for this purpose only after the Irish Supreme Court ruled that requiring the girl to have the child might lead her to commit suicide. According to experts, each year more than 7,000 Irish women travel to Great Britain to receive abortions.

Spain

Abortion law in Spain legalizes the procedure at any point during pregnancy in cases in which the mother's life or physical or mental health is at risk. Abortion is also allowed within 12 weeks of pregnancy in cases of rape and within 22 weeks of pregnancy in cases of foetal impairment. In 1991, Spain's high court set a case-by-case precedent for determining whether abortion could be sanctioned. In 2006, nearly 100,000 abortions reportedly were performed in Spain. Though the government will pay for an abortion, approximately 60% of women choose to pay for the procedure themselves for reasons of convenience and confidentiality. Recently, Spain's abortion laws became highly politicized after church groups accused private clinics of performing illegal abortions in Barcelona and Madrid. While the country's socialist party advocates for more liberal abortion laws, opponents argue that abortion is already too accessible.

Sweden

Since 1974, abortion has been legal in Sweden in all circumstances within the first 18 weeks of pregnancy. After this point, abortions are only permissible to save the life or physical health of the mother, or if approval is granted by the National Board of Health and Welfare. To date, abortion has not been a politically controversial issue in Sweden.

Eastern Europe

Latvia

In 1955, when Latvia was part of the Soviet Union, abortion became freely available during the first trimester of pregnancy. In 1982, it was legalized within the first 28 weeks of pregnancy when required for broad health reasons. Five years later, abortions within the first 28 weeks were legalized for certain nonmedical reasons, including imprisonment of the mother, imprisonment of her husband, or divorce or rape. Under the same 1987 law, abortion in other cases is sanctioned if approved by a medical commission.

Poland

According to a law passed in 1993, abortion is legal in Poland throughout pregnancy to preserve the life or physical health of the mother. During the first 12 weeks of pregnancy, abortion is also allowed in circumstances of rape, incest or foetal abnormality. In March 2007, the Council of Europe ordered Poland to compensate a Polish woman who had suffered a retinal hemorrhage after being denied an abortion despite doctors' knowledge that carrying the baby to term would jeopardize her

health. One month later, the Polish parliament rejected a constitutional amendment that would protect the “right to life from the moment of conception.” The Council of Europe has ordered all 46 member states, including Poland, to ensure that abortions are available in countries where they are legal.

Russia

Russia reportedly leads the world in the total number of abortions performed each year, which currently exceeds the country’s annual number of live births. Abortion is freely available during the first 12 weeks of gestation as well as at any point during the pregnancy in cases involving a risk to the life or health of the mother or severe foetal abnormalities. Since 2003, abortion has also been legal between the 12th and 22nd weeks of pregnancy on certain social grounds, including imprisonment, rape, or spousal disability or death.

Slovenia

Slovenia’s abortion laws stem from a statute enacted in the former Yugoslavia in 1977 that made abortion available through 10 weeks into a pregnancy. Abortion was also allowed in cases that threatened the mother’s life or cases that involved severe foetal abnormalities. The 1977 law is still in effect, and abortions are free under Slovenia’s health care system. In 2006, abortion came under the national spotlight when the minister of labour, family and social affairs, as part of a broader push to increase the country’s declining birth rate, proposed that the government subsidize only those abortions that were medically necessary to save the life of the mother. The minister was promptly asked to resign and the proposal was dropped.

Africa

Nigeria

Abortion is legal in Nigeria only to preserve the mother's life, but health specialists report that large numbers of procedures are performed both in the predominately Christian South and the predominately Muslim North. In 2008, the Society of Gynecology and Obstetrics of Nigeria reported that 11% of maternal deaths in Nigeria are caused by unsafe abortions.

Senegal

Legislation based on an 1810 penal code makes abortion illegal in Senegal except to save the mother's life. For a woman to qualify for an abortion, two physicians must concur that her life is in danger and one of these physicians must be on a court-approved list. These restrictions have attracted the attention of the U.N. Committee on Economic, Social and Cultural Rights, which has expressed concern over the health risks posed to women by the lack of access to legal abortions.

South Africa

Since 1996, abortion has been available without restrictions in South Africa within the first trimester of pregnancy if the mother's physical or mental health is at risk, if the pregnancy compromises the mother's social or economic situation, or if the pregnancy resulted from rape or incest. After the 20th week of pregnancy, abortion is available if the life of the mother or health of the foetus is at risk. In early 2008, the South African Parliament voted to relax abortion restrictions even further, establishing 24-hour

abortion facilities and allowing nurses – not just midwives and doctors – to carry out the procedure. President Thabo Mbeki had yet to sign the bill into law when he resigned in September 2008.

Zimbabwe

The country's abortion law was changed in 1977 to allow the procedure when the mother's physical health is at risk, when the pregnancy is a result of "unlawful intercourse" such as rape or incest, when the foetus is at risk for physical or mental defects, or when the mother's life is endangered. Formal authorization and certification is required in all of these circumstances, a process that some abortion rights advocates say drives many women to seek illegal abortions.

Middle East

Tunisia

Compared with other Muslim countries, Tunisia has very liberal abortion policies. Abortions are available during the first trimester and after 12 weeks when the mother's physical or mental health is at risk and in cases of foetal abnormalities; however, in more traditional communities, doctors may be less willing to perform abortions in situations that are considered taboo, such as pregnancies resulting from extramarital affairs or premarital sex. As a result, women often resort to illegal abortions.

Egypt

The Egyptian Penal Code of 1937 bans abortion in all circumstances, but criminal law allows flexibility on grounds of "necessity." Physicians rely on that principle to justify

performing an abortion when they believe the mother's life or health is in danger or in cases of foetal abnormality. A committee of physicians must agree that the abortion is acceptable within the confines of the law.

Iran

Abortion has been illegal in Iran since the 1979 Islamic Revolution. Although there are no explicit exceptions to this prohibition, Iranian law generally allows acts that are performed to save the life of a person; thus, it is commonly understood that abortion is illegal except when necessary to save the mother's life. In 2005, the Iranian parliament passed a measure allowing abortions within the first four months of pregnancy in cases of foetal impairment that would result in economic burden; the measure was ultimately blocked by the Iranian Guardian Council.

Israel

A 1977 law made abortion legal in Israel to save the mother's life or to preserve her mental or physical health. Abortion is also allowed in cases of rape, incest or foetal impairment, as well as in cases involving a wide range of difficult social circumstances. In 1979, those social circumstances were eliminated as an explicit reason for abortion, but leniency within the law still exists. For instance, being unmarried or being under the age of 17 or over the age of 40 constitutes a social circumstance in which an abortion is allowed. All abortions must be authorized by a medical committee composed of a social worker and two physicians.

Turkey

In 1983 law makes abortion legal in Turkey in all circumstances within 10 weeks of

pregnancy. After 10 weeks, abortion is legal if the mother's life is at risk, if her physical or mental health is in danger or if her pregnancy involves foetal abnormalities. Parental- and spousal-consent requirements are in effect, but they can be waived if the risk to the mother's life constitutes an immediate danger.

Asia

China

Abortion is virtually freely available in China, and there are no defined time limits for access to the procedure. Although sex-selective abortion is prohibited, critics say that China's one-child-per-family policy encourages the widespread abortion of female foetuses by couples intent on having a son. Today in China there are an estimated 120 boys born for every 100 girls. Human-rights groups have long accused the Chinese government of condoning mandatory abortions as a means of controlling population growth. The practice is believed to be less common today than it was in the 1980s and early 1990s, when the one-child policy was more strictly enforced.

India

Abortion is available in India during the first 20 weeks of pregnancy in cases in which the mother's life or physical or mental health is at risk, in cases of rape or foetal abnormality, or for social or economic reasons. However, to obtain an abortion between the 12th and 20th weeks of pregnancy, two medical practitioners must agree that the procedure is necessary. In 1994, to combat sex-selective abortion of female foetuses, the Indian government outlawed the practice of using prenatal testing to

reveal the sex of the child. But such abortions are still widely practiced and rarely prosecuted.

Japan

Japan's Eugenic Protection Law, passed in 1948, promoted liberal policies on abortion and sterilization with the intent of fostering a genetically healthy population. In 1996, new legislation omitted all references to eugenics and established regulations making abortion legal within the first 24 weeks of pregnancy to save the mother's life or to protect her physical health. Abortion is also allowed in cases of rape and for economic or social reasons.

Philippines

Abortion has been illegal in the Philippines since 1930, when it was first criminalized. The only acceptable reason for an abortion is when the mother's life is in danger, in which case permission for the abortion must be obtained from a board of medical professionals. The 1975 Child and Youth Welfare Code established that a person has inherent dignity from the moment of conception. The Constitution of 1987 reinforces this ruling, requiring that the state "equally protect the life of the mother and the life of the unborn from conception."

This simple overview shows that the history of abortion as a moral issue has always been there from the beginning and that the nucleus of the problem centres on the identity of the foetus. Hence, the legal dimension is relatively recent. It also shows that the problematisation of abortion was initially a matter of power; the Church and secular authorities considered the legal aspect only eventually. This is not to deny the

moral dimensions of abortion or the role it is playing in the debate. On the contrary, the debates, be it legal, political, theological, or philosophical, have all shed a different and new light on what was for centuries considered by the Church and the state as an issue of conscience and sin. Abortion is undoubtedly a moral issue but we need to bear this political dimension in mind as it is crucial in the unfolding debate we are about to undertake.

4.2. Pro-abortion Arguments

Reasons given by abortion advocates on why abortion is moral and should be legalized are numerous and have continued to grow as the debate itself evolves. These notwithstanding, the arguments can be classified into three categories: 1) Reasons that bother on the status of the foetus, 2) reasons from the mother's rights to autonomy and health and 3) utilitarian reasons. Our discussion in this section will incorporate these broad categorization.

4.2.1. Arguments from the Status of the Foetus

As has been consistently argued in this study, one of the central bones of contention in the abortion debate is the status of the foetus. The question is this: what is killed in abortion? Another way of formulating the question is, when does life begin? Now, almost all pro-abortion advocates agree with their anti-abortion opponents that the intentional killing of any human being is both immoral and unlawful, where they disagree with their anti-abortion opponents is that abortion amounts to such wilful killing. Their reasons for such denial usually come in two forms: first, an outright denial of the humanity of the foetus and the concomitant right to life that is the

prerogative of every human being and second, a qualified concession that the foetus becomes a human being but much later in pregnancy not at the moment of conception. In recognition of these two positions, M. O. Izunwa explains that “Pro-choice (pro-abortion) advocates variously aver that life begins at viability, at birth, or until there is capacity for social interaction.”⁴¹ A variant of the argument, according to McSweeney, is that the “human being does not begin to exist until the embryo is fully implanted in the uterus.”⁴²

The contention of the scholars who support the first point is that a foetus is not a person or is still part of the mother and hence cannot be said to have a right to life quite apart from the mother's. The strongest representation of this position is epitomised by Michael Tooley's extreme stance – already discussed at the literature review. Briefly, Tooley states that abortion and infanticide are morally permissible. The main argument he is making to underpin this thesis is the lack of personhood not only of the unborn but also of the infant during the first months after birth. If rationality is what characterises a person, he says, and if to be a person is what ascribes moral standing and the right to life, then abortion and infanticide are morally permissible. What is morally impermissible, he claims, is to inflict pain even to an animal (but this does not mean that an animal has a right to life).

Tooley's point as discussed in Chapter Two is that to be a bearer of rights - in this case, the bearer of right has the right to life - one must have at least the capacity to desire what one has a right to. Moreover, to have this capacity, one must possess the idea of oneself as a continuing subject of experience. Because an infant (and a foetus,

for that matter) does not possess an idea of self as a continuing subject of experience, it cannot have a desire to life. Therefore, neither a foetus nor an infant has a right to life.

At a later stage, Tooley⁴³ modified his argument by changing the link between rights and desires to a link between rights and interests. In other words, to have a right to life one must have an interest in having one's life continued. That interest, however, should not be something momentary. In addition, to have a “nonmonetary interest” one needs a concept of a “continuing mental substance.”

Now, what are the conditions or what is necessary for having a non-monetary interest? Tooley says: “What makes an individual a person ... is the property of being an enduring subject of non-momentary interests.”⁴⁴ He argues that at least three conditions must be met to qualify as an enduring subject of non-momentary interests: (1) one must have the ability of having desires, i.e. states that can be represented in consciousness (not merely behaviour); (2) one must possess the ability of having thoughts about time other than the present; and (3) one must possess and have exercised in relevant ways the concept of self as a continuing subject of mental states. Neither kittens nor foetuses/infants meet these conditions. Therefore, they have no right to life.

In the conclusion of the chapter entitled *The Scientific Evidence: Human Neurophysiological Development*, Tooley concludes that new-borns (and a fortiori foetuses) are no “human persons” because: (1) they show no evidence for a capacity for thought, self-consciousness or rational deliberation; (2) the networks located in the

upper layers of the cerebral cortex, that are thought to underlie higher mental functions are not present at birth; and (3) the bioelectrical changes [necessary for (2)] take place after birth.⁴⁵

This moral position has won some remarkable legal recognition in Europe, particularly in the English law. For instance, in *Paton v. British Pregnancy Advisory Service Trustees*, the court affirmed that “the foetus cannot, in English law have a right of its own at least until it is born and has separate existence from its mother.”⁴⁶

This decision of the court in *Paton's case* was brought before the European Commission on Human Rights. The Commission considered the decision vis-à-vis the provision of Article 2 of the European Commission of Human Rights which states that “Everyone’s” right to life shall be protected by law.” At the end of their considerations they felt that the term “Everyone” applied only to post-natal and that a pre-natal construction of the same will fail.⁴⁷ This view-point received another legal seal in *Winnipeg Child and Family Services v. G*⁴⁸ where the Supreme Court of Canada held that the law does not recognize the unborn child as a legal or judicial person possessing any rights but has always treated the mother and the unborn child as one legal entity.

The second pro-choice argument for abortion based on the status of the foetus states that there is room for abortion in certain conditions. What scholars who advance this view basically claim is that early abortion is permissible, but that it is morally wrong to terminate an advanced pregnancy. Now, one may ask: what is the criterion of moral considerability that tips the balance? On answers to this question, two schools of

thought can be identified. One follows the recommendations of the Warnock Commission and the concept of the pre-embryo (or pro-embryo) with Joseph Donceel's position on delayed animation.

The Warnock Commission, chaired by the Philosopher Baroness Mary Warnock, was created on a request by the British Government to make recommendations concerning the ethical issues resulting from the new advances in reproductive technology. The commission supported the concept of the pre-embryo and the permissibility of the abortion of a pre-embryo.⁴⁹

Contrary to the official position of the Catholic Church (divine command theories) which holds that the soul is infused at the moment of conception, (immediate animation), Donceel, a progressive theologian supports the view of delayed animation.⁵⁰ Donceel's argument rests on the relatively new concept of the pre-embryo (or pro-embryo). Advances in embryology have shown that during the first fourteen days of development a pre-embryo can split and produce identical twins; conversely (although very rarely) twin embryos can fuse (producing a chimera). In other words, before day fourteen the identity or the individuality of the pre-embryo is not definitely established; after the fourteenth day there is an individual. Donceel's point is that a soul cannot be infused before the individuality of the embryo is firmly established. In line with the embryological facts, he concludes that early abortion - that is, of a pre-embryo - is not immoral.

On the whole, both Warnock and Donceel, believe that abortion of a pre-embryo is morally neutral. It follows from this argument that contraceptive' methods such as the

intra-uterine contraceptive device (IUD), the so-called morning after pill, and mifepristone are also morally neutral. The same argument would also allow the disposal of supernumerary embryos produced with in-vitro fertilization (IVF), as well as so-called embryo experimentation.

Another pro-choice thesis defending this second position is the claim that the acquisition of sentience is the criterion of moral considerability. The main advocate of sentience as the criterion of moral standing is L. Wayne Sumner⁵¹, who claims that a pre-sentient embryo/foetus has no right to life and can thus be aborted. The concept of sentience is also used by Peter Singer⁵² as a criterion of moral standing of nonhuman animals. What this position basically claims is that early abortion is permissible, but that it is morally wrong to terminate an advanced pregnancy.

