

Why Abortion is Immoral

Don Marquis

Journal of Philosophy, Vol. 86 (April, 1989), pp. 183-202

- 1 The view that abortion is, with rare exceptions, seriously immoral has received little support in the recent philosophical literature. No doubt most philosophers affiliated with secular institutions of higher education believe that the anti-abortion position is either a symptom of irrational religious dogma or a conclusion generated by seriously confused philosophical argument. The purpose of this essay is to undermine this general belief. This essay sets out an argument that purports to show, as well as any argument in ethics can show, that abortion is, except possibly in rare cases, seriously immoral, that it is in the same moral category as killing an innocent adult human being.
- 2 The argument is based on a major assumption. Many of the most insightful and careful writers on the ethics of abortion—such as Joel Feinberg, Michael Tooley, Mary Ann Warren, H. Tristram Engelhardt, Jr., L.W. Sumner, John T. Noonan, Jr., and Philip Devine¹—believe that whether or not abortion is morally permissible stands or falls on whether or not a fetus is the sort of being whose life it is seriously wrong to end. The argument of this essay will assume, but not argue, that they are correct.
- 3 Also, this essay will neglect issues of great importance to a complete ethics of abortion. Some anti-abortionists will allow that certain abortions, such as abortion before implantation or abortion when the life of a woman is threatened by a pregnancy or abortion after rape, may be morally permissible. This essay will not explore the casuistry of these hard cases. The purpose of this essay is to develop a general argument for the claim that the overwhelming majority of deliberate abortions are seriously immoral.

¹ Feinberg, "Abortion," in *Matters of Life and Death: New Introductory Essays in Moral Philosophy*, Tom Regan, ed. (New York: Random House, 1986), pp. 256-293; Tooley, "Abortion and Infanticide," *Philosophy and Public Affairs*, Vol. 11, No. 1 (1912), pp. 31-65; Tooley, *Abortion and Infanticide* (New York: Oxford, 1984); Warren, "On the Moral and Legal Status of Abortion," *The Monist* LVIX, Vol. 1 (1973), p. 4361; Engelhardt, "The Ontology of Abortion," *Ethics* LXXXIV Vol. 3 (1974), pp. 217-234; Sumner, *Abortion and Moral Theory* (Princeton: University Press, 1981); Noonan, "An Almost Absolute Value in History," in *The Morality of Abortion: Legal and Historical Perspectives*, Noonan, ed. (Cambridge: Harvard, 1970); and Devine, *The Ethics of Homicide* (Ithaca: Cornell, 1978).

- 4 1. A sketch of standard anti-abortion and pro-choice arguments exhibits how those arguments possess certain symmetries that explain why partisans of those positions are so convinced of the correctness of their own positions, why they are not successful in convincing their opponents, and why, to others, this issue seems to be unresolvable. An analysis of the nature of this standoff suggests a strategy for surmounting it.
- 5 Consider the way a typical anti-abortionist argues. She will argue or assert that life is present from the moment of conception or that fetuses look like babies or that fetuses possess a characteristic such as a genetic code that is both necessary and sufficient for being human. Anti-abortionists seem to believe that (1) the truth of all of these claims is quite obvious, and (2) establishing any of these claims is sufficient to show that abortion is morally akin to murder.
- 6 A standard pro-choice strategy exhibits similarities. The pro-choicer will argue or assert that fetuses are not persons or that fetuses are not rational agents or that fetuses are not social beings. Pro-choicers seem to believe that (1) the truth of any of these claims is quite obvious, and (2) establishing any of these claims is sufficient to show that an abortion is not a wrongful killing.
- 7 In fact, both the pro-choice and the anti-abortion claims do seem to be true, although the "it looks like a baby" claim is more difficult to establish the earlier the pregnancy. We seem to have a standoff. How can it be resolved?
- 8 As everyone who has taken a bit of logic knows, if any of these arguments concerning abortion is a good argument, it requires not only some claim characterizing fetuses, but also some general moral principle that ties a characteristic of fetuses to having or not having the right to life or to some other moral characteristic that will generate the obligation or the lack of obligation not to end the life of a fetus. Accordingly, the arguments of the anti-abortionist and the pro-choicer need a bit of filling in to be regarded as adequate.
- 9 Note what each partisan will say. The anti-abortionist will claim that her position is supported by such generally accepted moral principles as "It is always prima facie seriously wrong to take a human life" or "It is always prima facie seriously wrong to end the life of a baby." Since these are generally accepted moral principles, her position is certainly not obviously wrong. The pro-choicer will claim that her position is supported by such plausible moral principles as "Being a person is what gives an individual intrinsic moral worth" or "It is only seriously prima facie wrong to take the life of a member of the human community." Since these are generally accepted moral principles, the pro-choice position is certainly not obviously wrong. Unfortunately, we have again arrived at a standoff.

