

A NEW APPROACH TO THE ABORTION PROBLEM

The debate on abortion has reached a stalemate. Proabortionists judging that in some instances abortion appears clearly indicated, justify their conclusion by denying the embryo's humanity. Antiabortionists presuming that the embryo's life is human from the start, allow no abortion unless the mother's life is directly endangered. One side ends up defending a moral insight by morally questionable principles. The other side is backed into inflexible rigidity by its adoption of an unquestionable starting point. The following remarks offer no solution, yet by sharpening the distinction between humanity and personhood they may perhaps contribute to resuming the dialogue.

The presence of human life *can* be settled by the biological sciences, at least to the extent that they may establish at which point life generated by humans begins to differ significantly from any other life. The presence of personhood, although directly dependent on the presence of human life, *cannot* be scientifically determined. The geneticist may challenge the former of these two claims on the ground of his inability to determine what is *significant* with respect to a category (humanity) that ultimately falls outside his field. Yet the evidence which he adduces leaves no room for an alternate conclusion. In spite of the presence of clearly distinguishable stages of development, no moment after conception can be singled out for the decisive break-through which would entitle it to the claim of being the beginning of *human* life. The most dramatic development, the attachment of the specifically human, frontal part of the cortex to the rest of the brain, takes place in the third month after birth, obviously too late to be called the beginning of *human* life. Nor does the first appearance of this specifically human part (4½ months after conception) provide us with a more adequate criterion, since this development itself is determined by an initial code of genetic information, a code which is at the same time the principal agent in transforming its program into new life. Not even the synthesis of the new cytoplasmic proteins which occurs after the morula's first cell divisions (from twelve to sixteen) around the third day may be regarded as the *first* appearance of autonomous human life, since the cell division itself already presupposes the building of new proteins, which again is determined by a pre-existing human code. I do not see how we can escape the conclusion that human life is present, and present in an individual uniqueness, as soon as the genes of the parental pools are combined. At no point after conception do we detect a discontinuity radical enough to justify the assumption of a prehuman stage of life. From the very beginning does the new life distinguish itself clearly from nonhuman life.

This conclusion, however, does not imply, as is so often thought, that all human attributes are present *in nucleo*. They are not present, and to say that they are *potentially* present is to say that they may never be actually present at all. A nidated morula may easily degenerate into a pathological placental excrescence. Even the individuality which results from the genetic uniqueness of the new life is no more than an inchoate individualization which may still split into two separate individuals.¹

New human life is incontrovertibly present from the start. Yet at which stage does it adopt that fulness which alone deserves the name "personhood"? To this question physiology offers no answers. The "fully human" is no longer its concern, since it emerges only to the extent that life *transcends* the purely physiological. It might seem logical to turn to the behavioral sciences, psychology and sociology. Since they deal with personal functions, one would expect them to be able to determine its beginning. Yet the study of behavior alone cannot establish the beginning of personhood. A newborn child "behaves" no more as a person than a fetus does. If it is true, as Ashley Montagu claims, that humanity is an achievement, not an endowment, then no infant is human. Obviously, the prenatal and even the early postnatal development differs from those stages in which the individual functions as a person and in which specifically human behavior appears. But does this difference in function separate the personal from the nonpersonal? The purely functional contains no more adequate criterion to decide this issue than the purely structural did. What we find before functional personhood is that dynamic combination of presence and absence moving toward ever greater presence to which the ancients attributed the name of potency. The social sciences are no more qualified to determine the status of a "potential" person (in terms of behavior) than the biological ones are. While physiology may determine how human life differs from nonhuman, psychology and sociology may describe the characteristics of mature personhood. Yet neither can establish the beginning of personhood, even though both psychology and sociology presuppose its presence.