This view-point received legal seal in *Roe v. Wade* where US Supreme Court ruled that: “the state could not forbid to have an abortion during the first three months of pregnancy”⁵³ The court thus legalized abortion-on-demand during the first trimester for the major reason that life does not begin at conception or rather that the foetus does not become a human being until much later in pregnancy. It is from this background that Justice Blackmun writes in *Roe v. Wade*:

We need not resolve the difficult question of when life begins. When those trained in the respective disciplines of medicine, philosophy, and theology are unable to arrive at any consensus, the judiciary, at this point in the development of man’s knowledge, is not in a position to speculate.⁵⁶

The point here as Blackmun clarifies is that the state is not to take one theory of life (most likely, what he has in mind here is divine theory of immediate animation) and force those who do not agree with that theory to subscribe to it. This is also the reason why he again writes in *Roe*, “In view of all this, we do not agree that, by adopting one theory of life, Texas may override the rights of the pregnant woman that are at stake.”⁵⁷ Similarly, in his dissenting opinion in *Webster v. Reproductive Health Services*, Justice Stevens goes even further than Blackmun:

The Missouri Legislature [which said that life begins at conception] may not inject its endorsement of a particular religious tradition in this debate, for ‘the Establishment Clause does not allow public bodies to foment such disagreement.’⁵⁸

Thus, the pro-life proposal that pro-choice women be prohibited from having abortions on the basis that individual human life begins at conception is viewed, not only as a violation of their right to privacy, but as a violation of the separation of church and state as well. Such a separation is supposedly necessary to sustain tolerance in a pluralistic society. As pro-choice advocate Virginia Mollenkott argues, “Women who believe that abortion is murder may never justly be required to have an abortion. Put in the words of a recent bumper-sticker: ‘Don’t like abortion, don’t have one.’”⁵⁹

In approaching an evaluation of these pro-choice arguments on the status of the foetus, we need to recall the central conflicts in the abortion debate. The conflicts as we articulated them consist in the disagreement over the status of the foetus and the question of how to resolve the conflict autonomy between the mother and the foetus.

Recalling this very important point is necessary because we are not out here to examine all the arguments against the pro-choice positions on the status of the foetus. What we intend doing is to assess these arguments according to whether it answers these two questions which we consider central in the abortion impasse.

Now, does the position of the pro-abortionists resolve the central conflicts in the abortion debate as we articulated them in this dissertation? To answer this question, we need to remember that the first pro-choice position denies the personhood of the foetus together with the right to life that goes with. What this implies is that the position rejects the existence of any form of conflicts between the foetus and the mother. The only right that exists is the mother's and she should be allowed to do whatever she likes with it. That people believe there is a conflict of rights between the foetus and the mother is the reason there is debate in the first place. Thus, an outright denial of this conflict makes the position an unworthy candidate in resolving the abortion debate.

Another important reason, although less central to our dissertation here, why the claim by pro-abortionists should be rejected is that it is counterintuitive and leads to absurd positions which no moral person would be ready to accept in practical life. Take for instance, the allowance that foetuses can be killed because they lack certain features observable in adults will by extension also legitimize the killing of infants since they too do not possess the said features (reasoning for example). As we have seen, this is actually the conclusion that scholars like Michael Tooley have come to and one begins to wonder what Tooley and his disciples think that society that makes law allowing

mothers to kill their infants will look like. By and large, the position sounds repulsive and at odds with common-sense morality,

The second pro-choice argument on the status of the foetus when considered from the standard of measurement already explained does not fair better either. For example, the position assumes two stages of intrauterine life: 1) pre-sentience or pre-individuality; and 2) post-sentience or individuality/personhood. During phase 1 abortion is permissible, whereas during phase 2, abortion is impermissible. During the gray area of dubious sentience the unborn is potentially sentient; after the pre-embryonic stage, the embryo/foetus is a potential person.

It is not only true that this position fail to convincingly address the mother-foetus autonomy conflict it also failed woefully to address the question that concerns the status of the foetus. Now, the underlining question this position tries to address is this: when does pain or reasoning begin? We can ask in this regards: what do we really know about the ability of an embryo/foetus to feel pain or to reason? Paraphrasing Thomas Nagel's famous "What is it like to be a bat?" (The difficulty if not the impossibility to know and to understand what other people really feel like), one may ask the question: "What is it like to be an embryo or a foetus?"

Particularly, the morality of abortion based on sentience not only assumes that from a certain stage, the foetus is sentient, but also that abortion inflicts pain to the foetus. This might well be a mere assumption, in need of scientific backup. Who of us recalls how painful it was to be squeezed through our mother's birth canal? If birth were so painful for the foetus (we surely know that it is for women), and if infliction of pain is

always morally wrong, would there not be a moral obligation to deliver all foetuses by Caesarean section? But that would sound not only impossible but also outrageous. Similarly labour wards where pain relief is not administered systematically to all parturient would be staffed by immoral midwives and obstetricians. For utilitarians, pleasure has to be maximised and suffering has to be minimised; and, every one counts for one and the same in the hedonic calculus. One might wonder why, in the utilitarian morality of abortion, only the foetus' pain (whatever that could be) seems to count in the hedonic calculus. The balance call for the avoidance of pain, women should be legally banned from having children until such a time that society finds means of delivery devoid of pain.

4.2.2. Arguments from the Mother's Right to Self-determination and Health

Beside the argument on the status of the foetus, another fundamental area pro-choicers anchor on to make their case for abortion is the mother's right to autonomy. The argument as it is usually formulated is that even if it is eventually established that the foetus is a human being and thus has a right to life that still does not nullify the mother's right of self-determination which allows her to do with her body whatever she wants. Seen in this light, abortion becomes an issue not of killing a human being but simply of not allowing a human being to make use of another's property in this case the mother's womb. Among scholars who subscribe to this argument, two trends can be identified. (1) Scholars who accord the right to life to the foetus but still insist that the mother's rights to self-determination and health triumph such right (2) Scholars who hold that there is no conflict of rights because the right of the foetus is subsumed within the right of the mother

An instance of the first case is a situation in which pregnancy threatens the mother's life and abortion becomes an option in order to save the life of the mother. Pro-abortionists hold that even direct abortion is not only reasonable but necessary when the pregnant woman is very ill and her life is in a serious danger due to her pregnancy. In a situation like this according to pro-abortionists, the human conception in the womb is an unjust aggressor and it is therefore morally justified that the mother should in self-defence have the pregnancy terminated.⁶⁰

A second practical instantiation of the first argument see abortion as a sign of maturity. According to this argument, for woman to be a full adult in the moral sense, not only does she have a right to bodily integrity but also to make and keep commitments. She has to determine her own life because if she does not, she is not capable of keeping prior and present commitments, and of making future ones, particularly in the areas of family, work and education. A right to abortion is integral to a woman's adult, mature responsibility and autonomy.⁶¹

A third example often used by pro-abortionists to buttress this first position is rape or incest. Before anything, it has to be observed that woman who becomes pregnant due to an act of either rape or incest is the victim of a horribly violent and morally reprehensible crime. Bioethicist Andrew Varga summarizes the argument from rape and incest in the following way:

It is argued that in these tragic cases the great value of the mental health of a woman who becomes pregnant as a result of rape or incest can best be safe-guarded by abortion. It is also said that a pregnancy caused by rape or incest is the result of a grave injustice and that the

victim should not be obliged to carry the fetus to viability. This would keep reminding her for nine months of the violence committed against her and would just increase her mental anguish. It is reasoned that the value of the woman's mental health is greater than the value of the fetus. In addition, it is maintained that the fetus is an aggressor against the woman's integrity and personal life; it is only just and morally defensible to repel an aggressor even by killing him if that is the only way to defend personal and human values. It is concluded, then, that abortion is justified in these cases.⁶²

The argument here then is that no woman should be compelled to endure unwanted pregnancy resulting from rape. To carry the child of a man who raped her is not just a violation of a woman's autonomy but also the greatest agony a woman can be made to go through. She is likely to live the rest of her life in fear of her sexual freedom being violated by an unwanted person. In order to rid herself of such memory and psychological torture, she would most likely prefer to terminate the pregnancy resulting from such relationship. The contention is that if this is not done, the continuous carrying of the pregnancy will continue to hunt the woman. In fact there are many practical cases to support the girls who are involved in such unfortunate conditions fear that if they fail to procure abortion, a child from such relationship would grow to become a serious maniac like his father. How does she show love to this child as an ideal mother should? This is really difficult to imagine and she should be spared of this, the argument usually goes.

As observed in Chapter Two, the foremost advocate of this first position is J. Thomson. In "A Defense of Abortion", Thomson grants for the sake of argument that

the foetus has a right to life, but defends the permissibility of abortion by appeal to the mother's right to self-determination. Employing her famous 'Violinist thought experiment', Thomson says, that abortion does not violate the foetus's legitimate rights, but merely deprives the foetus of something, the use of the pregnant woman's body and life-support functions to which it has no right. Thus, by choosing to terminate her pregnancy, a woman does not violate any moral obligation; rather, a woman who carries her pregnancy to term is a "Good Samaritan" who goes beyond her obligations.⁶³

Thomson criticizes the common method of deducing a woman's right to abort from the permissibility of a third party committing the abortion. In almost all instances, a woman's right to abortion may hinge on the doctor's willingness to perform it. If the doctor refuses, then the woman is denied her right. To base the woman's right on the accordance or refusal of a doctor, she says, is to ignore the mother's full personhood, and subsequently, her rights to her body. Thomson presents the hypothetical example of the 'expanding child:

Suppose you find yourself trapped in a tiny house with a growing child. I mean a very tiny house, and a rapidly growing child, you are already up against the wall of the house and in a few minutes you'll be crushed to death. The child on the other hand won't be crushed to death; if nothing is done to stop him from growing he'll be hurt, but in the end he'll simply burst open the house and walk out a free man.⁶⁴

Thomson concedes that a third party indeed cannot make the choice to kill either the person being crushed or the child. However, this does not mean that the person being crushed cannot act in self-defence and attack the child to save his or her own life. To

liken this to pregnancy, the mother can be thought to be the house, the foetus the growing-child. In such a case, the mother's life is being threatened, and the foetus is the one who threatens it. Because for no reason should the mother's life be threatened, and also for no reason is the foetus threatening it, both are innocent, and thus no third party can intervene. But, Thomson says, the person threatened can intervene, by which justification a mother can rightfully abort.

Continuing, Thomson returns to the 'expanding child' example and points out:

For what we have to keep in mind is that the mother and the unborn child are not like two tenants in a small house, which has, by unfortunate mistake, been rented to both: the mother owns the house. The fact that she does adds to the offensiveness of deducing that the mother can do nothing from the supposition that third parties can do nothing. But it does more than this: it casts a bright light on the supposition that third parties can do nothing.⁶⁵

If we say that no one may help the mother obtain an abortion, we fail to acknowledge the mother's right over her body (or property). Thomson says that we are not personally obligated to help the mother but this does not rule out the possibility that someone else may act. As Thomson reminds, the house belongs to the mother; similarly, the body which holds a foetus also belongs to the mother.⁶⁶

Similar version of Thompson's argument has also been offered by Block's in what he calls the theory of eviction. According to this theory a foetus can be aborted only if it is not killed as a result (provided that it is a genuine medical possibility). Block claims to derive such a conclusion from the libertarian axiom of non-aggression, which prohibits harming other human beings (even those not yet conscious of their

humanity), but allows for forcible removal of trespassers from one's private property (in this case the woman's womb).⁶⁷

In line with the contention of those scholars who insist that there is no conflict between the mother's right to self-determination and the fetus right to life, Block denies that the voluntariness of the pregnancy obliges the woman to carry the fetus to term. According to him, such an obligation could stem only from being an implicit contract between the two, and Block denies the existence of any such contract on the ground that one cannot consent (even implicitly) to any decision made before one came into being. Thus, he contends that the only valid reason for obliging the mother to carry out the pregnancy could stem from the existence of a relevant positive right (e.g., foetus's right to life), which is a notion incompatible with libertarian ethics.⁶⁸

Curiously enough, as indicated in the first paragraph, Block also asserts that lethally aborting the foetus counts as a murder only given the existence of non-lethal ways of performing abortion, but does not so count if no such methods are available. This in itself seems to undermine Block's proposal, since it appears to introduce an arbitrary complication into the principle of non-aggression—after all, if evicting a trespasser is a right of every human being, and one should not be thought of as responsible for what happens to the trespasser after he is evicted, then why should the moral evaluation of the act of eviction depend on what eviction options are available and on which of them is applied to the trespasser?

By and large, the case this second argument makes is that any attempts to force women into a legal corner concerning their decisions during pregnancy must be

avoided. Arguing purely from autonomy-based rights, the woman and only the woman is a rights bearer in these situations. There is no other legal person in existence and nobody else who can consent on the competent woman's behalf. She and she alone is custodian of her physical integrity. The woman has no autonomy-based obligation to the foetus because the foetus is not a person and cannot be thought to possess subjective interest. So if we do not concede that the foetus is a person, then we own it no duties and obligations, even if we may offer it some respect.

In spite of whatever form it appears, the bulwark of the arguments we examined here is that the mother's autonomy is the central question in the abortion debate and in other to respect that the mother should be allowed to abort. However, if respect for autonomy is a basic tenet or is the basic tenet of pro-choicers (and there is no reason to disagree with the importance of autonomy), it does not solve anything in the abortion debate. If the embryo/foetus is autonomous and has an inalienable right to life, the pregnant woman equally possesses inalienable autonomy and the right to life. Since abortion has been medicalised, it can also conflict with the health care provider's autonomy (conscientious objection). Since men are responsible for impregnating women, they should be part of the decision-making process and share the responsibility. This adds up to four autonomies to be reconciled, or, at least, to be taken into consideration. This is a conundrum that pro-choicers cannot solve.

4.2.3. Utilitarian Arguments

The third set of arguments used by abortion advocates to justify their support for abortion are utilitarian in nature. Consequently, before accessing these arguments, let

us first familiarize ourselves with the meaning of utilitarianism. An understanding of utilitarianism however, requires an insight into the meaning of consequentialism, an umbrella theory that encompasses both utilitarianism and other consequentialist theories. Thus, we shall begin our journey into utilitarianism from consequentialism.

As the word implies, consequentialism is a label affixed to theories holding that actions are right or wrong according to the balance of their good or bad consequences. To buttress this meaning T. L. Beauchamp & J. F. Childress explain that for the consequentialists the right act in any circumstance is the one that produces the best overall result, as determined from an impersonal perspective that gives equal weight to the interests of each affected party. According to them, consequentialism "...is the belief that what ultimately matters in evaluating or judging actions or policies of action are the consequences that result from choosing one action or policy rather than the alternative."⁶⁹ In other words, in deciding the morality of actions, those actions that produce good, positive or desirable results are adjudged moral whereas those that produce negative or undesirable results are adjudged immoral.

Seen as a subset of consequentialism, utilitarianism posits that all action should be directed toward achieving the greatest utility for the greatest number of people. It follows therefore that utilitarianism is an ethical doctrine that the moral worth of an action is solely determined by its contribution to overall utility. This philosophy judges everything in terms of its utility or usefulness. The basic tenet of utilitarianism and therefore the scale on which the morality of every action is measured is the moral imperative to avoid harm or pain. Thus, according to utilitarianism, pains are the

greatest evil and pleasure the greatest good. We should minimize pain and maximize pleasure for the greatest number.⁷⁰

However, in S. E. Stumpf's articulation, for utilitarian's, causing pain can only be morally justified if it is the only means to bring about a greater good. This is still in consonance with the "greatest happiness principle" according to which actions are right in proportion as they tend to promote happiness and wrong as they tend to produce the reverse of happiness. "By happiness are intended pleasure, and the absence of pain; by unhappiness, pain, and the privation of pleasure."⁷¹ The point Stumpf makes in this quotation buttresses what we underscored our explanation on consequentialism according to which consequences is the basis for judging the morality of actions. Hence, while action may involve pain, the action is still considered moral if the pleasure of its utility outweighs the pain used in procuring the pleasure.