- ¹⁰ Now, how might one deal with this standoff? The standard approach is to try to show how the moral principles of one's opponent lose their plausibility under analysis. It is easy to see how this is possible. On the one hand, the anti-abortionist will defend a moral principle concerning the wrongness of killing which tends to be broad in scope in order that even fetuses at an early stage of pregnancy will fall under it. The problem with broad principles is that they often embrace too much. In this particular instance, the principle "It is always *prima facie* wrong to take a human life" seems to entail that it is wrong to end the existence of a living human cancer-cell culture, on the grounds that the culture is both living and human. Therefore, it seems that the anti-abortionist's favored principle is too broad.
- ¹¹ On the other hand, the pro-choicer wants to find a moral principle concerning the wrongness of killing which tends to be narrow in scope in order that fetuses will *not* fall under it. The problem with narrow principles is that they often do not embrace enough. Hence, the needed principles such as "It is *prima facie* seriously wrong to kill only persons" or "It is *prima facie* wrong to kill only rational agents" do not explain why it is wrong to kill infants or young children or the severely retarded or even perhaps the severely mentally ill. Therefore, we seem again to have a standoff. The anti-abortionist charges, not unreasonably, that pro-choice principles concerning killing are too narrow to be acceptable; the pro-choicer charges, not unreasonably, that anti-abortionist principles concerning killing are too broad to be acceptable.
- ¹² Attempts by both sides to patch up the difficulties in their positions run into further difficulties. The anti-abortionist will try to remove the problem in her position by reformulating her principle concerning killing in terms of human beings. Now we end up with: "It is always *prima facie* seriously wrong to end the life of a human being." This principle has the advantage of avoiding the problem of the human cancer-cell culture counterexample. But this advantage is purchased at a high price. For although it is clear that a fetus is both human and alive, it is not at all clear that a fetus is a human being. There is at least something to be said for the view that something becomes a human being only after a process of development, and that therefore first trimester fetuses and perhaps all fetuses are not yet human beings. Hence, the anti-abortionist, by this move, has merely exchanged one problem for another.²
- ¹³ The pro-choicer fares no better. She may attempt to find reasons why killing infants, young children, and the severely retarded is wrong which are independent of her
- major principle that is supposed to explain the wrongness of taking human life, but which will not also make abortion immoral. This is no easy task. Appeals to social utility will seem satisfactory only to those who resolve not to think of the enormous difficulties with a utilitarian account of the wrongness of killing and the significant social costs of preserving the lives of the unproductive.³ A pro-choice strategy that extends the definition of "person" to infants or even to young children seems just as arbitrary as an anti-abortion strategy that extends the definition of "human being" to fetuses. Again, we find symmetries in the two positions and we arrive at a standoff. There are even further problems that reflect symmetries in the two positions. In addition to counterexample problems, or the arbitrary application problems that can be exchanged for them, the standard anti-abortionist principle "It is *prima facie* seriously wrong to kill a human being," or one of its variants, can be objected to on the grounds of ambiguity. If "human being" is taken to be a *biological* category, then the anti-abortionist is left with the problem of explaining why a merely biological category should make a moral difference. Why, it is asked, is it any more reasonable to base a moral conclusion on the number of chromosomes in one's cells than on the color of one's skin?⁴ If "human being," on the other hand, is taken to be a moral category, then the claim that a fetus is a human being cannot be taken to be a premise in the anti-abortion argument, for it is precisely what needs to be established. Hence, either the anti-abortionist's main category is a morally irrelevant, merely biological category, or it is of no use to the anti-abortionist in establishing (noncircularly, of course) that abortion is wrong.
- ¹⁴ Although this problem with the anti-abortionist position is often noticed, it is less often noticed that the pro-choice position suffers from an analogous problem. The principle "Only persons have the right to life" also suffers from an ambiguity. The term "person" is typically defined in terms of psychological characteristics, although there will certainly be disagreement concerning which characteristics are most important. Supposing that this matter can be settled, the pro-choicer is left with the problem of explaining why *psychological* characteristics should make a *moral* difference. If the pro-choicer should attempt to deal with this problem by claiming that an explanation is not necessary, that in fact we do treat such a cluster of psychological properties as having moral significance, the sharp-witted anti-abortionist should have a ready response. We do treat being both living and human as having moral significance. If it is legitimate for

² For interesting discussions of this issue, see Warren Quinn, "Abortion: Identity and Loss," *Philosophy and Public Affairs*, Vol. XIII, No. 1 (1984), pp. 24-54; and Lawrence C. Becker, "Human Being: The Boundaries of the Concept," *Philosophy and Public Affairs*, Vol. IV No. 1 (1915), pp. 334-359.

³ For example, see my "Ethics and the Elderly: Some Problems," in Stuart Spicker, Kathleen Woodward, and David van Tassel, eds., *Aging and the Elderly: Humanistic Perspectives in Gerontology* (Atlantic Highlands, NJ: Humanities, 1978), pp. 341-355.

⁴ See Warren, *op. cit.*, and Tooley, "Abortion and Infanticide."

the pro-choicer to demand that the anti-abortionist provide an explanation of the connection between the biological character of being a human being and the wrongness of being killed (even though people accept this connection), then it is legitimate for the anti-abortionist to demand that the pro-choicer provide an explanation of the connection between psychological criteria for being a person and the wrongness of being killed (even though that connection is accepted).⁵

- 15 Feinberg has attempted to meet this objection (he calls psychological personhood "commonsense personhood"):