The real problem is that personhood cannot be univocally defined. What is human may be adequately circumscribed by a comparison with the nonhuman. But the same cannot be done for the personal; for to

¹ Germain Grisez very appropriately introduces the notion of relative individuality to explain this phenomenon. "The biological concept of individuality is not defined solely in terms of the uniqueness of a 'genetic package' although such uniqueness helps to make clear the discontinuity between parent and offspring. Individuality is relative; it implies inner unity with division from others. The individuality of twins in relation to their parents clearly is established at conception, although that individuation in relation to one another may occur somewhat later . . ." (*Abortion: The Myths, the Realities and the Arguments* [New York, 1970] p. 274).

know what is nonpersonal, we already must know the personal. Of course, one can simply equate the personal with the human, but in doing so one merely begs the question. Our definitions of the person vary according to the issues we happen to be discussing. They all contribute to our understanding of personhood, but none of them can settle the question of the beginning of personhood. That the law considers a person the subject of certain rights informs us how people look upon the early stages of human life with regard to inheritance and some other rights. But it remains essentially a pragmatic consideration which does not allow one to decide what the minimum conditions for personhood are. Other descriptions of the person are, of course, more essential. Thus, we refer to the person as a self-determining subject or a responsible agent or an initiator of intersubjective relations. But all such descriptions assume the exercise of certain functions; they do not determine the status of what precedes this exercise as its necessary condition. They leave out of account the newborn, the senile, the insane, and even the temporarily unconscious, for all of whom we nevertheless claim some degree of personhood.

One particular argument has addressed itself directly to the problems of beginning personhood: the medieval dispute on the moment when the spiritual soul enters the embryo. As principle of all human activity proper, the spiritual soul also determines the beginning of personhood. Unfortunately, the body-soul dualism as well as the outdated physiological views which determine the entire discussion make the answers inappropriate to our present questions. Nevertheless, the very distinction between the beginnings of life and the animation of the body reveals a significant awareness that life is not personal for the simple fact of having been produced by humans. In this respect medieval theologians displayed a more sophisticated attitude than some of their contemporary successors.

The equation of the personal and the human must not be taken for granted. The human can be meaningfully distinguished from the nonhuman. In that respect it allows no gradation at all. Life is either human or it is not. The same cannot be said of the personal. Even if the personal be coextensive with the human, the various stages of human development cannot be considered personal in an equal degree. The fulness of humanity implied by the personal may be present to a greater or a lesser extent. A simple identification of the personal and the human leads to an unqualified predication of the attributes of mature personhood to human life as such, and, since the latter allows of no gradations, also to its earliest stages. Life may be human and yet possess none of those attributes. To claim that the fetus is human and will, if properly

developed, at some future time possess obviously personal properties is not to say that it must already be a person at the present. If personhood is essentially a dynamic concept, early human life *cannot* be personal in the same way in which it will be personal in the future. Indeed, one may validly question whether it is personal at all.

On the other side, the absence of the attributes of mature personhood does *in itself* not entitle us to deny its presence from early human life altogether. Life may lack those predicates without ceasing to be personal. At any rate no moralist would be willing to deny the personhood of the newborn, the insane, the unconscious, merely because they do not display all the characteristics of the mature person. To *be* a person means more than to *function* as a person. Function ultimately results from structure, and structure is operative long before functions appear.

Yet if personhood is irreducible to its functions alone, it cannot be an acquired reality. This, in turn, implies that the notion of personhood cannot be a derived one. To me, there is no doubt that it is original. In his study *Individuals*, Prof. P. F. Strawson proves that the notion of person logically precedes the predicates which we usually attribute to it, such as consciousness and corporeal characteristics, precisely because these predicates are irreducibly distinct from one another.²

Now it is difficult to conceive of personhood as underived unless its beginning coincides with that of human life. In this perspective personhood, although essentially a dynamic entity not fully realized even at life's peak, must nevertheless be minimally present already at life's humble beginnings. It would seem, then, as if, once more, personhood were to be equated with humanity. Still this is an equation with a difference. For as a *dynamic* concept, the personal introduces an element that was not contained in the human as such. Unlike humanity, which is altogether "given" reality, personhood consists of an active process. This is not to say that it can be reduced to personal achievements—the position which I attacked at the beginning of this paper; for all self-determining activity requires a self-determining structure, not merely as a condition but as an integral part of the activity itself. If personhood consists in self-determination, it comprehends at once an actual achievement and the nature which provides the potential for this achievement. In an essentially dynamic entity, the potential forms a single reality with the actual. At the same time, since a dynamic entity can only gradually be realized, the degree of actuality enters into the very essence of personhood. Undoubtedly the distinction between the actual and potential results in two different concepts of the person, that of a

²P. F. Strawson, *Individuals* (New York, 1963) pp. 97–101.

moral agent and that of a living being which may become a self-determining agent (although there is no certainty that it will do so). This dualism is inherent in any truly dynamic concept. For if actual self-determination were the sole criterion of personhood, the newborn infant would not qualify at all. A new definition would then be needed for that early state of personhood, and yet others for that of the young child and that of the mentally retarded. Instead of simplifying one's conceptual structure, a too stringent definition actually complicates it.