When applied to the abortion debate, utilitarianism is concerned with the amounts of pleasure and pain in situations where abortion is permitted as contrasted with the amounts of pleasure and pain where it is forbidden. As in the case with many issues in the utilitarian system, the rightness or wrongness of abortion turns mainly not on the mother or the foetus directly affected by the act, but on the less direct effects on the community at large. That is, the issue of abortion within a utilitarian consideration is stripped of the language of 'rights' and emotional sway over 'murdering babies', to the question of the desirability of the overall impact of abortion on the population.

Usually, the abortion arguments within the utilitarian framework are coined around two subheadings. The first consists in using the difficulty involved in implementing anti-abortion laws and the attendant health hazard of illegal abortion to argue for permissive abortion laws. The second justifies its call for the liberalization of abortion laws on grounds of the direct benefits of abortion to society.

In sum, advocates of the first position, contend that restrictive abortion law does not stop women who are determined to procure abortion from doing so. What it does is that it drives them to seek backstreets or illegal abortions in the hands of quacks and since these abortions are performed by non-experts the women either lose their lives or have their reproductive health permanently impaired in the process. The case here is that to stop or at least reduce the high maternal mortality associated with illegal abortion, abortion should be legalized. Legalization will make experts and adequate healthcare provision available for women who would wish to abort and hence reduce the deaths associated with illegal abortion.

In Chapter One of this dissertation we observed that there are two rival positions in Nigeria on the abortion debate. The first group led by the Catholic Church as we explained is anti-abortion. The group holds that abortion is murder and concludes from there that something as immoral as murder should not be given legal approval by the state.

The second group supported mainly by some healthcare professionals, feminists and human right activists attribute the high maternal mortality in Nigeria to its restrictive abortion law. From this, the group argues that a liberal abortion law would be in the

best interest of Nigeria, since it would save the lives of many mothers and would-be mothers who die in their numbers in the hands of quacks through illegal abortion. The utilitarian argument of this group can be formulated as follows. The purposes of anti-abortion legislations are to prevent abortion, on one hand and through that on the other hand, procure a greater good or utility for society (the greater utility here would mean protecting the lives of the mother and the foetus instead of sacrificing any of them through abortion). Nigeria has an anti-abortion legislation but in spite of that women who want abortion are still having their way and because the abortions in most cases are carried out by quacks many of these women lose their lives in the process. Consequently, the Nigerian anti-abortion legislation is ineffective in two ways: first, it does not stop abortion from occurring; second, it leads to avoidable deaths (possibly, the deaths of both the mother and the foetus). Therefore, there are more utility in liberal abortion legislation. Abortion should thus be legalized in Nigeria.

The bottom line in this argument is that the pain the restrictive abortion legislation causes Nigerians by far outweighs its pleasure/benefits and this when assessed within the utilitarian calculus means that abortion should be legalized or at least liberalized.

One scholar who defends this position very forcefully has been Kennedy Ilobinso. In a very personal illustration, Kennedy argues that he has seen many women risk their health and life in order to get abortion in countries where abortion is against the law. According to him, "Every day, approximately 186 women die around the world due to complications from unsafe abortion; many of these deaths are in countries where access to abortion is legally restricted."⁷² The highpoint of Kennedy's argument is

where he argues that restrictive abortion legislation does not stop women who are determined to get abortion from doing so. He contends:

The legal restrictions of abortion do not mean that abortion does not happen; it simply is driven underground and becomes more dangerous, that is to say, that despite all these legal restrictions and prohibitions of abortion, women still seek for abortion, and when abortion is illegal it is more likely to be unsafe and harmful to women's health, lives, families, and communities.⁷³

Now, if Kennedy is asked his opinion on what he thinks should be the solution to the abortion conflict in Nigeria. Looking at his delineation above, your guess is as good as ours on what his answers would be. And this is exactly what he does when he turns his attention to the restrictive abortion laws in the Nigeria.

As one who accepts utilitarianism as a valid ethical theory, Kennedy begins his assessment of the abortion controversy in Nigerian with an initial acceptance of utility as an appropriate moral principle for the resolution of the problem. "I... hold the view that the utility principle will be most applicable to the policy of abortion laws in Nigeria."⁷⁴

He follows this up by laying out how the principle of utility can be applied in examining the situation.

If the applicability of the utility principle in the Nigerian policy of abortion laws will increase the greater happiness, for the greater numbers, and decreases the pains which the Nigerian populace are passing through due to the restrictive nature of the abortion laws, then utility will favour legalization of abortion in Nigeria, otherwise it will not nod for it.⁷⁵

According to Kennedy, since utilitarianism in general is based on the empirical evidence that supports the widespread happiness of many, and looking at the situation of induced abortions in Nigeria, “it is my view that legalisation of abortion in Nigeria will be highly important, as that could be of value in reducing abortion associated maternal mortality in country.” Kennedy then makes bold to clarify why he thinks that a liberal abortion laws will be better than the present restrictive abortion law in the country.

My recommendation for liberalization of abortion laws in Nigeria stems from a utilitarianism standpoint. When using the utilitarianism consequential principle of ethics, we establish a set of general morals and rules in which we can apply to every moral question based upon our utilitarian findings. When this is applied to abortion, we can see that abortion is a completely ethical entity that provides the greatest amount of happiness for the greatest amount of people.⁷⁶

As already observed, the second utilitarian arguments, justifies its call for the liberalization of abortion laws on grounds of the direct benefits of abortion or liberal abortion laws to society. The contention here involves the arguments that abortion is directly a means of population control and indirectly, a method of controlling or eliminating crime. Encapsulated in this position is the economic theory that assumes that there is a necessary connection between Overpopulation, the economy of a nation and crime. As the populations of countries around the world grow, there is bound to be commensurate reduction in the per-capita income of families, especially for families in poorer countries. This in turn affects the number of persons or children a family can sustain. Now, sexual activity is not something always easy to control. Since people in normal circumstances almost always engage in sexual activity and

contraceptives are not sure guarantee against conception, humanity is faced with two options: overpopulation or abortion.

In a country like Nigeria where the second option (abortion) is rejected, overpopulation becomes the available alternative. The consequence of this is that families give birth to the number of children they cannot take care of. Because these children don't get good parental care which is necessary for early childhood upbringing and good education that they require to become responsible members of the society, they turn out to become criminals and other social misfits. The process continues as a particular generation of these social misfits will also give birth to another generation of criminals and social misfits. However, if abortion is legalized, it will help to cut the population to reasonable size which the available resources can take care of. This will in turn reduce or eliminate the number of would-be criminals or social misfits. By and large, the argument of the proponents of this position is that abortion helps to reduce or make society crime free.

In May 2001, researchers John J. Donohue III and Steven D. Levitt came to the provocative conclusion that “legalizing abortion in the early 1970s eliminated many of the potential criminals of the 1990s.”⁷⁷ Their study, “The Impact of Legalized Abortion on Crime,” was published in Harvard’s prestigious *Quarterly Journal of Economics* and its conclusion rests upon the premise that abortion is a remedy to the problem of unwanted children. According to the study’s authors, the Supreme Court’s *Roe v. Wade* decision in 1973 legalizing abortion may be saving “on the order of \$30 billion annually.”⁷⁸

With detailed statistics and tables, Donahue and Levitt correlate the sheer number of American abortions with the dramatic drop in crime some eighteen years after *Roe v. Wade*. Referred to as a "pariah theory" in a *New York Times* headline, the study argues that the disproportionate abortion rates among teenagers, unmarried women, and African-Americans are directly linked to a tremendous drop in crime.⁷⁹ These women, they argue, are more at risk of having children, pariahs, who would grow up to engage in criminal activity. With legalized abortion eliminating these bad apples, fewer criminals are around twenty years later to steal BMWs, slash their tires, or sell crack to their owners.

The theory as already hinted is based on a kind of statistical racial profiling: children born to disadvantaged women have "poor life prospects," tend to spend their childhood in an unending poverty, and are "resented" and "unwanted." The authors cite studies that indicate many of these children grow up unloved and fatherless, and tend not to be held, breastfed, rocked or nurtured by their mothers. These factors place a young child at risk to become a habitual criminal or violent crime offender. In short: poor minority families are the seedbed of criminality. Thus, according to Donahue and Levitt, the most significant risk factor for criminal behaviour is being "unwanted." With a formulaic $B < 0$ to indicate an unwanted baby, they argue it was the disproportionate elimination of unwanted foetuses that caused the unexpected windfall in reduced crime.⁸⁰

The most disturbing part of the Donohue-Levitt study is their contrast between states with the lowest and the states with the highest abortion rates. Some states may have

missed out on the unforeseen benefit of reduced crime because their abortion rates were the lowest: murders in these states increased by 16.9%. States with the *highest* abortion rates, however, saw murder rates plummet by 31.5%. The data suggests that no matter what other poverty programs are in place to assist the poor and reduce crime, the sheer number of abortions dwarfs all other factors.

Some points are obvious from the arguments of those who support abortion on utilitarian grounds. They believe that the morality of abortion should not be measured by any form of intrinsic value, such as the dignity of human life or man being created in the image of God but basically by the overall impact of abortion has on the society. It is also their opinion that the utility (measured in terms of pleasure and pain) of abortion on the society outweighs its disadvantages. It is from this locus that they call for the legalisation or liberation of abortion laws.

It is obvious but needs to be reemphasized that pro-choice utilitarian arguments do not succeed in addressing the two questions that we consider very central to the abortion debate in this dissertation. The contentions that abortion law cannot be completely enforced, that some women die when they embark on illegal abortion, or that liberal abortion laws can be used to control overpopulation and crime does not address the question on the status of the foetus neither does it respond to the mother-foetus right dichotomy or address why abortion is considered a moral issue in the first place.

In addition, arguments from utilitarianism totally beg the question, because they assume that the unborn are not fully human. If the unborn are fully human, this argument is tantamount to saying that, since people will murder other people anyway,

we ought to make it safe and legal for them to do so. But murder is never justified, even if there are social difficulties in forbidding it. Second, “A reasonable estimate for the actual number of criminal abortions per year in the pre-legalization era [prior to 1967] would be from a low of 39,000 (1950) to a high of 210,000 (1961) and a mean of 98,000 per year.”⁸¹ Contrasting this with the fact that there have been an average of 1.5 million abortions per year since 1973, one can only conclude that the pre-*Roe* anti-abortion laws were quite effective in limiting the number of abortions.

Now if the pro-choice advocate claims that a law cannot stop all abortions, he or she makes a trivial claim, for this is true of all laws which forbid illegal acts. For example, even though both hiring paid assassins and purchasing child pornography are illegal, some people remain undaunted and pursue them illegally. But there is no doubt that their illegality does hinder a vast number of citizens from obtaining them. Should we then legalize child pornography and the hit-man profession because we can’t stop all people from obtaining such “goods” and “services”? Such reasoning is absurd.

In the final analysis, pro-abortionists, starting from those who argue for the non-personhood of the foetus through those who insist on the mother’s right to personal autonomy or self-determination to those who endorse the utilitarian advantages of abortion over its disadvantages, the common ground for all these positions is that abortion is not or is not total immoral and therefore should not be completely outlawed. In time, we will devote some more space to a closer examination of these arguments, for the meantime however, let us turn over to the arguments of pro-lifers.

4.3. Anti-abortion Arguments

The approach usually adopted by many scholars in presenting the abortion debate is to delineate the arguments from a particular group, pro-choicers for example and then sequentially use the arguments of their opponents, pro-lifers to evaluate the validity of the later's position. That pattern is not followed in our presentation here. In practical terms, what this means is that having presented the arguments from the pro-abortion camp in the previous section, the present section will present the arguments from the anti-abortion camp without antagonising the two groups except where juxtaposition is necessary for clarification. Using this approach here is helpful because it will enable us to examine these arguments based on their individual merits not polemically.

4.3.1. Arguments from the Status of the Foetus

Once again, we need to remind ourselves that the nucleus of the conflict between pro-abortionists and anti-abortionists on the status of the foetus bothers on answering the question: when does life actually begins? As we have seen, the substantive position of the pro-choice movement is that life does not begin at conception. It starts much later, and since so, aborting before this crucial moment when life begins is permissible. The pro-life movement on the other hand, holds that life begins at conception. For them, it follows therefore, that any wilful action taken by a woman from the moment she is aware that she is pregnant amounts to murder and hence immoral.

Many pro-lifers have dwelt extensively on evidence from science to make their case that life begins at conception. J. Mat presented the following argument:

Pro-life and pro-choice advocates both seem to genuinely believe they are acting ethically. How can this be? I believe the question really boils down to how an

individual views human life. Before I explain this, however, let me first dispel the common misconception that we somehow “don’t know exactly when life begins”. This is an outright falsehood. Any honest, thinking person who defends abortion will immediately concede that life begins at conception. Science answered that question a long time ago (for confirmation, just open any embryology textbook). Those who claim that a fetus is “only a clump of cells” overlook the fact that all of us are really just clumps of cells.⁸²

However, this is not all. The question of why it is basically wrong to kill a human being which is more fundamental than the question of when life begins is still unanswered. For example, admitted that human life begins at conception but humans are not the only beings that have life, animals do as well. Why is it right to kill a cow but wrong to kill a human being?

Pro-lifers generally address the question of why it is wrong to kill human beings with their Principle of Sanctity of Life (PSL). According to Ronald Dworkin, the PSL is at the heart of the conflict between staunch pro-lifers and liberal pro-choicers. The reason of the conflict is that for the pro-lifers abortion violates the PSL - this is what he calls the detached objection to abortion. Life is sacrosanct. End of the discussion.⁴¹

There are two different arguments supporting the PSL: the argument from association and the argument from history. Examples of the PSL by association would be that of the *Osu* Cast system in traditional Igbo society and the sacred cows in India; the lives of the *Osu people* and the cows are valued because they are associated with certain divinities. The basic argument which associated in use over the centuries to condemn killing which has been used in recent times against abortion is the *imago Dei* argument. The contention is that human life is sacred because man is the image of

God. The foetus in the mother's womb, from the moment of conception bears this image in no less degree than the adult and therefore he or she has the right to life as much as the adult. Protecting the right of the foetus to life is as much the responsibility of the society as much as that of the adult. J. Mat states this as it is seen by pro-lifers:

This is why those of us on the pro-life side of the argument often speak in terms of the sanctity of human life rather than the happiness of human life. What does this mean? It means that we view all human life as having God-given value and certain inalienable rights – from the moment of conception to the moment of death. A life is valuable because it is created in the image of God – not because it possesses certain physical, mental, or emotional abilities...and not because it enjoys more total “happiness” than “unhappiness”.⁸³

The argument from history derives either from the Divine Command theory or from the Natural Law theory. The basic claim of the Divine Command theorists is that a soul is infused at the time of conception; therefore, human life is sacrosanct from the time of conception. No exception should ever be tolerated. This is the expression of God's will. It has to be observed also that the divine command theory has its root in the Judeo-Christian “thou shall not kill” maxism.

The position of the Natural Law theorists is a secular variation on the Divine Command Theory: thou shall not kill. What nature has endowed with life is to be respected and allowed to follow its course. Natural Law stands above and apart from the activities of human lawmakers; it constitutes an objective set of principles that can be discovered by the use of reason.⁸⁴

Other versions of pro-life arguments demonstrating that fetuses are human beings and therefore must not be aborted have their roots on the theories we have described above. For example, Don Marquis' potentiality argument which contends that abortion is wrong because it robs someone of a "future like ours"⁸⁵, still requires a justification of why human life is sacred in the first place. In the same manner, the arguments from essence and substance from Peter Kreeft⁸⁶ and J. P. Moreland⁸⁷ respectively, attempts to answer the question on when human life begins but does not say why it is morally reprehensible to kill a human being.