The characteristics that confer commonsense personhood are not arbitrary bases for rights and duties, such as race, sex or species membership; rather they are traits that make sense out of rights and duties and without which those moral attributes would have no point or function. It is because people are conscious; have a sense of their personal identities; have plans, goals, and projects; experience emotions; are liable to pains, anxieties, and frustrations; can reason and bargain, and so on—it is because of these attributes that people have values and interests, desires and expectations of their own, including a stake in their own futures, and a personal well-being of a sort we cannot ascribe to unconscious or nonrational beings. Because of their developed capacities they can assume duties and responsibilities and can have and make claims on one another. Only because of their sense of self, their life plans, their value hierarchies, and their stakes in their own futures can they be ascribed fundamental rights. There is nothing arbitrary about these linkages. (*op. cit.*, p. 270)

- 16 The plausible aspects of this attempt should not be taken to obscure its implausible features. There is a great deal to be said for the view that being a psychological person under some description is a necessary condition for having duties. One cannot have a duty unless one is capable of behaving morally, and a being's capability of behaving morally will require having a certain psychology. It is far from obvious, however, that having rights entails consciousness or rationality, as Feinberg suggests. We speak of the rights of the severely retarded or the severely mentally ill, yet some of these persons are not rational. We speak of the rights of the temporarily unconscious. The New Jersey Supreme Court based their decision in the Quinlan case on Karen Ann Quinlan's right to privacy, and she was known to be permanently unconscious at that time. Hence, Feinberg's claim that having rights entails being conscious is, on its face, obviously false.
- 17 Of course, it might not make sense to attribute rights to a being that would never in its natural history have certain psychological traits. This modest connection between psychological personhood and moral personhood will

create a place for Karen Ann Quinlan and the temporarily unconscious. But then it makes a place for fetuses also. Hence, it does not serve Feinberg's pro-choice purposes. Accordingly, it seems that the pro-choicer will have as much difficulty bridging the gap between psychological personhood and personhood in the moral sense as the anti-abortionist has bridging the gap between being a biological human being and being a human being in the moral sense.

- 18 Furthermore, the pro-choicer cannot any more escape her problem by making person a purely moral category than the anti-abortionist could escape by the analogous move. For if person is a moral category, then the pro-choicer is left without the resources for establishing (noncircularly, of course) the claim that a fetus is not a person, which is an essential premise in her argument. Again, we have both a symmetry and a standoff between pro-choice and antiabortion views.
- 19 Passions in the abortion debate run high. There are both plausibilities and difficulties with the standard positions. Accordingly, it is hardly surprising that partisans of either side embrace with fervor the moral generalizations that support the conclusions they preanalytically favor, and reject with disdain the moral generalizations of their opponents as being subject to inescapable difficulties. It is easy to believe that the counterexamples to one's own moral principles are merely temporary difficulties that will dissolve in the wake of further philosophical research, and that the counterexamples to the principles of one's opponents are as straightforward as the contradiction between *A* and *O* propositions in traditional logic. This might suggest to an impartial observer (if there are any) that the abortion issue is unresolvable.
- 20 There is a way out of this apparent dialectical quandary. The moral generalizations of both sides are not quite correct. The generalizations hold for the most part, for the usual cases. This suggests that they are all *accidental* generalizations, that the moral claims made by those on both sides of the dispute do not touch on the *essence* of the matter.
- 21 This use of the distinction between essence and accident is not meant to invoke obscure metaphysical categories. Rather, it is intended to reflect the rather atheoretical nature of the abortion discussion. If the generalization a partisan in the abortion dispute adopts were derived from the reason why ending the life of a human being is wrong, then there could not be exceptions to that generalization unless some special case obtains in which there are even more powerful countervailing reasons. Such generalizations would not be merely accidental generalizations; they would point to, or be based upon, the essence of the wrongness of killing, what it is that makes killing wrong. All this suggests that a necessary condition of resolving the abortion controversy is a more theoretical account of the wrongness of killing. After all,

⁵ This seems to be the fatal flaw in Warren's treatment of this issue.

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?

- 22 2. In order to develop such an account, we can start from the following unproblematic assumption concerning our own case: it is wrong to kill us. Why is it wrong? Some answers can be easily eliminated. It might be said that what makes killing us wrong is that a killing brutalizes the one who kills. But the brutalization consists of being inured to the performance of an act that is hideously immoral; hence, the brutalization does not explain the immorality. It might be said that what makes killing us wrong is the great loss others would experience due to our absence. Although such hubris is understandable, such an explanation does not account for the wrongness of killing hermits, or those whose lives are relatively independent and whose friends find it easy to make new friends.
- 23 A more obvious answer is better. 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 which 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. To describe this as the loss of life can be misleading, however. The change in my biological state does not by itself make killing me wrong. The effect of the loss of my biological life is the loss to me of all those activities, projects, experiences, and enjoyments which would otherwise have constituted my future personal life. These activities, projects, experiences, and enjoyments are either valuable for their own sakes or are means to something else that is valuable for its own sake. Some parts of my future are not valued by me now, but will come to be valued by me as I grow older and as my values and capacities change. When I am killed, I am deprived both of what I now value which would have been part of my future personal life, but also what I would come to value. Therefore, when I die, I am deprived of all of the value of my future. Inflicting this loss on me is ultimately what makes killing me wrong. This being the case, it would seem that what makes killing any adult human being *prima facie* seriously wrong is the loss of his other future.⁶
- 24 How should this rudimentary theory of the wrongness of killing be evaluated? It cannot be faulted for deriving an

"ought" from an "is," for it does not. The analysis assumes that killing me (or you, reader) is *prima facie* seriously wrong. The point of the analysis is to establish which natural property ultimately explains the wrongness of the killing, given that it is wrong. A natural property will ultimately explain the wrongness of killing, only if (1) the explanation fits with our intuitions about the matter and (2) there is no other natural property that provides the basis for a better explanation of the wrongness of killing. This analysis rests on the intuition that what makes killing a particular human or animal wrong is what it does to that particular human or animal. What makes killing wrong is some natural effect or other of the killing. Some would deny this. For instance, a divine-command theorist in ethics would deny it. Surely this denial is, however, one of those features of divine command theory which renders it so implausible.