Of course, considerations of this sort contribute nothing substantial to the ethical discussion on abortion if personal life as such is considered an absolute value which may never be directly suppressed except to protect one's own life. However, to be consistent, such a position must equally proscribe all attacks on human life not strictly required by self-defense. I know of only one author who has consistently defended this position. Germain Grisez in *Abortion: The Myths, the Realities and the Arguments* coherently argues for the right to life as an absolute and condemns capital punishment, nondefensive wars, and unnecessary violence in defensive wars. His position appears to be logically irrefutable. Moreover, he upholds an ideal of respect for life which one might hope the entire human race will embrace some time. Yet I find myself unable to condemn every attitude which does not attain that ideal. Ethical norms develop gradually and this process cannot be substantially accelerated beyond the pace of the culture in which they originate. That some acts may be anticipated to conflict with future ideals may be a reason to suspect them in the present, but it provides no sufficient ground for condemning them. I doubt whether moralists of the twenty-first century will still approve of such "innocent" pastimes as hunting or fishing for pleasure, or, for that matter, slaughtering of animals for human consumption. But I can judge these acts only by the norms of the present, and that present is culturally conditioned. Is the vengeance of the primitive tribe or family for an injury suffered by one of its members immoral? Few would say so, yet such a vengeance is clearly unacceptable by the moral norms of a civilized society.

The general principle of respect for life holds true in both situations, but the application varies according to the degree of moral development. The difficulty of a discussion on ethical principles consists in discovering which applications can be reasonably required at any given stage. If we are dealing with a developing reality such as that of the person, decisions of this nature are particularly hard to reach.

The first task of the moralist here is to clear up some of the terminological confusion. Thus, any argument that does not start from the premise that in an abortion individual human life is directly being

killed obfuscates the issue. Still, accepting that premise by no means leads to the conclusion that *all* abortifacient killing is immoral. Indeed, such a conclusion is simply untenable. Those who claim that life is an absolute value under any circumstances attempt to justify the termination of a pregnancy that threatens the mother's life, by invoking the principle of double effect. The direct purpose of the abortion, they claim, is to save the mother's life; the death of the fetus is only an indirect effect. But this is a purely verbal solution, for the killing is the cure. Moreover, one may well wonder why the same principle would not apply to less serious dangers to physical and even mental health. I prefer to consider abortion always a direct killing of human life and then to ask under which circumstances it could be licit.

It is often heard that the fetus has no right to life when that life seriously inconveniences the mother, especially when it was inflicted upon her against her will. But the right to life is not conveyed by any extrinsic source: it emerges with life itself as the basis of all other rights. Society may articulate this right, restrict it if need be, even overrule it perhaps when a particular life constitutes a threat to its subsistence. But society never conveys or abolishes that right. Much less a single individual. Nor is that right in any way conditional upon the consent of those who bestow the new life: wherever new human life appears, the right to life is present. In this respect I find the majority opinion of the recent Supreme Court decision most confusing. I am not questioning that the undeveloped person may have to yield to the more developed one, but this is never because the fetus is not *entitled* to the right to life. A woman's undisputed right over her body by no means cancels the right to life of a nascent person. Nor does rape or incest suppress that right in the resulting new life, even though few would have denied the woman the right to kill in order to prevent an aggressor from inflicting this unwanted life upon her.

On the other hand, the underived quality of the right to exist by no means implies that the mother must foster any independent new life regardless of its impact upon her own life or, more generally, that each person's right to life is the same, regardless of his state of development. Moralists now pretty much agree on permitting an abortion in case of an open conflict between the mother's and the fetus' life. But is this the only case which justifies abortion? Granting an ontological significance to the principle of development in the abortion debate, it requires far less justification to take a morning-after pill (assuming this to be a possible abortifacient) or to undergo a lavage during the hours immediately following a rape than to have an abortion after three months of pregnancy. Although human life, and therefore inchoate personhood, is

present in both cases, the ethical import significantly differs according to the degree of development.