Be that as it may, the central claim of anti-abortionist in relation to the status of the foetus is not just that life begins at conception but also that life is sacrosanct because it has a special origin or association which endows it with sanctity and dignity. This sanctity is what makes killing a human being morally wrong at every stage of his development. In a telling elegance, J. Mat juxtaposes this position with utilitarian pro-choice argument:

In order to rationally justify the practice of abortion, a person must first accept the existentialist notion that human life is devoid of *objective meaning* (meaning derived from a Higher Source – not to be confused with *subjective meaning* derived from oneself). This philosophy then makes it possible for a person to embrace utilitarianism – a brand of ethics that seeks to maximize the overall level of "happiness" in the world. Following utilitarianism to its logical conclusion, one can then successfully argue that abortion is ethically justifiable. The aborted child doesn't enter the world to experience happiness or unhappiness, and the life of the woman with the pregnancy is made more "happy" (just for the sake of argument here) by not having to raise or support an unwanted child.⁸⁸

As with pro-choice arguments on the status of the foetus, the positions of the pro-life advocates do not address the central questions in the abortion debate. Specifically, pro-lifers in a bid to protect the right to life of the foetus fail to recognize that the mother also has right that must be protected. In other words, their either-or position leads to a dead-end that the argument itself cannot resolve.

Furthermore, One of the main difficulties with the Divine Command position is the fact that a theological premise (the infusion of a soul) is supposed to lead to a general moral conclusion (an ensouled entity is sacrosanct). The validity of an argument depends on whether the premise(s) is/are true. Since, as Curzer writes, “we have nothing like a soul detector”⁸⁹, without a leap of faith the premise cannot be substantiated. Although there should be room, understanding, and tolerance for theologically inspired worldviews, the Divine Command theory is convincing only for those who believe in the existence of the God given soul. Nevertheless, as we observed above, even among those who believe in the soul new perspectives are currently defended. While the current official position and teaching of the Roman Catholic Church still sticks strictly to the Divine Command theory, progressive theologians like Joseph Donceel however, support the view of the so-called delayed animation (as opposed to the doctrine of immediate animation).

Natural Law theorists are mainly concerned with the sanctity of human life. Some of their arguments are, for instance, that a fertilised human egg is human because it has a complete and specifically human genetic equipment, or that since the time of conception the fertilised egg is alive.⁹⁰ No one would really argue seriously against the

claim that a human embryo (or zygote for that matter) is both human and alive, and that it has a human genome. These are plain biological facts. Conversely one could, however, argue (for argument sake) whether chromosomal abnormalities (missing or additional chromosomes) deprives an entity from humanity in the same way as we deny apes humanity (their genetic equipment is extremely close to that of humans).

What really matters is, first, whether to be a zygote/pre-embryo/embryo is enough to possess moral standing, and, second, whether one should ascribe moral standing only to the species *Homo sapiens*. Animal rights activists have a serious moral objection against speciesism. The moral considerability of a zygote remains a matter of ongoing debate. The last word has not yet been said in reproductive technology, and the related moral issues surrounding it are cropping up every day. A clear example of the complexity of the ethics of reproduction and of the ascription of a clear-cut moral weight to a pre-embryo is that moral philosophers with a more or less strong pro-life inclination choose the middle-of-the-road argument from potentiality to ascribe moral standing to the unborn. It is not in virtue of what the zygote/pre-embryo/embryo proper/foetus is now (because at the early stages it is just a cell or a cluster of cells that, if circumstances permit, will one day become a person) that it deserves moral consideration, but rather in virtue of what it has the potential to become. However, one could argue and ask whether a frozen human embryo has a potential unless it is implanted in a woman's uterus; if not implanted a frozen embryo will ultimately be discarded, unless its stem cells are utilised (the only alternative potentiality).

4.3.2. Need to be Responsible

Pro-lifers also argue that keeping and bringing a pregnancy to terms in itself is a way of owning-up or showing responsibility for one's actions. The argument here is that any woman engaging in sex should bear in mind that sexual activity can result to pregnancy. If in spite of this awareness, the woman still goes ahead to indulge in sexual activity, the woman should bear the consequence of her action by undergoing the pregnancy and the labour. According to pro-lifers, to abort the child is dodging the responsibility of her actions and meting out capital punishment on the innocent child. To abort in this condition becomes an act of cowardice, selfishness and irresponsibility.

A high profile proponent of this position is J. Mat. He articulates his position on this as follows:

When people ask me why I'm not pro-choice, I respond by saying I AM pro-choice: I support a woman's right to choose whether or not to get pregnant. Sex isn't a biological necessity, and abstinence is a 100% fool proof way to avoid pregnancy. I support a woman's right to make this choice. When a woman chooses to become sexually active – regardless of the type of birth control being used (if any) – she does so with the knowledge that this behaviour might result in pregnancy.⁹¹

This according to Mat is where personal responsibility comes into play. He was insistent that when a woman engages in sexual activity, she ought to be held morally and legally responsible for protecting the life of her child in the event that a pregnancy occurs. He as well believes that a man who engages in sexual activity ought to be held responsible in a similar manner “(ideally by helping to raise the child as a father...but

at the very least, by being held financially accountable for the child).” In summary, Mat’s argument consist in this:

But when a man and a woman engage in irresponsible, recreational sex...they shouldn’t be allowed to decide that they don’t want to “keep the baby”. If two adults make poor decisions, the solution isn’t to murder an innocent child.⁹²

As the arguments from the need for responsibility does not address the fundamental problems of the abortion impasse, we shall not be detained here evaluating. We naturally assume that our points in the previous subheading adequately apply to this subheading as well.

4.3.3. Utilitarian Arguments

Although, anti-abortion arguments are in the main valued-based or deontological in nature nevertheless, sometimes in order to meet their opponents on their own grounds, pro-lifers also adopt utilitarian reasoning to demonstrate the immorality of abortion. The arguments generally use either the negative impacts of allowing or the positive outcomes of disallowing abortion on individuals and society to support their call for anti-abortion legislation.

One of such negative arguments is that abortion procedures, especially the surgical ones, no matter how safe we wish to claim that technology has made them still poses some degree of real danger to the mother’s health and life. According to Ekwutosi some of these risks include, “a perforated uterus, perforated bowel, sterility, and death.” He maintains that:

The risk of complication can increase depending on how far pregnancy has progressed. The risk is also dependent upon the skill and experience of the practitioner; maternal age, health, pre-existing conditions, methods and instruments used, medications used; the skill and experience of those assisting the practitioner and quality of recovery and follow-up care.⁹³

Although, Ekwutosi is ready to concede that:

In some societies where abortion is illegal the risks are even higher due to quack and unsafe method used. Unsafe abortion methods (e.g. use of certain drugs, herbs, or insertion of non-surgical objects in the uterus) are potentially dangerous, carrying a significantly elevated risk for permanent injury or death, as compared to abortion done by professionals.⁹⁴

The point he particularly intends to underline is that abortion is never free from risks.

In that regards, he argues that it is safer and more beneficial to women and society if abortion is avoided altogether.

Louise-Kennedy also makes similar point when he argues that:

Induced abortion involves risks. Repeated abortion by dilation and curettage for instance, weakens and damages the cervix. This often leads to premature delivery or spontaneous abortion in subsequent pregnancies. Again, the cavity of the uterus may be damaged leading to the formation of scar tissue and consequently secondary infertility. Even when the abortion is procured by suction, the womb may be displace from its natural position. When the womb is not in its proper position, conception may take place in the fallopian tube but the zygote cannot be nourished by the wall of the uterus. As a result of this, the zygote dies away. In some women, frequent abdominal pain occurs. Abdominal pains are not conducive for pregnancy and miscarriage may occur. In the case of some young girls it is even worst. Some of them also suffers from psychological disturbances and attracts aspersions to themselves. Not only do the moral consequences of their

act weight them down, their social relationship too is marred. They may need good counselling and other kinds of asylum, confidence and self-esteem.⁹⁵

Another utilitarian reason pro-lifers use to justify their anti-abortion stance is that granted that pregnancy can be very burdensome, however, there are good alternatives short of abortion that can take care of unwanted pregnancy. Analyzing this position, Ekwutosi explains that a woman put in the family way through rape etc. who feels it would be difficult for her to show love to the child or a mother who feels she has many children and therefore does not want to have the child, should hand it over for adoption or to motherless homes instead of aborting it. His reason for advocating this alternative is that there are many childless couples willing to adopt children.

Now the overall logic underpinning this advocacy lies in the utilitarian principle that emphasizes the primacy of utility. Going back to Ekwutosi's contention above, if the child is adopted instead of aborted, the child whose life is spared, the mother, who is saved from the moral and psychological burden of abortion, the childless couple who adopt the child and the society itself stand to gain much more than it would have if the child is aborted. Considering these utilitarian categories within the framework of utility calculus, the average pro-lifer believes that it is more beneficial to society as well as individuals to disallow abortion. On the whole, pro-life-utilitarian arguments like all arguments by pro-lifers aim at a single purpose: to rationally explain the immorality of abortion and hence explain why it should not be permitted.

As noted at the beginning of this dissertation, the dominant group on the abortion debate in Nigeria is the pro-life advocates. The group has on many occasions gone on

activism to protests and condemn attempts—whether real or rumoured—by the state to legalization of abortion. Their latest actions as at the time of writing this dissertation is the condemnation and protests that trail the rumours that Rochas Okorochoa, the Executive Governor of Imo State has legalized abortion. Whether the rumour is true or false, this researcher cannot verify. What is evident is that at a point the protests and condemnation becomes too unbearable that the Governor himself had to come out to debunk the rumour and to tell the enraged Christian community, especially Catholics that there was no element of truth in the alleged abortion legislation in the State.⁹⁶

However, in the end, the ethical dilemma of abortion hinges on two main issues: the moral standing of the unborn, and the conflict of mother-foetus rights to self-determination. Therefore, most moral theories on abortion usually take a stance only on either of the two. Pro-life advocates have a general tendency to dwell on the moral standing of the unborn. Said moral standing is claimed to result from the possession of personhood (actual or potential), or from the claim that a God-given soul inhabits the unborn from the time of conception. In either case, this moral standing ascribes an inalienable right to life. Pro-choice activists are more prone to insist on women's rights. The debate, then, is more about conflicting rights, between the pregnant woman who has no right to kill, and the embryo/foetus that has no right to occupancy of the uterus.

Finally, the pro-choice and pro-life positions as our analyses in this chapter have shown have their merits. Nonetheless, their demerits are what undermine their

suitability as ideal solutions to the abortion controversy. The next chapter presents the principle of identity and the doctrine of double effect as more suitable solutions to the problem of the morality of abortion.

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CHAPTER FIVE: TOWARDS A RESOLUTION OF THE ABORTION DEBATE

5.1. Towards a Resolution of the Abortion Debate

The fundamental conflict in the morality of abortion and by that extent the problems which have pitched the pro-choice and pro-life proponents against each other are issues bothering on the status of the foetus and how the conflict of rights between the mother and the foetus can be reconciled. The previous chapter has shown that existing attempts to resolve these problems are inadequate. This inadequacy as observed in that chapter was because previous scholars usually focused on one side of the problems, right of the mother for instance, at the detriment of the right of the foetus. However, as also noted any resolution of the abortion debate that worth its salt must not only be able to identify but must also resolve the problems of the identity of the foetus and the conflict of rights between the mother and the foetus. Denying these problems as many scholars have done in the past and others are still doing, rather than solve, exacerbates the abortion impasse.

The present chapter undertakes to conceptualize the Principle of Personal Identity and the Doctrine of Double Effect with the view of applying them towards the resolution of these two fundamental problems on the morality of abortion. The chapter is made up of two parts. While the principle of personal identity is developed and applied to the abortion debate in the first part, the doctrine of double effect is developed and applied in the second part. On the whole, the chapter shows that not only is it possible to demonstrate that the foetus is a human being (one of the sticking points in the

morality of abortion) but that it is also possible to show that the seeming irreconcilable conflicts between the rights of the mother and the foetus can be overcome.

5.2. The Law of Identity

The law or principle of identity is one of the three principles generally known in philosophy as the laws of thought. The other two principles are, the law of non-contradiction and the law of excluded middle. The interest of this dissertation is on the law of identity. The basic assumption of the law of identity is that everything that exists has a specific nature. In other words, each entity exists as something in particular and it has characteristics that are a part of what it is. For example, “this leaf I am holding is red, solid, dry, rough, and flammable.” “This book I am writing on is white, and has 200 pages.” “This coin is round, dense, smooth, and has a picture on it.” In all three of these cases we are referring to an entity with a specific identity; the particular type of identity, or the trait discussed, is not important, what is important is that each case exemplifies an object with unique existence. Jeff Lauduer and Joseph Rowland summarise the basic ideas enshrined in the law:

Identity is the concept that refers to the concept of existing as something in particular, with specific characteristics. An entity without an identity cannot exist because it would be nothing. To exist is to exist as something, and that means to exist with a particular identity. To have an identity means to have a single identity; an object cannot have two identities. A tree cannot be a telephone, and a dog cannot be a cat. Each entity exists as something specific, its identity is particular, and it cannot exist as something else. An entity can have more than one characteristics, but any characteristic it has is a part of its identity. Since reality has an identity, it is knowable. Since it exists in a particular way, it has no contradictions. (Jeff

Lauduer and Joseph Rowland, "A is A: Aristotle's Law of Identity."¹

The crux of this principle was also beautifully formulated in 1916 by H.W.B. Joseph in *An Introduction to Logic*; according to him

"A thing, to be at all, must be something, and can only be what it is. To assert a causal connexion between 'a' and x implies that 'a' acts as it does because it is what it is; because, in fact, it is 'a'. *So long* it must act thus; and to assert that it may act otherwise on a subsequent occasion is to assert that what is 'a' is something else than the 'a' which it is declared to be."²

It follows therefore from the law of identity that existence implies identity. It is not possible to exist without being something, and a thing can only be what it is: A is A. Any actions of that thing form part of its identity. The way in which it acts must be regarded as a partial expression of what it is. Thus to deny any connection between a thing, its actions, and their consequences, is to assert that the thing is not what it is; it is to defy the well-established Law of Identity.

5.2.1. The Principle of Personal Identity

The principle of personal identity is a subset of the law of identity. The principle is an attempt by scholars to investigate the relationship between personhood and identity. It tries to address such questions as, when does personhood begin?; Is there continuity in personhood, in other words, is that little boy who is so small 10 years, truly the same person as big and tall as I am today?; and "If I became severely demented, could I still be considered to be the same person as I was before?"

There are several philosophical theories advanced by scholars to address these questions including the body, soul and consciousness theories. However, the theory that is relevant to this study is the essential or substantial theory of personal identity.

5.2.2. The Essential Theory of Personal Identity

This section argues that in spite of the disagreements on the meaning and nature of personal identity, philosophers centrally agree that personal identity is that durable and separable underlying element which remains the same in an individual even after other features and properties are dispensed with. That is, personal identity is not only that irreducible element in man that perdures through time, but it is also that aspect of being which persists through time and therefore that makes a thing what it is.

To develop the theory of personal identity as it will be applied in this dissertation, there is need to understand that the most fundamental definition of philosophy sees it as the study of being or the study of ‘what is’ (i.e. the study of existence). The German existentialist, Martin Heidegger, phrased the question appropriately when he asked, what is there? In general, philosophers believe that what is there is ‘being’. But then it can as well be asked, what is being? Attempts to answer this question is not only at the foundation of the philosophical doctrine of personal identity but it can also be argued and appropriately so, that efforts to tackle the problem is both the motivation and driving force of what we know today as philosophy. Thus, philosophy right from its origin was, is still and will always be the quest for the meaning and nature of identity or what makes a thing what it is.

Back to the question: what is there? From an empiricist point of view, this question could be answered by observing or looking at our surroundings and enumerating what we see. We can then answer the question by pointing to this or that, a man, a mango tree, a football pitch, a dog, a river etc. and saying this is what is there. However, it could be objected that the massive nature of the things around us require more than simple enumeration to understand. Thus, we may decide to adopt a second approach in answering the question. We can say that what is there is a fundamental stuff which manifests itself in the different things we see around us. Alternatively, we may still decide to group things of the same kind together and present them as what is there.

A walk through the history of Western philosophy reveals that what we just sketched above represents the basic approaches in the articulation of the doctrine of identity. For example the Ionian Trios, credited as the initiators of the philosophical project have a concept of identity similar to our second category above. They thought that the being of the universe consists in some kind or kinds of stuff. Thales, argued that everything, including man, was essentially water, for Anaximenes everything was a form of air and Anaximander, convinced the ‘stuff’ in question as indeterminate, so that it could transmute into the various determinate stuffs such as water, air, earth and fire.