- 25 The claim that what makes killing wrong is the loss of the victim's future is directly supported by two considerations. In the first place, this theory explains why we regard killing as one of the worst of crimes. Killing is especially wrong, because it deprives the victim of more than perhaps any other crime. In the second place, people with AIDS or cancer who know they are dying believe, of course, that dying is a very bad thing for them. They believe that the loss of a future to them that they would otherwise have experienced is what makes their premature death a very bad thing for them. A better theory of the wrongness of killing would require a different natural property associated with killing which better fits with the attitudes of the dying. What could it be?
- 26 The view that what makes killing wrong is the loss to the victim of the value of the victim's future gains additional support when some of its implications are examined. In the first place, it is incompatible with the view that it is wrong to kill only beings who are biologically human. It is possible that there exists a different species from another planet whose members have a future like ours. Since having a future like that is what makes killing someone wrong, this theory entails that it would be wrong to kill members of such a species. Hence, this theory is opposed to the claim that only life that is biologically human has great moral worth, a claim which many anti-abortionists have seemed to adopt. This opposition, which this theory has in common with personhood theories, seems to be a merit of the theory.
- 27 In the second place, the claim that the loss of one's future is the wrong-making feature of one's being killed entails the possibility that the futures of some actual nonhuman mammals on our own planet are sufficiently like ours and it is seriously wrong to kill them also. Whether some animals do have the same right to life as human beings depends on adding to the account of the wrongness of killing some additional account of just what it is about my future or the futures of other adult human beings which

⁶ I have been most influenced on this matter by Jonathan Glover, *Causing Death and Saving Lives* (New York: Penguin, 1977), ch. 3; and Robert Young, "What Is So Wrong with Killing People?" *Philosophy*, Vol. LIV, No. 210 (1979), pp. 515-528.

makes it wrong to kill us. No such additional account will be offered in this essay. Undoubtedly, the provision of such an account would be a very difficult matter. Undoubtedly, any such account would be quite controversial. Hence, it surely should not reflect badly on this sketch of an elementary theory of the wrongness of killing that it is indeterminate with respect to some very difficult issues regarding animal rights.

²⁸ In the third place, the claim that the loss of one's future is the wrong-making feature of one's being killed does not entail, as sanctity of human life theories do, that active euthanasia is wrong. Persons who are severely and incurably ill, who face a future of pain and despair, and who wish to die will not have suffered a loss if they are killed. It is, strictly speaking, the value of a human's future which makes killing wrong in this theory. This being so, killing does not necessarily wrong some persons who are sick and dying. Of course, there may be other reasons for a prohibition of active euthanasia, but that is another matter. Sanctity-of-human-life theories seem to hold that active euthanasia is seriously wrong even in an individual case where there seems to be good reason for it independently of public policy considerations. This consequence is most implausible, and it is a plus for the claim that the loss of a future of value is what makes killing wrong that it does not share this consequence.

²⁹ In the fourth place, the account of the wrongness of killing defended in this essay does straightforwardly entail that it is prima facie seriously wrong to kill children and infants, for we do presume that they have futures of value. Since we do believe that it is wrong to kill defenseless little babies, it is important that a theory of the wrongness of killing easily account for this. Personhood theories of the wrongness of killing, on the other hand, cannot straightforwardly account for the wrongness of killing infants and young children.⁷ Hence, such theories must add special ad hoc accounts of the wrongness of killing the young. The plausibility of such ad hoc theories seems to be a function of how desperately one wants such theories to work. The claim that the primary wrong-making feature of a killing is the loss to the victim of the value of its future accounts for the wrongness of killing young children and infants directly; it makes the wrongness of such acts as obvious as we actually think it is. This is a further merit of this theory. Accordingly, it seems that this value of a future-like-ours theory of the wrongness of killing shares strengths of both sanctity-of-life and personhood accounts while avoiding weaknesses of both. In addition, it meshes with a central intuition concerning what makes killing wrong.

³⁰ The claim that the primary wrong-making feature of a killing is the loss to the victim of the value of its future has obvious consequences for the ethics of abortion. The

future of a standard fetus includes a set of experiences, projects, activities, and such which are identical with the futures of adult human beings and are identical with the futures of young children. Since the reason that is sufficient to explain why it is wrong to kill human beings after the time of birth is a reason that also applies to fetuses, it follows that abortion is prima facie seriously morally wrong.