Yet, one might object, the thesis of developing personhood destroys the presumption of equal rights. To value the person according to the greater or lesser presence of personal qualities would constitute a dangerous form of discrimination not unlike the one applied in German concentration camps. Although in some cases, such as the assignment of specific tasks or the right to particular forms of respect, it is perfectly reasonable to treat persons according to their qualifications and merits, in life-and-death issues such an attitude would be immoral. Extreme circumstances may require the taking of a personal life, but this may never be done on the basis of a maximization of awards or merits. Only to prevent a person from inflicting a *comparable* type of harm to others would we be justified in killing him. Now in the case of abortion such an absolute value is at stake and qualitative distinctions based on the degree of development must not be allowed to play a decisive role.³ Indeed, at an early stage of development a person is all the more entitled to full protection, since he is totally dependent upon others for his survival.

The objection rightly emphasizes the unique quality of the person and rules out any balancing of its value with values that exist only *because* of the person. Yet practical impact of this principle depends on what constitutes a "comparable type of harm." If we assume that only a direct threat to one's life would justify the killing of personal life, we find ourselves once again in the earlier position which is consistent but conflicts with the accepted morality of a society that considers killing justified for a number of other reasons (e.g., to punish an inveterate criminal, to avert rape or the suffering of a major communal injustice). Yet, if there are other valid reasons than a direct threat to one's life, then the question immediately arises which ones deserve to be rated "comparable." The degree of development inevitably enters into the evaluation of the life value. Even moralists who refuse to let personal life be sacrificed to any value other than self-defense apply in fact the comparative norm of personal development when they permit an abortion to the woman whose life is threatened by a continuing pregnancy. (I assume, of course, for reasons explained before, that the terms "indirect killing" or "double effect" do not provide a candid interpretation of the case, and I reject the charge that the fetus is an unjust aggressor.) If personal liberty is a value comparable to that of life itself, as it is to many people, why should the preservation of a person's

³This position was argued forcefully by Frederick Carney of Perkins School of Theology at a symposium on the beginnings of personhood at the Houston Medical Center in which I participated on Feb. 23, 1973.

mental health (unfortunately a much abused term in the abortion debate) not constitute a sufficiently serious reason for terminating a threatening pregnancy? Is a minimum mental health not a condition for freedom? The developmental factor is equally recognized by proabortionists, since even the most tolerant among them consider permissible at an early stage of pregnancy what they no longer allow at an advanced one.

The real problem with the developmental view is that it provides no simple rule of thumb for moral decisions. Even though it is objective, it must operate with sliding scales. An identical risk to a woman's health decreases in moral weight as the pregnancy progresses. What would constitute a sufficient factor during the first two days after conception no longer does so after two months. Moreover, no abortive action, early or late, becomes ever permissible under our principles *unless* a value comparable to life itself is at stake. This ends the discussion for moralists who claim that nothing can be compared to that basic value. But I find it difficult to understand their position in the light of their own approval of the sacrifice of life for the liberation of one's community or the preservation of one's faith. An example may clarify what the position here espoused could imply. In cases of rape of an adolescent, the presumption of serious mental damage appears strong enough to warrant the general use of an abortifacient at least during several hours following the coitus. But the same presumption cannot be taken for granted at a later stage of development, or at any time after sexual relations between two mature consenting adults.

I am well aware that the criterion of developing personhood risks encouraging a stretching of the standard of what is "comparable" to life, particularly the value of basic mental health. Yet the possibility of abuses ought not to stop the moralist from stating the appropriate principles of behavior in all their complexity. The purpose of my remarks has been merely to open a new perspective, not to solve all problems. What, for instance, is the right course of action when severe mental retardation is detected before birth? Does the certainty of a seriously diminished personhood justify abortion, particularly at an advanced stage of pregnancy? I do not know the answer, but whatever it may be, it certainly cannot be reached on the basis of simplistic principles such as "The woman alone holds the right over her body," or "A personal life should never be extinguished."

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