Atomists such as Democritus and Leucippus take similar position when they argued that those determinate particular objects they called atoms were the essence of the universe.³ This same idea of identity was adopted by Benedict Spinoza when he argued that God and the universe are one and the same thing. Leibniz followed the

same line in his doctrine of monads. According to him, the monads (whether created or uncreated) are basic constituents of the universe and all existence. Immanuel Kant's a priori psychology also falls within this dimension. According to Kant:

It is only by understanding the world as possessing enduring spatio-temporal objects, which enter into causal relations with each other (that is, it is only by applying the categories of substance and causation) that we can have intelligible experience. Identity that is, a framework of stable, enduring objects are essential, but the source of this necessity lies not how the world is in itself, but in the framework which we are obliged to impose.⁴

Plato rejected the materialists' attempts to explain identity on the basis of that of which it was made. Instead, he adopted essentialist notion of identity used as our third example above. According to Plato, the identity of things and therefore, the governing principles were the intelligible Forms which material objects attempted to copy. These Forms are not have specific identity in the sense of being not only the stuff out of which all else is constructed but also of remaining what it is through changes. Rather they are the driving principles which give structure and purpose to everything else. Without it, the rest would be, at most, an unintelligible chaos.⁵

The foregoing is a single approach to the doctrine of identity. In the history of Western Scholarship, the most comprehensive attempt to articulate the doctrine of identity was first made by Aristotle. Accordingly, Aristotle has three notions of identity, namely: primary, secondary and substantial identities. The primary identity are individual objects. Reflection on the concept of an object has its first theoretical articulation in Aristotle's Categories, where he distinguishes between individual

objects and the various kinds of properties they can possess. He illustrates the various categories:

Each [individual term] signifies either quantity or qualification or a relative or where or when or being in a position or having or doing or being affected. To give a rough idea, ideas of identities are man, horse; of quantity: four foot, five foot; of qualification; white, grammatical; of a relative: double, half, larger; of where: in the Lyceum, in the market-place; of when: yesterday, last year; of being in a position: is-lying, is-sitting; of having: has-shoes-on, has-armour-on; of doing: cutting, burning; of being-affected: being-cut, being-burnt. ⁶

The individual identities are the subjects of properties in the various other categories, and they can gain and lose such properties whilst themselves enduring.

Contrary to primary identities which Aristotle designated as individual objects, secondary identities are kinds of individual objects. Thus, for some purposes, discussion of identity is a discussion about individuals, and for other purposes it is a discussion about universal concepts that designate specific kinds of such individuals. Thus, bingo, the dog is a primary identity—an individual—but dog or dog-hood is the secondary identity or substantial kind.

Each arm of this distinction raises different issues. If one is concerned with kinds of identity, one obvious question that will arise is ‘what makes something a thing of that kind (for example, what is involved in being a dog)?’ This is the question of the essence of substantial kinds. But if one is concerned with individuals, the parallel question is ‘what makes something that particular individual of a given kind (for

example, what is involved in a dog's being and remaining bingo)?' This is the question of individual essences and of identity over time.

In Aristotle substantial form, he analyses identity in terms of matter and form. The form is what kind of thing the object is, and the matter is what it is made of. The term 'matter' as used by Aristotle is not the name for a particular kind of stuff, nor for some ultimate constituents of bodies, such as atoms (Aristotle reject atomism). 'Matter' is rather the name for whatever, for a given kind of object, meets a certain role or function, namely that of being that from which the object is constituted. Relative to the human body, matter is flesh and blood and form is the soul. The matter of an axe-head is the iron from which it is made while the form is the purpose the axe-head is used for.

Usually, scholars identify three worthy candidates for identity in Aristotle's concept of substantial form, namely, matter, form or the combinations of matter and form (substantial form). While scholars, have been debating and giving reasons for choosing any of the three elements as the true representatives of Aristotle's idea of where identity is to be located, we have decided that such controversy is outside the rudder of this dissertation. What we have chosen to do is to give a general characterization which satisfies Aristotle's views of identity whether it is taken as an individual object, essence of objects, matter, form or the composite of matter and form.

Thus, identity or what makes a thing what it is, for Aristotle possess the following qualities:

It is durable, separable, and identical. Identity as durable means that it persists over time. It endures. It may come into existence, or cease to exist or it may be uncreated or indestructible but either way, it has an extended existence in time. An identity as separable means that its existence is not dependent on other things. It exists independently, and it can be separated from other things that exist. An identity as identical means that it has an identity, in which it is the same thing as itself, or in which it has an identity as the member of a certain kind - the same as it endures over time, or as it is separated from other things.⁷

If the principle of essential or substantial identity is applied to the theory of personal identity in relation to man or human beings, the outcome would be that there is something in man, essence that defines him and makes him what he is. This essence is not his body, because he can become bodily deformed and still remain a man. Also, it is not consciousness or his ability to reason since losing this does not make him lose humanness. It is something intrinsic, something he is endowed with. These features encapsulate how this dissertation characterizes the essential or substantial doctrine of personal identity and that is how it is going to be applied here in establishing the identity of the foetus.

5.2.3. Applying the Theory of Personal Identity to the Abortion Debate

From our analysis of the doctrine of identity above, human identity can be identified in two ways: from his individual essences and of identity over time and from his essence of substantial kind as a human being. These two concepts of the human identity are important for our discussion here because they will help us to show that the foetus is not only a human being as an individual but also has an essential human identity which places it among human beings and assures that it has rights to be

respected as other human beings. Also, similar to the general characterization of identity which we underlined above W. Norris Clarke offers a four-part definition of what gives human nature its identity:

(1) it has the aptitude to exist in itself and not as a part of any other being; (2) it is the unifying centre of all the various attributes and properties that belong to it at any one moment; (3) if the being persists as the same individual throughout a process of change, it is the identity which is the abiding, unifying centre of the being across time; (4) it has an intrinsic dynamic orientation toward self-expressive action, toward self-communication with others, as the crown of its perfection, as its very *raison d'etre*.⁸

The implication of this to the abortion debate would be that the human being, as an organism, begins its existence at conception and that it is a unified organism with its own intrinsic purpose and basic capacities whose parts work in concert for the perfection and perpetuation of its existence as a whole. In other words, the human being is a particular type of organism that remains identical to itself as long as it exists, even if it is not presently exhibiting the functions, behaving in ways, or currently able to exercise immediately these activities that we typically attribute to active and mature rational moral agents. So, for example, the substance Anthony Mba is a human substance, a being with a particular nature that we call human. The substance Bingo too is an individual being, but she is a doggish substance, a being with a particular nature that we call dog.

Hence, each kind of living organism or substance, including the human being, maintains identity through change as well as possessing a nature or essence that makes certain activities and functions possible. "A substance's *inner nature*," writes J. P.

Moreland, “is its ordered structural unity of ultimate capacities. A substance cannot change in its ultimate capacities; that is, it cannot lose its ultimate nature and continue to exist.”⁹ Consider the following illustration.

A domestic dog, because it has a particular nature, has the ultimate capacity to develop the ability to bark. It may die as a puppy and never develop that ability. Regardless, it is still a dog as long as it exists, because it possesses a particular nature even if it never acquires certain functions that by nature it has the capacity to develop. In contrast, a frog is not said to lack something if it cannot back, for it is by nature not the sort of being that can have the ability to bark. A dog that lacks the ability to bark is still a dog because of its nature. A human being who lacks the ability to think rationally (either because he/she is too young or he/she suffers from a disability) is still a human person because of her nature. Consequently, a human being’s lack makes sense if and only if he/she is an actual human person.

Again, the dog remains the same particular dog over time from the moment it comes into existence. Suppose you buy this dog as a puppy and name him ‘Tiger’. When you first bring him home you notice that he is tiny in comparison to his parents and lacks their mental and physical abilities. But over time Tiger develops these abilities, learns a number of things his parents never learned, sheds his hair, has his claws removed, becomes ten times larger than he was as a puppy, and undergoes significant development of his cellular structure, brain and cerebral cortex. Yet, this grown-up Tiger is identical to the puppy Tiger, though he has gone through significant physical changes. Why? The reason is that living organisms, or substances, maintain identity through change.

Another way to put it is to say that organisms, including human beings, are ontologically prior to their parts,¹⁰ which means that the organism as a whole maintains absolute identity through time while it grows, develops, and undergoes numerous changes, largely as a result of the organism's nature that directs and informs these changes and their limits. The organs and parts of the organism, and their role in actualizing the intrinsic, basic capacities of the whole, acquire their purpose and function because of their roles in maintaining, sustaining, and perfecting the being as a whole. This is in contrast to a thing that is not ontologically prior to its parts, like an automobile, cruise ship, or computer, none of which subsists through time as a unified whole.¹¹ Each is, in the words of Moreland, "a sum of each temporal (and spatial) part...."¹² These entities are *mereologically essential*. From the Greek *meros* for "part," this term means that "the parts of a thing are essential to it as a whole; if the object gains or loses parts, it is a different object."¹³ Organisms, however, are different, for they may lose and gain parts, and yet remain the same thing over time.

Thus, if you are an intrinsically valuable human person now, then you were an intrinsically valuable human person at every moment in your past including when you were in your mother's womb, for you are identical to yourself throughout the changes you undergo from the moment you come into existence. But if this were not the case, that it is only one's present ability to exercise certain human functions, such as rationality, awareness of one's interests, and consciousness, that makes one a person, then it is not the organism that is intrinsically valuable, but merely one's states or functions. "It would follow" from this position, writes Patrick Lee, "that the basic moral rule would be simply to maximize valuable states or functions."¹⁴ For example,

“it would not be morally wrong to kill a child, no matter what age, if doing so enabled one to have two children in the future, and thus to bring it about that there were two vehicles of intrinsic value rather than one. On the contrary, we are aware that persons themselves, which are things enduring through time, are intrinsically valuable.”¹⁵

It is instructive at this point to assess briefly an argument offered by philosopher Dean Stretton, a defender of abortion rights, who, in a response to Lee concedes that a human being remains the same substance throughout its existence, but argues that personhood is not an essential property, that personhood is an accidental property acquired at some point in the development of the human substance. Stretton’s argument and the response that follows help to illustrate the substance view. Stretton writes:

Putting aside for the moment the right to life (which is the very case in dispute), our background knowledge does not include any cases where an (earthly) being’s natural capacities entitle it to any substantial—that is, significant-type or level of respect. Imagine, for example, I have a natural capacity to become a great athlete, or a brilliant intellectual. These capacities or indeed *any* essential property—would hardly entitle me to any respect if, say, too much TV has in fact turned me into a fat, lazy dullard. Substantial respect *would* of course be owed to those who *are* great athletes or brilliant intellectuals—perhaps in virtue of their developed capacity for these things, or perhaps in virtue of other accidental properties, such as their achievements in these areas. Generalising from this background knowledge, it appears we do not owe to beings, in virtue of their natural capacities (or any other essential property), any substantial type or level of respect. The right to life, however, is surely itself about respect: the fact that a being has a right to life is just the fact that, in virtue of some property it has, we owe that being a certain (very substantial) type and level of

respect. But now *because* we do not owe to beings, in virtue of their natural capacities (or any other essential property), any substantial type or level of respect, *it follows that* we do not owe to beings, in virtue of their natural capacities (or any other essential property), the substantial type and level of respect involved in the right to life. And this is just to say that beings do not have a right to life in virtue of their natural capacities (or any other essential property), but in virtue of their *accidental* properties.¹⁶

Ironically, Stretton's argument seems to make the very point he is denying. Surely he is correct that one ought not to respect people who, when given the opportunity to hone and nurture certain gifts. e.g. intellectual skill and athleticism-waste these potentials in a life of sloth and depravity. But the "respect" not owed here is not the respect about which we speak of when we claim that human beings are rational moral agents by nature because of their basic capacities. The respect about which Stretton writes is a respect that is *earned* by persons who properly employ and nurture those natural talents that are not equitably distributed among human beings (talents that come in degrees and, thus, cannot be the basis of intrinsic value). But the withholding or lavishing of that respect on a particular being makes sense only in light of the sort of being it is by nature, that is, a being who has certain intrinsic capacities and purposes, that if prematurely disrupted by either its own agency or another agent, results in an injustice. So, the human being who wastes his talents is one who does not respect his natural gifts, or the basic capacities whose maturation and proper employment make possible the flourishing of talent and skill. That is, the judgment that certain perfections grounded in basic capacities have been impermissibly obstructed from maturing, is assumed in the very judgment one makes about human beings and the way by which they should treat themselves (as in the case of the lazy

person with natural gifts offered by Stretton) or be treated by others (as in the case of the unborn in abortion).

Consequently, typical human functions that are immediately exercisable by mature and healthy members of the human species-functions such as sentience, “ability to reason” and/or self-awareness (having interests) or some combination of these -that are often employed by philosophers to exclude fetuses from personhood status and thus from legal protection in the context of abortion, cannot do the moral work they are supposed to do under the substance account of personhood that we presented above.

Besides, having interests that presuppose conscious desires cannot adequately account for the wrongness of killing human beings. First, as we noted above, if the substance view of persons is correct, then your adult self, which has intrinsic value, is identical to your prenatal self, and therefore has intrinsic value as well. Second, as Lee has argued,¹⁷ a person, such as a slave, may be indoctrinated to believe he has no interests, but he still has a prima facie right not to be killed, even if he has no conscious longing for, or interest in, a right to life. Even if the slave is never killed unjustly, we would still think that he has been harmed precisely because his desires and interests have been obstructed from coming to fruition. Thus, “It seems more reasonable,” writes Lee, “to hold that the violation of someone’s rights is more closely connected with what truly harms the individual rather than with what he or she desires.”¹⁸ But if that is the case, the proper questions are what sort of a thing is a

human being, what types of “conditions or activities truly perfect a human being,” and “whether a person is harmed or deprived of a real benefit... or not.”¹⁹

Thus, killing a human adult is wrong not because a being with consciousness or self-interest have been killed but because a human substance have been killed. If this is what makes killing wrong as we are arguing it is and if the human substance is the same all through life beginning from conception then there is no difference between killing a foetus and killing a human adult because both involve the elimination of human substances.

5.3. The Doctrine of Double Effect

As we have seen, the principle of substance is the game changer in the abortion debate. By showing that the foetus is a human substance that remains the same all through life, the principle has demonstrated the inadmissibility of most of the arguments used by pro-choice advocates to justify abortion. For example, within the purview of this principle, abortion on demand, on utility or because of rape shall all be illegitimate since we cannot call for the murder of an innocent adult to reduce population.

However, this principle does not answer all the moral concerns on abortion. The question that remains to be addressed is, what happens when there is a genuine conflict of rights between the mother and the foetus? On this question, many “liberals” complain that it is irrational and brutal to expect a woman to die so that her unborn child may live. Abortion for them should be permitted basically on demand, certainly in cases where the health and life of the woman are at risk, and even in cases of incest

or rape. In contrast, many “conservatives” argue that abortion can never be rationalized or permitted, as it is fundamentally immoral to kill a human being who is innocent no matter what the circumstances or the law - regardless of the woman’s health, life, incest or rape. At times it seems that the advocates of either position are “talking past” each other, oblivious to the possibility of any moral legitimacy in each’s position. Further, there seems as yet to be no structured or principled means by which to circumvent this highly politicized stand-off or to address these tragic moral dilemmas which after serious consideration are commonly acceptable to both “camps”.

To a significant degree this stand-off is often due to misinformation or to a reluctance to make some important moral distinctions. One moral distinction is between: (1) inherently bad actions (e.g., abortion); and, (2) inherently good (or neutral) medical actions which are permitted, even though bad effects would result, in order to save the life of the mother (e.g., the giving of chemotherapy treatments, or the removal of a cancerous uterus, etc.). Another moral distinction is between directly and indirectly voluntary actions (that is, between directly willing an evil, and indirectly allowing an evil to take place). Once these important moral distinctions are correctly understood, then conditions allow us to apply a common moral principle to this stand-off, rather than leaving such a vital issue up to personal emotions or to unprincipled political compromise.