³¹ This argument does not rely on the invalid inference that, since it is wrong to kill persons, it is wrong to kill potential persons also. The category that is morally central to this analysis is the category of having a valuable future like ours; it is not the category of personhood. The argument to the conclusion that abortion is prima facie seriously morally wrong proceeded independently of the notion of person or potential person or any equivalent. Someone may wish to start with this analysis in terms of the value of a human future, conclude that abortion is, except perhaps in rare circumstances, seriously morally wrong, infer that fetuses have the right to life, and then call fetuses "persons" as a result of their having the right to life. Clearly, in this case, the category of person is being used to state the *conclusion* of the analysis rather than to generate the *argument* of the analysis.

³² The structure of this anti-abortion argument can be both illuminated and defended by comparing it to what appears to be the best argument for the wrongness of the wanton infliction of pain on animals. This latter argument is based on the assumption that it is prima facie wrong to inflict pain on me (or you, reader). What is the natural property associated with the infliction of pain which makes such infliction wrong? The obvious answer seems to be that the infliction of pain causes suffering and that suffering is a misfortune. The suffering caused by the infliction of pain is what makes the wanton infliction of pain on me wrong. The wanton infliction of pain on other adult humans causes suffering. The wanton infliction of pain on animals causes suffering. Since causing suffering is what makes the wanton infliction of pain wrong and since the wanton infliction of pain on animals causes suffering, it follows that the wanton infliction of pain on animals is wrong⁷

³³ This argument for the wrongness of the wanton infliction of pain on animals shares a number of structural features with the argument for the serious prima facie wrongness of abortion. Both arguments start with an obvious assumption concerning what it is wrong to do to me (or you, reader). Both then look for the characteristic or the consequence of the wrong action which makes the action wrong. Both recognize that the wrong-making feature of these immoral actions is a property of actions sometimes directed at individuals other than postnatal human beings. If the structure of the argument for the wrongness of the wanton infliction of pain on animals is sound, then the structure of the argument for the prima facie serious wrongness of abortion is also sound, for the structure of the two arguments is the same. The structure common to

⁷ Feinberg, Tooley, Warren, and Engelhardt have all dealt with this problem.

both is the key to the explanation of how the wrongness of abortion can be demonstrated without recourse to the category of person. In neither argument is that category crucial.

- ³⁴ This defense of an argument for the wrongness of abortion in terms of a structurally similar argument for the wrongness of the wanton infliction of pain on animals succeeds only if the account regarding animals is the correct account. Is it? In the first place, it seems plausible. In the second place, its major competition is Kant's account. Kant believed that we do not have direct duties to animals at all, because they are not persons. Hence, Kant had to explain and justify the wrongness of inflicting pain on animals on the grounds that "he who is hard in his dealings with animals becomes hard also in his dealing with men."⁸ The problem with Kant's account is that there seems to be no reason for accepting this latter claim unless Kant's account is rejected. If the alternative to Kant's account is accepted, then it is easy to understand why someone who is indifferent to inflicting pain on animals is also indifferent to inflicting pain on humans, for one is indifferent to what makes inflicting pain wrong in both cases. But, if Kant's account is accepted, there is no intelligible reason why one who is hard in his dealings with animals (or crabgrass or stones) should also be hard in his dealings with men. After all, men are persons: animals are no more persons than crabgrass or stones. Persons are Kant's crucial moral category. Why, in short, should a Kantian accept the basic claim in Kant's argument?
- ³⁵ Hence, Kant's argument for the wrongness of inflicting pain on animals rests on a claim that, in a world of Kantian moral agents, is demonstrably false. Therefore, the alternative analysis, being more plausible anyway, should be accepted. Since this alternative analysis has the same structure as the anti-abortion argument being defended here, we have further support for the argument for the immorality of abortion being defended in this essay.
- ³⁶ Of course, this value of a future-like-ours argument, if sound, shows only that abortion is *prima facie* wrong, not that it is wrong in any and all circumstances. Since the loss of the future to a standard fetus, if killed, is, however, at least as great a loss as the loss of the future to a standard adult human being who is killed, abortion, like ordinary killing, could be justified only by the most compelling reasons. The loss of one's life is almost the greatest misfortune that can happen to one" Presumably abortion could be justified in some circumstances, only if the loss consequent on failing to abort would be at least as great. Accordingly, morally permissible abortions will be rare indeed unless, perhaps, they occur so early in

pregnancy that a fetus is not yet definitely an individual. Hence, this argument should be taken as showing that abortion is presumptively very seriously wrong, where the presumption is very strong—as strong as the presumption that killing another adult human being is wrong.

- ³⁷ 3. How complete an account of the wrongness of killing does the value of a future-like-ours account have to be in order that the wrongness of abortion is a consequence? This account does not have to be an account of the necessary conditions for the wrongness of killing. Some persons in nursing homes may lack valuable human futures, yet it may be wrong to kill them for other reasons. Furthermore, this account does not obviously have to be the sole reason killing is wrong where the victim did have a valuable future. This analysis claims only that, for any killing where the victim did have a valuable future like ours, having that future by itself is sufficient to create the strong presumption that the killing is seriously wrong.
- ³⁸ One way to overturn the value of a future-like-ours argument would be to find some account of the wrongness of killing which is at least as intelligible and which has different implications for the ethics of abortion. Two rival accounts possess at least some degree of plausibility. One account is based on the obvious fact that people value the experience of living and wish for that valuable experience to continue. Therefore, it might be said, what makes killing wrong is the discontinuation of that experience for the victim. Let us call this the *discontinuation account*.⁹ Another rival account is based upon the obvious fact that people strongly desire to continue to live. This suggests that what makes killing us so wrong is that it interferes with the fulfillment of a strong and fundamental desire, the fulfillment of which is necessary for the fulfillment of any other desires we might have. Let us call this the *desire account*.¹⁰
- ³⁹ Consider first the desire account as a rival account of the ethics of killing which would provide the basis for rejecting the anti-abortion position. Such an account will have to be stronger than the value of a future-like-ours account of the wrongness of abortion if it is to do the job expected of it. To entail the wrongness of abortion, the value of a future-like-ours account has only to provide a sufficient, but not a necessary, condition for the wrongness of killing. The desire account, on the other hand, must provide us also with a necessary condition for the wrongness of killing in order to generate a pro-choice conclusion on abortion. The reason for this is that presumably the argument from the desire account moves from the claim that what makes killing wrong is

⁸ "Duties to Animals and Spirits," in *Lectures on Ethics*, Louis Infeld, trans. (New York: Harper, 1963), p. 239.

⁹ I am indebted to Jack Bricke for raising this objection.

¹⁰ Presumably a preference utilitarian would press such an objection. Tooley once suggested that his account has such a theoretical underpinning. See his "Abortion and Infanticide," pp. 44/5.

interference with a very strong desire to the claim that abortion is not wrong because the fetus lacks a strong desire to live. Obviously, this inference fails if someone's having the desire to live is not a necessary condition of its being wrong to kill that individual.

- 40 One problem with the desire account is that we do regard it as seriously wrong to kill persons who have little desire to live or who have no desire to live or, indeed, have a desire not to live. We believe it is seriously wrong to kill the unconscious, the sleeping, those who are tired of life, and those who are suicidal. The value-of-a-human-future account renders standard morality intelligible in these cases; these cases appear to be incompatible with the desire account. The desire account is subject to a deeper difficulty. We desire life, because we value the goods of this life. The goodness of life is not secondary to our desire for it. If this were not so, the pain of one's own premature death could be done away with merely by an appropriate alteration in the configuration of one's desires. This is absurd. Hence, it would seem that it is the loss of the goods of one's future, not the interference with the fulfillment of a strong desire to live, which accounts ultimately for the wrongness of killing.
- 41 It is worth noting that, if the desire account is modified so that it does not provide a necessary, but only a sufficient, condition for the wrongness of killing, the desire account is compatible with the value of a future-like-ours account. The combined accounts will yield an anti-abortion ethic. This suggests that one can retain what is intuitively plausible about the desire account without a challenge to the basic argument of this paper.
- 42 It is also worth noting that, if future desires have moral force in a modified desire account of the wrongness of killing, one can find support for an anti-abortion ethic even in the absence of a value of a future-like-ours account. If one decides that a morally relevant property, the possession of which is sufficient to make it wrong to kill some individual, is the desire at some future time to live—one might decide to justify one's refusal to kill suicidal teenagers on these grounds, for example—then, since typical fetuses will have the desire in the future to live, it is wrong to kill typical fetuses. Accordingly, it does not seem that a desire account of the wrongness of killing can provide a justification of a pro-choice ethic of abortion which is nearly as adequate as the value of a human-future justification of an anti-abortion ethic.
- 43 The discontinuation account looks more promising as an account of the wrongness of killing. It seems just as intelligible as the value of a future-like-ours account, but it does not justify an anti-abortion position. Obviously, if it is the continuation of one's activities, experiences, and projects, the loss of which makes killing wrong, then it is not wrong to kill fetuses for that reason, for fetuses do not have experiences, activities, and projects to be continued or discontinued. Accordingly, the discontinuation account does not have the anti-abortion consequences that the value of a future-like-ours account has. Yet, it seems as intelligible as the value of a future-like-ours account, for when we think of what would be wrong with our being killed, it does seem as if it is the discontinuation of what makes our lives worthwhile which makes killing us wrong.
- 44 Is the discontinuation account just as good an account as the value of a future-like-ours account? The discontinuation account will not be adequate at all, if it does not refer to the value of the experience that may be discontinued. One does not want the discontinuation account to make it wrong to kill a patient who begs for death and who is in severe pain that cannot be relieved short of killing. (I leave open the question of whether it is wrong for other reasons.) Accordingly, the discontinuation account must be more than a bare discontinuation account. It must make some reference to the positive value of the patient's experiences. But, by the same token, the value of a future-like-ours account cannot be a bare future account either. Just having a future surely does not itself rule out killing the above patient. This account must make some reference to the value of the patient's future experiences and projects also. Hence, both accounts involve the value of experiences, projects, and activities. So far we still have symmetry between the accounts.
- 45 The symmetry fades, however, when we focus on the time period of the value of the experiences, etc., which has moral consequences. Although both accounts leave open the possibility that the patient in our example may be killed, this possibility is left open only in virtue of the utterly bleak future for the patient. It makes no difference whether the patient's immediate past contains intolerable pain, or consists in being in a coma (which we can imagine is a situation of indifference), or consists in a life of value. If the patient's future is a future of value, we want our account to make it wrong to kill the patient. If the patient's future is intolerable, whatever his or her immediate past, we want our account to allow killing the patient. Obviously, then, it is the value of that patient's future which is doing the work in rendering the morality of killing the patient intelligible.
- 46 This being the case, it seems clear that whether one has immediate past experiences or not does no work in the explanation of what makes killing wrong. The addition the discontinuation account makes to the value of a human future account is otiose. Its addition to the value-of-a-future account plays no role at all in rendering intelligible the wrongness of killing. Therefore, it can be discarded with the discontinuation account of which it is a part.
- 47 4. The analysis of the previous section suggests that alternative general accounts of the wrongness of killing

are either inadequate or unsuccessful in getting around the anti-abortion consequences of the value of a future-like-ours argument. A different strategy for avoiding these anti-abortion consequences involves limiting the scope of the value of a future argument. More precisely, the strategy involves arguing that fetuses lack a property that is essential for the value-of-a-future argument (or for any anti-abortion argument) to apply to them.