A general moral principle that can be used in these difficult situations is found in the time-honoured Doctrine of Double Effect.²⁰ Properly understood, the principle of

double effect evolved in order to address just these types of difficult moral dilemmas - in this case where both of the lives of those affected are innocent, and yet something must be done or will happen which inevitably will endanger one of these two innocent lives. The obvious application for our purposes here is when a woman, who is herself an innocent human being, whose human life is precious and must be respected, is pregnant with an unborn child, who is likewise an innocent human being (from fertilization onwards), and whose life is also precious and must be respected. Since, as natural law theory holds, one may never directly intend to kill an innocent human being,²¹ under what circumstances and conditions is it morally permissible: (1) for a woman to undergo an abortion procedure; or, (2) for a physician to help one of these innocents to live, by means of other and different morally legitimate medical actions, and yet permit or allow the other, unfortunately, to die?

These are really two different and separate moral questions, and so must be approached differently. One concerns abortion procedures; the other concerns other medical actions or procedures which could be taken in order to save the life of the mother (and *vice versa*) when urgent and valid medical circumstances arise. The solutions to these two very different questions, we would suggest, could be applied in helping to resolve at least the extremes of the current abortion debates, without at all compromising long established moral principles. The resolution lies in seeing the moral distinction between these two questions, and then properly applying the well-established principle of double effect.

The principle of double effect was gradually refined over the centuries in order to meet the unfortunate but very real moral dilemmas in which, no matter what is

reasonably done, one or more innocent human beings may be harmed or even die in the process of resolving the dilemma. The following explanation of the principle of double effect, as well as its four necessary conditions, are taken almost verbatim from the work of Austi Fagothey, *Right and Reason*. Its application to the abortion debate will be specifically indicated under each condition of the principle.

The principle of double effect is based on the fact that evil must never be directly and voluntarily willed for its own sake, and must never be willed either as an end or as a means to an end. Nor may evil ever be directly willed as a foreseen but unwanted consequence. But evil can be reduced to an incidental and unavoidable by-product in the achievement of some morally licit good the person is rightfully seeking.

Thus, although I am never allowed to will evil, I am not always bound to prevent the existence of evil. Just as I may tolerate the existence of evils in the world at large, since I could not cure them without bringing other evils on myself or my neighbour, so I may sometimes tolerate evil consequences from my own actions, if to abstain from such actions would bring a grave evil on myself or others. Unfortunately, then, as is sometimes the case, I cannot realistically in fact will a legitimate good, without at the same time permitting the existence of an evil which in the very nature of things is inseparably bound up with the good will. But I must not do so indiscriminately. In short, sometimes I am bound to prevent evil, and in these cases it would be wrong for me to permit it. But sometimes I am permitted to allow evil effects to take place. How can we distinguish between these two different cases?²² This is where the principle of double effect comes in.

5.3.1. The Application of the Principle of Double Effects

The principle of double effect holds that it is morally allowable to perform an action that has a bad effect only under the following conditions:

Once again, the action to be performed must be good in itself, or at least indifferent.

This is evident, for if the act is evil of its very nature, nothing can make it good or indifferent. Evil would then be chosen directly, either as an end or as a means to an end, and there could be no question of merely permitting or tolerating it.²³ If the action is fundamentally and inherently morally illicit, then it cannot be morally permitted regardless of any good intentions or goals, or under any good circumstances.

Application

The act of abortion in its very nature is inherently evil, because it is the intentional and direct killing of an innocent human being. This would apply to all abortions, including those in the case of rape and incest (and to those involving human foetal and human embryo research, and human cloning). Therefore it is never morally permissible to undergo an abortion procedure. The principle of double effect as applied to the case of abortion renders abortion procedures morally illicit, since the action by its very nature is evil. However, other possible medical actions, e.g., the giving of chemotherapy or the removal of a cancerous uterus - morally good or at least neutral acts - could be permitted in order to save the life of the mother, even if it could possibly result in the

unintended death of the unborn child, as long as all of the other three following conditions are also met.

The evil effect must not be directly intended for itself but only permitted to happen as an accidental by-product of the act performed.²⁴

Application

In the case of abortion procedures, the death of the unborn child is directly intended, and therefore is morally illicit. On the other hand, in the use of chemotherapy or the performance of a hysterectomy to remove a cancerous uterus, etc., the death of the unborn child may not be directly intended, but only permitted or allowed as a possible by-product.

The good intended must not be obtained by means of the evil effects.

The evil must not be an actual factor in the accomplishment of the good.²⁵

Application

In the case of abortion procedures, the death of the unborn child may not be used as a means of limiting family size, preventing birth defects, enhancing a career, etc. (all legitimately good or neutral ends or goals in themselves). On the other hand, the curing of the potentially deadly disease of cancer could be obtained by means of the morally acceptable actions of the administration of chemotherapy or the performance of a hysterectomy. The death of the unborn child is not the means used to cure the cancer.

There must be a reasonably grave reason for permitting the evil effect.

If the good is slight and the evil great, the evil can hardly be called incidental. If there is any other way of getting the good effect without the bad effect, this other way must be taken.²⁶

Application

In the case of abortion procedures, to maintain a slim figure, to have a child of a certain sex, to prevent the birth of a child with defects, or to evade social embarrassment would not be reasonably grave reasons for permitting the unintended and unavoidable death of the unborn child. On the other hand, to give chemotherapy or to perform a hysterectomy in order to remove a cancerous uterus, etc., to preserve the life of the mother (who is also an innocent human being) would be a reasonably grave reason for permitting or allowing the unintended and unavoidable death of the unborn child. If there is any other reasonable medical treatment available to save the life of the mother which would not entail undo harm or death to the unborn child, then it must be chosen instead.²⁸ It is good to note that these examples of “other medical actions” are not morally licit unless all four conditions of the principle of double effect are fulfilled. If any one of them is not satisfied, even though the other three are, those medical actions are morally wrong.

Nevertheless, the spirit of the doctrine of double effect is that a pregnant woman who is faced with the grim reality of impending death short of the use of, e.g., chemotherapy or hysterectomy, may use these and other morally licit medical treatments and procedures for the reasonably grave reason of saving her life, as long as the death of her unborn child is not directly intended as the end of using these

procedures, or is the means by which her life is saved, but only allowed or permitted to happen as an accidental by-product of these medical actions, and no other reasonable medical treatment is available. However, the directly intended death of an unborn child by means of procured abortion remains morally indefensible - even to save the life of the mother, or for the best of intentions, or under very difficult circumstances - even in the case of incest or rape.

There is too much at stake to leave the lives of so many millions of innocents - both women and unborn children - up to mere personal whimsy or political bartering. Presented here is at least a moral means of considerably reducing the rancour and misinformation swirling about these abortion debates. The proper understanding and application of the principle of double effect offers a commonly accepted, morally legitimate, objectively grounded basis for clarifying the important moral distinctions which need to be made within these very complex and difficult moral dilemmas - one on which most of us could reasonably agree.

Finally, at the beginning of this chapter we offered to use the principle of substance and the doctrine of double effect to resolve the two central problems in the abortion debate. The central problems as we articulated them were question on the identity of the foetus and how to resolve the conflict of rights between the mother and the foetus. Using the principle of substance we have tried establishing that the foetus is a human being. It follows therefore, that metaphysically there is no difference between killing a foetus and an adult human being. Furthermore, we applied the doctrine of double effect to demonstrate the conflict of rights between the mother and the foetus can be

mediated without infringing on the right of any of the parties. On the whole, the central message of this chapter that abortion is a complex moral problem. This notwithstanding, the problem is not as intractable as the contestants often present it.

Endnotes

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CHAPTER SIX: EVALUATION AND CONCLUSION

6. Evaluation and Conclusion

At the introductory section of this dissertation, we observed that the most recent dominant feelings among scholars and activists on the abortion debate is that the pro-life argument has been defeated on two grounds: the inability of anti-abortionists to prove conclusively that the foetus is a human being or rather their inability to show that the pro-abortionists' arguments on the status of the foetus is unreasonable and the fact that even if it is established that the foetus is a human being, the mother's right to personal autonomy is still so compelling that it overrides the foetus right to life. It was from this background that we undertake to demonstrate in this dissertation that not only is it possible to show that the foetus was a human being and therefore, has a right to life that should be protected by the human society but also that though the rights of the mother and that of the foetus, could come into conflict as they often do, but that they can be reconciled and as such not mutually exclusive as the pro-choice advocates would have us believe.

Two of these purposes have been accomplished in the last chapter. In other words, we have shown using the principle of identity and the doctrine of double effects that the foetus is a human being, and that the conflicts of rights between the mother and the foetus can be reconciled, respectively.

However, there are counter arguments against our identity and double effect proposals which require to be addressed. In addition, there is also the contention that if the pro-

choice and pro-life views are equally reasonable, and because the liberty of the pregnant women hangs in a balance, the law should err on the side of liberty by legalizing abortion. The evaluation section in this chapter takes up the responsibility of addressing these outstanding issues. The conclusion which recapitulates all our endeavours in this study brings the dissertation to an end.

6.1. Evaluation

The personal identity view as formulated in Chapter Five can be schematized as follows.

P1, now, at the age of 28 years, this researcher, Anikpe Mbah is a human being.

P2, because Anikpe Mbah is a human being, he is an intrinsically valuable person.

P3, if Anikpe Mbah is an intrinsically valuable human person now, then he was an intrinsically valuable human person at every moment in the past including when he was in his mother's womb, for he was numerically identical to himself throughout the changes he underwent from the moment he came into existence (at conception)

P4, therefore, it is wrong to kill Anikpe Mbah now as it was wrong to kill him 28 years ago because the one who has the right not to be killed now is identical to his prenatal life.

There are at least three major objections to the personal identity view of the foetus. These criticisms zero in on problems with the notion of an essential nature. The first objection centres on the entrenched debate in metaphysics over realism and

nominalism. Against the typological view defended in this paper, some argue that ‘essence’ is a mere chimera, lacking empirical defence. A variant of this argument claims that the theory of personal identity is based on religious or metaphysical beliefs and like every metaphysical claim is contentious as it cannot be independently verified. Holding this position, Nathan Nobis avers: “It appears that one can plausibly conjoin any moral conclusion about abortion with any metaphysics of human identity”. His contention, therefore is that:

Metaphysical theorists can be pro-life or pro-choice and the same with bodily theorists: The metaphysics does not force the morals. Thus, the metaphysical nature of human organisms’ identity over time seems to make no moral difference: What matters are the defensibility of any general moral claims about obligations to all human organisms and moral claims about our obligations toward particular human beings at particular stages. These sorts of claims are defended and critiqued using ethical methods, for example, evaluating moral principles in light of their explanatory power and counterexamples, not metaphysical analysis.¹

Nobis continues to insist that even if granted for argument’s sake, the morality of abortion does depend on the “nature” of the unborn nevertheless, so does much else, indeed nearly everything:

For example, structural engineering depends on the nature of building materials, medicine depends on the nature of human biology, and cooking depends on the nature of foods. But none of these inquiries are metaphysical and metaphysics is irrelevant to them all. The *moral* nature of fetuses matters if that just refers to the properties that determine how they can be treated morally. Calling moral assumptions “metaphysical” might make them sound loftier (but also more intractable since moral philosophy’s progress has surely been greater than metaphysics’) but that does not help

them do the moral work that metaphysics, as metaphysics, does not do.²

Similarly Peter Millican, claims that since we have no way of determining whether there is anything like personal identity or not, the personal identity view is only convincing only for those who believe in the existence of personal identity. As such it will be wrong to use it to formulate a general norm that will apply to everybody.

Compering the personal identity view with religious believe Peter argues that:

any reasonable religious believer who is aware of the multitude of faiths, of the equal commitment and conviction of many of those who follow them, and of the lack of independently compelling arguments to vindicate any one of them, must surely acknowledge that, from an objective point of view, his religious beliefs are somewhat less than certain. Also, the moral implications of any particular religion can themselves be very uncertain, and even where they are not, there can be serious doubt as to the legitimacy of imposing them on others. Furthermore, and very significantly, all of these three uncertainties will multiply together and thus amplify, indicating that any direct inference from religion to morality is likely to be highly problematic.³

Still on the contention that the personal view is a metaphysical concept and therefore is irrelevant morally, J.M. Thoday suggests that genetic variations are so significant among members of any given population that regarding human beings, “there are as many human natures as there are men.”⁴

The obvious question for scholars, especially Thoday, who put up this metaphysical objection against the personal identity view, is why we refer to all men as having human natures? What is it that unifies this group of existents under the classification, ‘human’? These scholars may respond that each human being has an individually

distinct human nature, and thus may be grouped into the set we refer to as ‘humans’: (e.g., {Human Nature₁, Human Nature₂, Human Nature₃ ... Human Nature_n}).⁵ But this clearly does not solve the problem. For now the question is what unifies the members of this set to warrant calling it the set of individual human natures? To avoid an infinite regress of individualized natures within natures or making exact similarity relations among them as primitives, we must eventually point to a universal human nature that allows us to refer to the unified group of existents we call humans. Unless there is some tacit, generalizable understanding of what the word “human” means, some universal signification, then it could not be used to describe more than one organic entity.

While Thoday’s observation of genetic variance among populations is interesting, it hardly refutes the notion that essential natures are hard and shared by members of a species. He is correct that identifying a single characteristic to fulfil this role may be difficult, but epistemic inability does not alter ontological reality. The essentialist case does not derive from our ability to catalogue and compare all the properties of existing species, finally identifying a peculiar trait in each, but rather, on the need to ground the unity of a naturally occurring class of entities. Moreover, the single-character taxonomy view is not a necessary component of essentialism. The essential nature of a being includes that set of peculiar properties and their internal relations that distinguish its class of membership from all others. The number of distinguishing characteristics in this set is irrelevant, as long as the set unifies the members of the species, irrespective of any accidental variances within the class. Thus, natural kind X will refer to all and only those beings who bear the essential X nature, regardless of

any non-essential variations between the members of the class. This view is neither far-fetched nor impractical.

A second argument against the personal identity view suggests that entering a species is a process. Speaking of the human species, Lawrence Becker asserts,

Human fetal development is a process analogous to metamorphosis, and just as it makes good sense to speak of butterfly eggs, larvae, and pupae as distinct from the butterflies they become (to say that they are not butterflies) so too it makes sense to say that human eggs, embryos, and fetuses are distinct from the human beings they become—that they are not human beings, only human becomings. When can we say that the fetus is a human being rather than a human becoming? Surely only when its metamorphic-like process is complete — that is, when the relatively undifferentiated mass of the fertilized human ovum has developed into the pattern of differentiated characteristic of the organism it is genetically programmed to become.⁶

Becker's view is riddled with problems. First, he fails to distinguish between epistemic convention and essential natures. From the fact that we draw an epistemological distinction between 'pupae,' 'larvae,' and 'butterfly,' it does not follow that each is its own species, or that each is a different organism. Becker himself acknowledges that "caterpillars and butterflies are both stages in the same insect".⁷ Though the former is modified morphologically into the latter, the essential nature of the one insect is identical in both cases. This is what allows us to justify the notion that these are different *stages* in the *same* organism. Likewise, though we distinguish between human new-borns and adults, it does not follow they are of different species, or are different organisms. Nor does it follow that because we

distinguish between human fetuses and two year-old children, they belong to different species, or are different organisms. Thus, Becker's distinction between human beings and human becomings is metaphysically confused. Moreover, he follows a widespread confusion that identifies a thing's natural kind with an adult member of that kind. But as David Wiggins has shown, when we trace the laws of development for an organism, we ground this activity in a principle of individuation that is specific and that makes process and maturation intelligible.⁸

A second problem with Becker's view is the suggestion that the foetus becomes a human being only after 'its metamorphic-like process is complete' "When the relatively undifferentiated mass of the fertilized human ovum has developed into the pattern of differentiated characteristic of the organism." This judgment is highly arbitrary, especially when applied to human beings, since the development process continues for decades after birth. Thus, it is difficult to see when Becker's 'metamorphic-like' process is complete. Size and shape, as well as physical and mental capacities continue unfolding well into the teen-age years. Certainly the 18 year old is no more human than the 5 year old; but since the older person is further along in the (metamorphic) process, Becker's distinction implies this conclusion. It seems apparent that both the child and the adult are equally human. This can be accounted for if both possess a common human nature. As mentioned earlier, this essential nature informs and directs the 'metamorphic-like' process throughout a human being's life. Arguably, this same essential nature directs the process before birth. Nothing in Becker's argument dissuades this suggestion.