- 48 One move of this sort is based upon the claim that a necessary condition of one's future being valuable is that one values it. Value implies a valuer. Given this one might argue that, since fetuses cannot value their futures, their futures are not valuable to them. Hence, it does not seriously wrong them deliberately to end their lives.
- 49 This move fails, however, because of some ambiguities. Let us assume that something cannot be of value unless it is valued by someone. This does not entail that my life is of no value unless it is valued by me. I may think, in a period of despair, that my future is of no worth whatsoever, but I may be wrong because others rightly see value—even great value—in it. Furthermore, my future can be valuable to me even if I do not value it. This is the case when a young person attempts suicide, but is rescued and goes on to significant human achievements. Such young people's futures are ultimately valuable to them, even though such futures do not seem to be valuable to them at the moment of attempted suicide. A fetus's future can be valuable to it in the same way. Accordingly, this attempt to limit the anti-abortion argument fails.
- 50 Another similar attempt to reject the anti-abortion position is based on Tooley's claim that an entity cannot possess the right to life unless it has the capacity to desire its continued existence. It follows that, since fetuses lack the conceptual capacity to desire to continue to live, they lack the right to life. Accordingly, Tooley concludes that abortion cannot be seriously *prima facie* wrong (*op. cit.*, pp. 46/7).
- 51 What could be the evidence for Tooley's basic claim? Tooley once argued that individuals have a *prima facie* right to what they desire and that the lack of the capacity to desire something undercuts the basis of one's right to it (*op. cit.*, pp. 44/5). This argument plainly will not succeed in the context of the analysis of this essay, however, since the point here is to establish the fetus's right to life on other grounds. Tooley's argument assumes that the right to life cannot be established in general on some basis other than the desire for life. This position was considered and rejected in the preceding section of this paper.
- 52 One might attempt to defend Tooley's basic claim on the grounds that, because a fetus cannot apprehend continued life as a benefit, its continued life cannot be a benefit or cannot be something it has a right to or cannot be something that is in its interest. This might be defended in terms of the general proposition that, if an individual is literally incapable of caring about or taking an interest in some *X*, then one does not have a right to *X* or *X* is not a benefit or *X* is not something that is in one's interest.¹¹
- 53 Each member of this family of claims seems to be open to objections. As John C. Stevens¹² has pointed out, one may have a right to be treated with a certain medical procedure (because of a health insurance policy one has purchased), even though one cannot conceive of the nature of the procedure. And, as Tooley himself has pointed out, persons who have been indoctrinated, or drugged, or rendered temporarily unconscious may be literally incapable of caring about or taking an interest in something that is in their interest or is something to which they have a right, or is something that benefits them. Hence, the Tooley claim that would restrict the scope of the value of a future-like-ours argument is undermined by counterexamples.¹³
- 54 Finally, Paul Bassen¹⁴ has argued that, even though the prospects of an embryo might seem to be a basis for the wrongness of abortion, an embryo cannot be a victim and therefore cannot be wronged. An embryo cannot be a victim, he says, because it lacks sentience. His central argument for this seems to be that, even though plants and the permanently unconscious are alive, they clearly cannot be victims. What is the explanation of this? Bassen claims that the explanation is that their lives consist of mere metabolism and mere metabolism is not enough to ground victimizability. Mentation is required.
- 55 The problem with this attempt to establish the absence of victimizability is that both plants and the permanently unconscious clearly lack what Bassen calls "prospects" or what I have called "a future life like ours." Hence, it is surely open to one to argue that the real reason we believe plants and the permanently unconscious cannot be victims is that killing them cannot deprive them of a future life like ours; the real reason is not their absence of present mentation.
- 56 Bassen recognizes that his view is subject to this difficulty, and he recognizes that the case of children seems to support this difficulty, for "much of what we do for children is based on prospects." He argues, however, that, in the case of children and in other such cases, "potentiality comes into play only where victimizability has been secured on other grounds" (*ibid.*, p. 333).
- 57 Bassen's defense of his view is patently question-begging, since what is adequate to secure victimizability is exactly

¹¹ Donald VanDeVeer seems to think this is self-evident. See his "Whither Baby Doe?" in *Matters of Life and Death*, p. 233.

¹² "Must the Bearer of a Right Have the Concept of That to Which He Has a Right?" *Ethics*, XCV, 1 (1984): 68-74.

¹³ See Tooley again in "Abortion and Infanticide," pp. 47-49.

¹⁴ "Present Sakes and Future Prospects: The Status of Early Abortion," *Philosophy and Public Affairs*, XI, 4 (1982): 322-326.

what is at issue. His examples do not support his own view against the thesis of this essay. Of course, embryos can be victims: when their lives are deliberately terminated, they are deprived of their futures of value, their prospects. This makes them victims, for it directly wrongs them.

- ⁵⁸ The seeming plausibility of Bassen's view stems from the fact that paradigmatic cases of imagining someone as a victim involve empathy, and empathy requires mentation of the victim. The victims of flood, famine, rape, or child abuse are all persons with whom we can empathize. That empathy seems to be part of seeing them as victims.¹⁵
- ⁵⁹ In spite of the strength of these examples, the attractive intuition that a situation in which there is victimization requires the possibility of empathy is subject to counterexamples. Consider a case that Bassen himself offers: "Posthumous obliteration of an author's work constitutes a misfortune for him only if he had wished his work to endure" (*op cit.*, p. 318). The conditions Bassen wishes to impose upon the possibility of being victimized here seem far too strong. Perhaps this author, due to his unrealistic standards of excellence and his low self-esteem, regarded his work as unworthy of survival, even though it possessed genuine literary merit. Destruction of such work would surely victimize its author. In such a case, empathy with the victim concerning the loss is clearly impossible.
- ⁶⁰ Of course, Bassen does not make the possibility of empathy a necessary condition of victimizability; he requires only mentation. Hence, on Bassen's actual view, this author, as I have described him, can be a victim. The problem is that the basic intuition that renders Bassen's view plausible is missing in the author's case. In order to attempt to avoid counterexamples, Bassen has made his thesis too weak to be supported by the intuitions that suggested it.
- ⁶¹ Even so, the mentation requirement on victimizability is still subject to counterexamples. Suppose a severe accident renders me totally unconscious for a month, after which I recover. Surely killing me while I am unconscious victimizes me, even though I am incapable of mentation during that time. It follows that Bassen's thesis fails. Apparently, attempts to restrict the value of a future-like-ours argument so that fetuses do not fall within its scope do not succeed.
- ⁶² 5. In this essay, it has been argued that the correct ethic of the wrongness of killing can be extended to fetal life and used to show that there is a strong presumption that any abortion is morally impermissible. If the ethic of killing adopted here entails, however, that contraception is also

seriously immoral, then there would appear to be a difficulty with the analysis of this essay.

- ⁶³ But this analysis does not entail that contraception is wrong. Of course, contraception prevents the actualization of a possible future of value. Hence, it follows from the claim that futures of value should be maximized that contraception is *prima facie* immoral. This obligation to maximize does not exist, however; furthermore, nothing in the ethics of killing in this paper entails that it does. The ethics of killing in this essay would entail that contraception is wrong only if something were denied a human future of value by contraception. Nothing at all is denied such a future by contraception, however.
- ⁶⁴ Candidates for a subject of harm by contraception fall into four categories: (1) some sperm or other, (2) some ovum or other, (3) a sperm and an ovum separately, and (4) a sperm and an ovum together. Assigning the harm to some sperm is utterly arbitrary, for no reason can be given for making a sperm the subject of harm rather than an ovum. Assigning the harm to some ovum is utterly arbitrary, for no reason can be given for making an ovum the subject of harm rather than a sperm. One might attempt to avoid these problems by insisting that contraception deprives both the sperm and the ovum separately of a valuable future like ours. On this alternative, too many futures are lost. Contraception was supposed to be wrong, because it deprived us of one future of value, not two. One might attempt to avoid this problem by holding that contraception deprives the combination of sperm and ovum of a valuable future like ours. But here the definite article misleads. At the time of contraception, there are hundreds of millions of sperm, one (released) ovum and millions of possible combinations of all of these. There is no actual combination at all. Is the subject of the loss to be a merely possible combination? Which one? This alternative does not yield an actual subject of harm either. Accordingly, the immorality of contraception is not entailed by the loss of a future-like-ours argument simply because there is no nonarbitrarily identifiable subject of the loss in the case of contraception.
- ⁶⁵ 6. The purpose of this essay has been to set out an argument for the serious presumptive wrongness of abortion subject to the assumption that the moral permissibility of abortion stands or falls on the moral status of the fetus. Since a fetus possesses a property, the possession of which in adult human beings is sufficient to make killing an adult human being wrong, abortion is wrong. This way of dealing with the problem of abortion seems superior to other approaches to the ethics of abortion, because it rests on an ethics of killing which is close to self-evident, because the crucial morally relevant property clearly applies to fetuses, and because the argument avoids the usual equivocations on 'human life', 'human being', or 'person'. The argument rests neither on

¹⁵ Note carefully the reasons he gives on the bottom of p. 316.

religious claims nor on Papal dogma. It is not subject to the objection of "speciesism." Its soundness is compatible with the moral permissibility of euthanasia and contraception. It deals with our intuitions concerning young children.

- ⁶⁶ Finally, this analysis can be viewed as resolving a standard problem—indeed, *the* standard problem—concerning the ethics of abortion. Clearly, it is wrong to kill adult human beings. Clearly, it is not wrong to end the life of some arbitrarily chosen single human cell. Fetuses seem to be like arbitrarily chosen human cells in some respects and like adult humans in other respects. The problem of the ethics of abortion is the problem of determining the fetal property that settles this moral controversy. The thesis of this essay is that the problem of the ethics of abortion, so understood, is solvable.