Finally, Becker equivocates between human- becomings and human beings. All organisms, he claims, are 'genetically programmed to become' specifically differentiated entities. Presumably, this genetic programme allows the being to develop into its adult form. But what is this genetic programme if not an essential nature? How can it continue to direct an entity's becoming if it does not continue to be present in that entity? Both the embryonic and adult stages of the organism possess the *same* genetic programme (nature). This unity of being allows Becker to refer to the foetus as the 'it' whose metamorphic process will one day be complete, affording 'it' the status of human being. On what basis, then, can Becker draw a metaphysical distinction between so-called human becomings and human beings? It seems none. Thus, he gives us no reason to doubt that the human embryo, possessing an identical genetic programme as the adult she will become, is a bona fide member of the human species.

In line with baker, there are scholars who claim that humanness or the right to life does not begin at conception as we claimed in the personal identity view but much later in life. These scholars assert criteria for humanness, including, morphology, quickening or spontaneous movement and viability, production of an EEG (Electroencephalography) or birth to demarcate human beings from 'potential' human beings. Others like Mary Ann Warren, draw a more sophisticated demarcation between so-called 'genetic humanity' and 'moral humanity,' claiming only those in the latter group are persons. Persons, she claims, must meet one of five criteria: 1. Consciousness... and in particular the ability to feel pain; 2. Reasoning, the developed capacity; 3. Self-motivated activity; 4. The capacity to communicate; 5. The presence

of self-concepts.⁹ To this list, Joseph Fletcher adds a) self-control; b) a sense of the future and the past; c) the ability to relate to others; and d) curiosity.¹⁰ Similar to Warren's 'genetic/moral' distinction, James Rachels draws a distinction between 'biographical' and 'biological' life.¹¹

For example, Mary Ann Warren argues that:

Personal pronouns like "we" refer to people; we are essentially people if we are essentially anything at all. Therefore, if fetuses and gametes are not people, then we were never fetuses and gametes, though one might say that we emerged from them. The fetus which later became you was not *you* because you did not exist at that time... if it had been aborted nothing whatever would have been done to you, since you would have never existed.¹²

Notice that Warren makes the assumption that a being must exist, in some way, before she can be the proper subject of harm or benefit. If we were never identical to a foetus, if, in fact, we came into existence gradually as our personhood gradually arose, then abortion would not have harmed *us* because we had not yet existed in the foetal stage. In this sense, Warren's contention is that the realization of potential is only morally relevant when there exists a being of whom the realization of that potential constitutes a benefit. But, according to Warren, no such individual yet exists at the foetal stage because the foetus is not identical to any future person who experiences life. Thus, there exists no one, at the foetal stage that would benefit from the realization of potential. Peter Singer, who also maintains that it is necessary to be an actual person in order to have an interest in continued existence and a moral right to it, also seems to espouse a similar view of personal identity. He writes:

I am not the infant from whom I developed. The infant could not look forward to developing into the kind of being that I am, or even into any intermediate being, between the being I now am and the infant. I cannot even recall being the infant; there are no mental links between us.¹³

Singer here holds that in order for there to be an identity relation between the infant from whom I developed and myself currently, the infant must have been able to conceive of herself as a future person and must have had the capacity to “look forward” to becoming that future person. In other words, self-consciousness, in addition to memory retention, is a necessary condition, according to Singer, for possessing any type of significant mental links that could establish an identity relation. Like Warren, therefore, Singer seems to be arguing that an identity relation between past and future stages of a self can only come into being once personhood arises, for only persons possess self-consciousness in the robust fashion that Singer believes is requisite for an identity relation.

Although Stone disagrees with Warren and Singer himself, he succinctly sums up the consequences of holding to such a view:

This view is that the being which realizes self-awareness is a person; a person comes into being when it realizes self-awareness; hence a person was never a fetus or an infant. It follows that the fetus, like the sperm, produces a numerically different entity which is the thing that thinks and feels, so the fetus has no welfare of its own.¹⁴

We will consider each of these criteria mentioned in turn. Morphology and quickening are unhelpful criteria, since they confuse metaphysics with epistemology by inferring that essence is a function of outside observation. Moreover, one can rightly dismiss

these criteria by pointing to grossly deformed and fully paralyzed adult human beings. If these individuals are human persons, this determination rests on some criterion other than morphology or spontaneous movement. Likewise, viability is clearly a non-starter, since it relegates human personhood to a function of medical technology. Similarly, birth is a wholly arbitrary, metaphysically irrelevant criterion, since ontology is not a function of venue.

We are left, then, with the EEG criterion and the more sophisticated criteria of Werner, Fletcher and Rachels. What about the EEG requirement? Apart from its prima facie appeal, this criterion fails for two reasons. First, while it is true that a thing functions in light of what it is, a thing *is* what it *is*, not what it *does*. From the fact that an embryo does not have a recordable EEG, it does not follow that the embryo is not human. An equally logical conclusion is that possessing a recordable EEG is not one of its first order capacities at that particular stage in its existence. The same could be said of the capacity to master quantum physics. Disappointingly, this may not be a first-order capacity in one's life. Nevertheless, in such a case, it is still a higher order (unexpressed) capacity. Though some of one's capacities are yet unexpressed, it hardly follows that the individual is other than human. Both our first and second-order capacities are grounded in the ultimate capacities that constitute our essential human nature. This reality is clearly evident when we consider that it is entirely possible for an adult human's EEG to cease (at least to be measurable), only to begin again a short time later. If the EEG criterion is applied consistently, such an individual would be momentarily a non-human person and then regain her human personhood a short time later, but this is a strained and unnecessary view of what is going on. Adding

qualifications like, 'a human being is one who has been a human being before and will have an EEG in the future' fail as well.

The more sophisticated criteria asserted by Warren, Fletcher and Rachels fare no better than those above. While epistemically thought-provoking, all functional criteria for personhood fail to draw a convincing, ontological distinction between born and unborn human beings. Moreover, they seem arbitrary, metaphysically inadequate and ethically problematic. In our view, the entire project of defining personhood in functional terms fails, since, as argued above, a thing is what it is, not what it does. Moreover, the absence of lower order functional capacities does not mean that the individual's ultimate capacities *for* those lower abilities are absent. In general, a thing's highest order capacities are realized through the development of a structural hierarchy of capacities under them. In fact, the very notion of a functional defect or privation would seem to presuppose this archetypical perspective. Thus, the absence of a lower order capacity merely signals the fact that a higher order capacity cannot be realized; it does not indicate the absence of the latter. Applied to the unborn, from the assertion that the unborn, defective or otherwise, may be incapable of first-order human person skills like reasoning, communication, willing, desiring, self-reflection, aspiring, etc., it does not follow that they are not human persons. For these capacities still exist within the individual human substance as ultimate capacities constituting its essence. Therefore, even if these criteria were among the legitimate epistemological identifiers of personhood, every human substance, born and unborn would qualify as a human person; for a human being is a substance with all the ultimate capacities for fully expressed personhood, including those listed by Warren, Fletcher and Rachel's.

The ontological inadequacies of functional definitions become evident if we try to practise them consistently. Applying any of the above criteria, counter-intuitive and ethically troubling results abound. Consider the person under general anesthesia. He is clearly not conscious, has no expressed capacity for reason, is incapable of self-motivated activity, cannot possibly communicate, has no concept of himself, and cannot remember the past or aspire for the future. According to the functionalist view, he is not a full person-but this is absurd. In response, it may be argued that the adult lacks the first-order capacity to respond, but still has the capacity to exercise the first-order capacity when free from anesthesia and is therefore a person who is *temporarily dysfunctional*. But this ad hoc claim is not available without appealing to something outside of first-order functional criteria. Appealing to *unexpressed* but higher order capacities as evidence of personhood smacks of essentialism; that is, defending the personhood of the anesthetized human seems to require pointing to higher order capacities embedded in human nature. To argue that the person before anesthesia remains a person while under anesthesia, we must point to what that person *is*, irrespective of the functioning of first-order capacities, not what the person is *doing*. To insist that he remains a person because he had once expressed first order-capacities of consciousness begs the question, since this merely reasserts the functional premise as a defence against the counter-argument.

A final consequence of the functionalist view takes us back to the problem with Becker's 'human-becomings'. Specifically, if essential personhood is determined by function, it follows that essential personhood is a degreed property. After all, some will realize more of their capacities to reason, feel pain, self-reflect, etc., than others.

Moreover, it is undeniable that the first several years of normal life outside the womb include increasing expression of human capacities. Likewise, the last several years of life include decreasingly expressed human capacities. Consequently, if the functionalist view is correct, the possession of personhood could be expressed by a bell-curve, in which a human being moves toward full personhood in her first year of life, reaches full personhood at a given point, and then gradually loses her personhood until the end of her life. Presumably, the commensurate rights of persons would increase, stabilize and decrease in the process. Without appealing to something other than function, it is difficult to resist this counter-intuitive conclusion. Indeed, intellectual honesty has driven many to embrace this end, and the slope is ever so slippery. Applying functional reasoning to infanticide, Kuhse and Singer comment on the ontological status of new-borns:

When we kill a new-born, there is no person whose life is begun. When I think of myself as the person I am now, I realize that I did not come into existence until sometime after my birth ... It is the beginning of the life of the person, rather than of the physical organism, that is crucial so far as the right to life is concerned.¹⁵

It is quickly apparent that Kuhse and Singer equivocate on the question of personal identity. After all, if I do not exist until sometime after *my* birth, in what sense is the birth *mine*? The only way for 'my birth' to be more than a linguistic convention is to admit that 'I' existed before I was born, or at least at the time of my birth. If this is the case, Kuhse and Singer's attempt to define personhood in terms of function fails. In addition, while we applaud their intellectual consistency in applying their notion of personhood evenly in ethical issues, their chilling consistency reveals, at least to us,

the danger of defining human personhood in functional terms. Not only are the unborn and newborns less than persons, apparently all of us are subject to graded personhood and the commensurate rights therein. This conclusion seems unavoidable given a functional view of personhood.

It could be responded that the criteria for personhood pick out degreed properties that are, at the same time, threshold properties, i.e., properties that either have or have not made an appearance and that, once exemplified, they are degreed to the extent to which they are developed. According to this response, it is the presence or absence of the threshold property, not the degree of development that is of relevance to moral value. But this response seems to be inadequate. The intrinsic value is either the individual human person that has the functional properties or the presence of those properties themselves. If the latter, it is hard to see what is so important about the mere presence of a property of personhood since the worth of these features varies with the degree of their realization. All things being equal, having more rational abilities is more valuable than having a minimalistic form of rationality. If the former, then it is the human person himself or herself who is of value. But then, as we have argued, there is no good reason to think the person pops into existence the moment certain threshold properties are exemplified. Instead, the human person is the bearer of the ultimate capacities for these to be actualized. And if advocates of this lemma allow a human person's value to remain constant irrespective of the degree to which the properties of personhood are realized, there is no reason not to press the point further and apply it to the value of the human person prior to but with the ultimate capacity for the instancing of these threshold properties.

Perhaps, a brief appreciation of the philosophical notion of change will assist us to throw more light on why this second argument does not invalidate the personal identity view. Now, at some point in its existence, the being in the womb must change. There are two kinds of changes: accidental changes and substantial changes. In an accidental change, the accidents of a thing change. A thing's accidents are "that which are able to exist only in another".¹⁶ They are qualities that cannot stand alone. For example: I have various accidental qualities. I'm short, I have wavy hair, fair skin, etc. An example of an accidental change would be, say, I decide to paint my face black. I would still be, but my facial colour has changed. I still remain me. My essence, the underlying identity or nature of, has not changed. A thing like *cannot* stand by itself. You cannot go to the store and buy blackness

In a substantial change, the substance of a thing changes. Here is when the essence of a thing changes, that underlying identity that can stand alone. The substantial form, what makes it the kind of thing that it is, experiences a change. So an example would be say I take a piece of wood. I would change it accidentally if I did things like inscribed my name on it, sawed it in half, painted it, nailed it to another piece of wood, etc. But I would change it substantially if I were to burn it. After it burns, its substance is different. It's no longer wood, its ash or charcoal. Its underlying identity has changed. Its substantial form has changed. It is no longer wood, it is a completely different substance than wood.

So, obviously, the kind of change we're looking for is not an accidental change but a substantial change. When does the being in the womb's substance change? In fact, when do any humans experience substantial change? If I set myself on fire, but I'm

still alive afterward, I may look like a hideously grotesque non-human. But if I am alive, I am still Anthony, and I am still human. All that has changed are my accidents. But if I were to die as a result of being set on fire, I would no longer be me. Thus I would have changed substantially. My substantial form (which is, incidentally, what I believe the soul to be) is no longer there. What's there is a corpse. It's not me anymore. A corpse is not a human being.

Now, there is an event in this being's existential history that is a substantial change. It is called conception. After this event it begins to exist as the kind of thing that it is. Before, there was sperm and egg, and then after there was this new thing that's causing all the trouble. This is the point at which the being begins to exist. The potency of a thing's existence is actualized, a thing's essence exists in the world of actual things. St. Thomas Aquinas claimed that this, existence, is the essence of a thing's first or primary *act*.¹⁷ The essence has gone from potency to act, and its first act is existence. Could there be a candidate after this, aside from death itself? When does the essence of this being ever change, except when it begins to exist and when it ceases to exist as that being (i.e. conception and death)? When does it become a completely and totally different being? Contrary to mentalism that places these decisive moments at different stages of foetal development, the substance view we are defending in this dissertation contends that the crucial moment is at conception.

The third objection to the personal identity view claims that the classical doctrine of essential natures is too discreet and lacks the explanatory power of views that emphasize external relations.' Curran summarizes a form of this objection as follows:

The contemporary view sees reality more in terms of relations than of essential natures. The individual is not thought of as a being totally constituted in the self, whose life is the unfolding of the nature already possessed According to a more contemporary, relational view, reality does not consist of separate substances completely independent of each other. Reality can be understood only in terms of the relations that exist among the individual beings.² Regarding human flourishing, this view asserts that, The individual person has no intrinsic orientation (a nature) necessarily bringing about personal perfusion; rather, according to Aristotle, one depends more on the contingent and the accidental.¹⁸

These ‘contemporary theorists’ are correct that reality, taken as a whole, reflects relations among beings and not merely beings in isolation. Moreover, the human experience does indeed include contingency and accident. However, by acknowledging the role of accident and contingency, we must not deny or unnecessarily minimize the restrictive role of essential natures. The simple fact is that there are limits to the kind of change a human can undergo and still exist, as well as on the kinds of relations a human can sustain to other things. On our view, these limits establish parameters for every aspect of human development and personal flourishing. These facts are not only consistent with the doctrine of natures but also, best explained by that doctrine. Moreover, the doctrine of natures makes the best sense of the notions of contingency and accident by contrasting them to an enduring essence. Thus, one can assert that a thing is what it is and not another thing without ignoring contingent relations among existents, since the members of a given species possess a deeply unified and law-like structure that remains unaffected by contingency and accident. Essential natures, then, play an irreducibly crucial role in defining what a thing is,

what it can become, and how it can be related to other entities. And according to our cumulative claim in this section, the intrinsic value of the human essence and its numerical identity and persistence all through life (from conception to death) is basically what make both killing and abortion morally reprehensible.

We shall now turn our attention to objections against the principle of double effect. Before that, however, let us once again familiarize ourselves with the codes of the doctrine. The doctrine states as follows:

1. The act performed is not itself morally evil.
2. The good effect is not caused by the evil effect.
3. Only the good effects are directly intended; the bad effects are not intended but only tolerated (as unavoidable).
4. There is a due proportion between good and bad effects.

There are at least three major objections to the principle of double effect. First, some scholars opposed to the general application of the doctrine of double effect to the abortion debate usually claim that the doctrine was developed by Roman Catholic moral theologians in the Middle Ages.¹⁹ From this, the argument is therefore made that since the doctrine originated in the context of a particular religious tradition, it cannot therefore be applied in a society or most modern societies that are multi-religious. J. T. Mangan, particularly suggests that the doctrine cannot work in America. He opines that “American society incorporates multiple religious, ethical, and professional traditions, so medicine must accommodate various approaches to assessing the morality of end-of-life practices.”²⁰

Although the doctrine of double effect can be and is related to Catholic theology, it is not theological. Rather, it is a natural law ethical theory²¹ which aids us in understanding which human actions are morally right or wrong through the aid of human reason alone - without the use of Divine Revelation or the teachings of the Magisterium. One might argue therefore that the principle of double effect is not the case of imposing one's religious belief on other by pointing to several facts. First, the doctrine of double effect can well hold its own in complicated, academic and heated debates compared to other philosophical ethical theories (although I will not get into that here). Second, there is simply no such thing as a "neutral" ethics which might be "perfect" for our pluralistic society - no matter how convenient such "neutrality" might be. This includes the ethical theories of utilitarianism, relativism or communitarianism - none of which are "neutral" and all of which are normative ethical theories. Therefore we are in fact constantly "forcing" some non-neutral philosophical or social ethical theory on others whether we want to acknowledge that fact or not. Finally, as pointed out in the *Declaration on Procured Abortion*: "It is true that it is not the task of the law to choose between points of view or to impose one rather than another. But the life of the child takes precedence over all opinions. One cannot invoke freedom of thought to destroy this life."²²

In counter-distinction to many other ethical theories, the doctrine of double effect as natural law ethical theory is proximately and objectively grounded in our objectively knowable human nature, i.e., on what is really good or bad for us as human beings - as individuals and as members of our human communities.²³ It is not simply deduced from non-empirically derived and questionable "philosophical" premises or religious

dogmas, or from variable emotions or personal opinions. For example, it is wrong to use cocaine because our human natures are such that cocaine eventually seriously harms, sometimes even destroys, us - body, mind and spirit. It can also seriously harm others close to us as well as to our human society at large. That is just the way we human beings are “made” and we can know this fact objectively and empirically.

In addition, because the basic precepts of natural law theory are proximately grounded on an objectively knowable human nature, they are applicable to all human beings, precisely because we all possess such human natures. The possession of natures which are specifically human is precisely what we all have in common. This is true regardless of time, culture, background, race, sex, religion or political affiliation. Thus if properly understood and applied, doctrine of double effect should be ideal for our “pluralistic” society - since all of our citizens are human beings, and hold at least that in common. What is fundamentally good or bad for human beings in general will hold for us all. Certainly secondary differences must be taken into consideration; but the primary precepts of the doctrine of double effect will be the same for all of our citizens by virtue of their common humanity, and these precepts cannot be changed because our human natures, and what is objectively and fundamentally good or bad for them, cannot change. It calls, indeed, for simply minimal moral requirements to guide a human polity.

The second, objection argues that the analysis of intention used in the rule of double effect is problematic, difficult to validate externally, and inconsistent with other analyses of human intention. In *View from Nowhere*, T Nagel asserts that “Even philosophers and theologians sympathetic to the distinction between intended and

foreseen consequences have failed to find an unambiguous way to draw the distinction in many difficult cases.²⁴

Tom Beauchamp and James Childress made raise similar objection in their: 'Principles of Biomedical Ethics'. After an initial denigration of the doctrine as among a group of related distinctions which are "outmoded and untenable"²⁵ Beauchamp and Childress employ some example to demonstrate why they believe that the application of the doctrine untenable. The examples depend on a comparison between two pairs of cases.²⁶ The first pair is the hysterectomy of a pregnant cancer patient, and the removal of a fallopian tube containing an ectopic pregnancy. The second pair are abortion for a mother with a weak heart (where the continuing pregnancy 'will probably result in her death'), and the craniotomy of a foetus in the process of being born (where the mother otherwise 'will die'). Beauchamp and Childress claim that 'according to proponents' of the doctrine the first two actions are permissible, and the second two are not. Without any attempt to distinguish the conceptual structure created by the doctrine, Beauchamp and Childress's argument at this point is that "it is not likely that a morally relevant difference can be established" between the first pair of cases and the second pair. In neither cases does the agent want or desire the death of the foetus, and the descriptions of the acts in these cases do not indicate morally relevant differences between intending, on the one hand, and foreseeing but not intending, on the other.²⁷

It is necessary to remind oneself here that the doctrine of double effect encapsulates the claim that whether harm is intended or merely foreseen is of great moral significance. Beauchamp and Childress appear to be demanding that the presence or

absence of an intention to harm be an indication of the presence or absence of a separate, morally relevant, feature of the cases. This argument simply begs the question against the claim that intention is morally relevant in itself. There is no argument that intention is not morally relevant, just an implicit assertion. The only way of arguing in favour of the moral relevance of intention is by appealing to moral intuitions, and such arguments are not difficult to make. If you discover that the driver who scratched your car did so by intention, and not, as you had assumed, accidentally, negligently, recklessly, or perhaps foreseeable, but nevertheless for some other reason, the moral seriousness of the act is greatly increased. Similarly, if you hear that what you thought was a deliberate murder was in fact done accidentally, negligently and so on, or that the agent foreseeable, but without intention, brought about the death in performing an action to save several other lives (exploding a terrorist's bomb where the fewest possible people were present, for example), then the moral gravity of the action is greatly reduced; it may even turn out to be a good action. Beauchamp and Childress do not make any such investigation of moral intuitions, however, and merely assume that intention is morally irrelevant.

More objections on the ground of intention were raised by A. Donagan. According to modern psychology, human intention is multi-layered, ambiguous, subjective, and often contradictory. "The rule of double effect", Donagan claims:

Does not acknowledge this complexity; instead, intention is judged according to the presence or absence of a clear purpose. Clinicians familiar with the requirements of the rule may learn to express their intentions in performing ambiguous acts such as providing terminal sedation or withdrawing life support

in terms of foreseen but unintended consequences; at the same time, other clinicians may reasonably interpret these acts as clear violations of the rule.²⁸

Dongan also claims that in most moral, social, and legal realms, people are held responsible for all reasonably foreseeable consequences of their actions, not just the intended consequences. Physicians according to him are not exempt from this expectation. He maintains that this understanding of moral responsibility encourages people to exercise due care in their actions and holds them responsible for that which is under their control.²⁹ Dongan believes that the doctrine's, unrealistic characterization of physicians' intentions, and failure to account for patients' wishes make it not just problematic but useless to medical practices. He is of the view that physicians' care of their dying patients is properly guided and justified by patients' informed consent, the degree of suffering, and the absence of less harmful alternatives to the treatment contemplated not the doctrine of double effect.

T. Shaw in his article "Two challenges to the double effect doctrine: euthanasia and abortion" he also strongly criticizes the doctrine of double effect. His intention is to show that it is illogical to use this doctrine to forbid either euthanasia or abortion. Shaw introduces three arguments to prove that logical contradictions arise when applying the doctrine to argue against euthanasia and abortion. The first argument is based on the assumption that "good effects in medicine do result from evil effects".³⁰ The author tries to show his point through a few examples. The second argument is that "the patient's own ethical evaluation of a method or an outcome should determine whether it is good or bad."³¹

Shaw's here is that autonomy is a central tenet of Western medical ethics and law. Thus, those who give considerable weight to patients' rights to determine their own care believe that the patient's informed consent to an action that may cause death is more fundamental than whether the physician's intentions are. From this perspective, the crucial moral considerations in evaluating any act that could cause death are the patient's right to self-determination and bodily integrity, the provision of informed consent, the absence of less harmful alternatives, and the severity of the patient's suffering. His third argument is that "there is little intuitive moral difference between indirect killing, permitted by the doctrine, and direct killing, forbidden by it."³²

At first sight these arguments appear convincing, a more profound reading reveals that the apparent logical contradictions stressed by the authors rest on a misunderstanding of some fundamental ethical concepts. The authors seem to identify the moral object of an action with its physical performance. But the physical performance of an action (*actushominis*) does not necessarily coincide with a moral act. Only an action in which human freedom is exercised (*actushumanus*) can be morally qualified. A moral act is essentially an act in which human freedom is exercised. This means that the moral act itself is marked by an 'intrinsic intentionality'; it tends towards an object (called moral object).

Hence, the moral act cannot be properly characterized by describing a mere physical performance. In order to find out which is the kind of moral act we are performing (i.e., the 'moral species' of the act), the key question is: What are you doing? And an answer like "injecting morphine to this patient" would not do it. The proper answer to

this question relieving pain reveals the ‘intrinsic intentionality’ of the moral act. An analysis of the lived ethical experience shows that the moral character of our free acts is basically determined by this ‘intrinsic intentionality’ of the act, i.e., by the kind (‘species’) of act we perform.

But the ethical experience also shows that the agent’s motivation does in fact play a fundamental role in determining the moral character of a given action as well. Thus, we have to add the question: Why (or for the sake of what) are you doing this? The answer to this question e.g. in order to allow the patient to enjoy his life - will explain the actual intention or motivation of the agent inasmuch as it goes beyond the motivating role of the intrinsic intentionality of the act itself. Thus, the ‘intrinsic intentionality’ of the act itself and the intention of the agent are not the same thing and need to be carefully distinguished. A careful analysis of our most basic human moral experience shows that the ethical character of human acts does not primarily depend on the motivation or intention of the agent, but on the *moral species* of the action to be performed. Hence, the common saying ‘the end does not justify the means’. The principle of double effect intends to secure that this necessary condition for the ethical legitimacy of our free actions will be respected. This in our view is what the critics of the doctrine of double effect miss. It is our contention that when this fundamental differences are acknowledged and analysed, the basic objections to the doctrine will disappear.

Now, there is one more claim by pro-choice advocates that needs to be addressed in order to make this evaluation complete. This objection consist in the contention that if

the pro-choice and pro-life views and equally reasonable, and because the liberty of the pregnant women hangs in a balance, the law should err on the side of liberty by legalizing abortion. The foremost proponent of this position is Thomson, already encountered in this dissertation. Thomson, however, maintains that because the arguments for the contrary positions on the moral standing of the foetus are equally reasonable and because the liberty of certain citizens (i.e. pregnant women) hangs in the balance, we should err on the side of liberty. She writes:

One side says that the fetus has a right to life from the moment of conception, the other side denies this. Neither side is able to prove its case. Why should the deniers win? The answer is that the situation is not symmetrical. What is in question here is not which of two values we should promote, the deniers' or the supporters'. What the supporters want is a license to impose force; what the deniers want is a license to be free of it. It is the former that needs justification.³³

But this clearly begs the question, for Thomson has to show, rather than merely stipulate, that in the debate over abortion's permissibility *reason requires* us to conclude that liberty is the good at stake. Or to conscript Thomson's language for our purposes, it is not unreasonable to reject the notion that we should err on the side of liberty when all sides in the abortion debate hold equally reasonable arguments. Consider the following. If it is true that no one position on the foetus's moral status wins the day, this is an excellent reason *not* to permit abortion, because an abortion *may* result in the death of a human entity who has a full right to life. If one kills another being without knowing whether that being is an entity with protected moral status, and if one has reasonable grounds (as Thomson admits) to believe that the

being in question has that status, such an action would constitute a wilful and reckless disregard for others, even if one later discovered that the being was not a person.

Thomson is apparently saying that the different positions on the foetus's moral status all have able defenders, persuasive arguments, and passionate advocates, but none really wins the day. To put it another way, the issue of foetal personhood is up for grabs; all positions are in some sense equal, none is better than any other. In fact, Thomson writes that "while I know of no conclusive reason for denying that fertilized eggs have a right to life, I also know of no conclusive reason for asserting that they do have a right to life." But if this is the case, then it is safe to say that the odds of the foetus being a human person are roughly 50/50 (if we wanted to put a number on a "not unreasonable" position held by a sizeable number of well-informed and educated adults in the world). Given these odds, it would seem that society has a moral obligation to err on the side of life, and therefore, to legally prohibit virtually all abortions.

Imagine the police are able to identify someone as a murderer with only one piece of evidence: his DNA matches the DNA of the genetic material found on the victim. The police subsequently arrest him, and he is convicted and sentenced to death. Suppose, however, that it is discovered several months later that the murderer has an identical twin brother who was also at the scene of the crime and obviously has the same DNA as his brother on death row. This means that there is a 50/50 chance that the man on death row is the murderer. Would the state be justified in executing this man? Surely not, for there is a 50/50 chance of executing an innocent person. Consequently, if it is

wrong to kill the man on death row, it is then wrong to kill the foetus when the arguments for its full humanity are just as reasonable as the arguments against it.

This analysis once again, undermined the almost general assumption that the pro-choice advocates have won or are winning the abortion debate. Thus, while the abortion debate is both a complex and controversial moral problems, this evaluation has shown that the debate cannot be morally, legally or politically resolved in favour of the pro-choice position by appealing either to the status of the foetus, the mother rather to autonomy or the supposed equal rationality of the pro-life and the pro-choice positions on the moral status of the foetus. In order words, as this evaluation have shown, the foetus is a human being and has a right to life like every other human being. In the event of any contrary claim, then the onus is on those who support abortion not on those who oppose it to substantiate their claim.

6.2. Conclusion

Let us now take the final pause to recapitulate the efforts invested in this dissertation. To sum up, we came into the abortion debate not just to interrogate the claim that pro-choice advocates have carried the day, but also to show that the assumed intractable problems of the moral status of the foetus and conflict of rights between the mother and the foetus can be resolved without setting aside the moral significance of any of the parties involved. Throughout this work, we have painstakingly kept faith with these three objectives and can at this concluding juncture say that we have been fair to our topic.

Basically, our genius in the dissertation derives from our observation in chapters, two, three and four, that, the pro-choice and pro-life advocates, the two most vocal contestants in the abortion debate, because they push themselves to positions that make problem solving impossible, are not worthy candidates in resolving the debate. In broad and general terms, the fundamental pro-life activists admit of no exception to the principle of Sanctity of Life and therefore do not only forbid abortion in all cases but are basically unable to provide convincingly grounds upon which such prohibition can be justified. On the other hand, the liberal pro-choice advocates claim that abortion or not only abortion but also infanticide is permissible. Their justification for this is either that the foetus is not a person or that the mother's right to autonomy overrides the foetus right to life thus, whereas it is practically impossible to follow strictly the conservative and unjustified position of the pro-life advocates, it is counterintuitive and repulsive to follow the logic of the pro-choicers to its conclusion.

It is in cognisance of these shortcomings and in pursuant of it resolution that we offered the principle of substance and the doctrine of double effect in Chapter Five. On one hand, we were able to show through the principle of personal identity that the foetus is a human substance; numerically identical itself always and therefore is always of equal intrinsic value, irrespective of whether as an adult or a foetus. On the other hand, the doctrine of double effect allowed us to mediate between the mother's and foetus rights, thus demonstrating not only that the conflicts are not non-existent but also not intractable most pro-choice advocates would claim.

In addition we also contended for argument sake, that even in a situation where the substance view and the doctrine of double effect fail to provide more explanatory power than its opponents, the abortion debate cannot still go in favour the pro-choice advocate because it is more logical to err in favour of life than in favour of liberty.

Finally, since we have been able to show that the foetus is a human being and as such that the doctrine of double effect is the best way to mediate between the foetus right and the mothers right, we hereby submit that to allow abortion on demand or to legally permit abortion for any kind of maternal indication (health, rape, insanity, incest) is generally to undermine the ultimate value of life which attaches to human life and which many municipal and international laws had fought to defend.

Further, to legally permit abortion for reasons of foetal abnormality and/or deformity amounts to placing value not on life but on its functionality, in which case expediency and not essence becomes the rule and measure of value. Such will mean setting criteria of evaluation by factors exterior to life itself. It may further lead to a situation where the insane, the mentally retarded and the incurably ill, are consigned to the waste and considered disposable. This will mean a new form of euthanasia where the prerogative of mercy is exercised not on behalf of the child but society into which he is to be born. By the same argument with which suicide, homicide and euthanasia is rejected, abortion ought also to be rejected with its kindred implications. In the end, the only framework open for escaping the oddity and/or absurdity of extinguishing human life in abortion is to give legal effect to the Principle of Double Effect and that is the view we have defended in this dissertation.

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