

KEY TERMS

conceptus (single-celled zygote)	fetus	Trap Law
double effect	person quickening	viability
embryo	speciestism	zygote (multicelled zygote)

The states are not free, under the guise of protecting maternal health or potential life, to intimidate women into continuing pregnancies.

Justice Harry A. Blackmun, *Roe v. Wade*, 22 January 1973

There is no difference between a first trimester, a second trimester, a third trimester abortion or infanticide. It's all the same human being in different stages of development. I finally got to the point I couldn't look at those tiny bodies anymore.

Dr. Arnold Halpern, former director of a Planned Parenthood clinic

If the anti-abortion movement took a tenth of the energy they put into noisy theatrics and devoted it to improving the lives of children who have been born into lives of poverty, violence, and neglect, they could make a world shine.

Michael Jay Tucker

THE ABORTION ISSUE

As we enter the first decades of the twenty-first century, the struggle over the issue of abortion seems as current as the morning news. Yet, abortion has been under consideration for the full extent of Western civilization, and through the ages, societies have either banned or promoted the practice. In 335 B.C.E., Aristotle promoted abortion as a form of birth control for families with too many children. On the other hand, the father of medicine, Hippocrates, 429 B.C.E., in his oath of practice, bound his followers to avoid the practice, stating, "Similarly I will not give a pessary to a woman to cause abortion." It is always important to establish the who, what, when, and why of the issue under consideration so that is where we will begin.

More than half of American women receiving abortions are in their 20s, with women aged 20-24 having the highest rate of any age group. Seventeen percent of all U.S. abortions are obtained by teenagers. Sixty percent of the women obtaining an abortion already have a child and more than 37 percent have two or more. No racial or ethnic group makes up a majority of women having abortions: 36 percent are non-Hispanic white, 30 percent are non-Hispanic black, 25 percent are Hispanic, and 9 percent are women of other races.

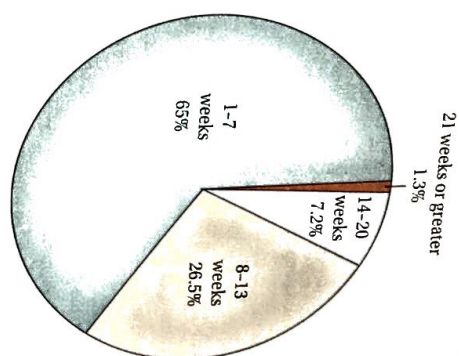


FIGURE 8-1 Percentage of 2012 Reported Abortions by Weeks of Gestation (CDC)

Source: Centers for Disease Control and Prevention, "Abortion Surveillance - United States, 2012," *Morbidity and Mortality Weekly Report (MMWR)*

More than 70 percent of the women reported a religious affiliation: 37 percent Protestant, 25 percent Catholic, and 7 percent other.

Women with family incomes below the federal poverty level (\$18,530 for a family of three) account for more than 40 percent of all abortions. In contrast, higher-income women (with family incomes at or above 200 percent of the poverty line) have a rate that is about half the national rate.¹ Only about 10 percent of abortions occur in the second trimester. More than 90 percent occur in the first 12 weeks of pregnancy and more than 60 percent occur in the first 8 weeks. Approximately 1 percent occur after 20 weeks. Figure 8-1 provides the percentage of 2012 abortions by weeks of gestation, as reported by the Centers for Disease Control.²

For all the controversy surrounding the procedure, abortion is a very common experience for women. In 2012, 1.31 million abortions took place in the United States. The reasons given for having an abortion are diverse and complex, ranging from concern for the health of the mother or fetus to "I'd be looking at that dumb man's face in that child and resenting it." The most common reasons cited were:³

- child would interfere with education, work or ability to care for dependents (74 percent)
- could not afford a baby now (73 percent)
- did not want to be a single mother or was having relationship problems (48 percent)

- felt they had completed their childbearing (40 percent)
- not ready to have a child (30 percent)

Younger women often reported that they were unprepared for the transition to motherhood, while older women regularly cited their responsibility to dependents. For some women, the abortion came as a deep relief. Others report the experience to be devastating. Whatever the reason given, the experience of having an abortion is real, immediate, and personal. It is interesting to note that the rate of abortions has been in decline since the early 1990s. According to a recent Gallup Poll, 29 percent of adult Americans believed that abortions should be legal in any circumstance, 13 percent legal in most circumstances, 36 percent legal in only a few circumstances, and 19 percent illegal in all circumstances. Since 2010, Americans have generally been evenly divided between the pro-choice/pro-life positions. The only exception was May 2010 when the pro-life position led by 50 percent to 41 percent. Currently 50 percent of Americans consider themselves “pro-choice” on abortion, surpassing the 44 percent who identify as “pro-life.” This is the first time since 2008 that the pro-choice position has had a statistically significant lead in Americans’ abortion views.⁴

Recently, there has been a heated debate in regard to a form of late-term abortion. As with many of these arguments, the advocates have not even managed to decide what to name the procedure in question. Pro-choice advocates favor *intact dilation and evacuation*, and pro-life advocates use the term *partial birth abortion*. It is estimated that fewer than a thousand third-trimester abortions are performed each year. Most of these have involved lethal anomalies or danger to the health of the mother. The American Medical Association has supported limiting this form of abortion as it is a procedure that is never the only appropriate procedure and has no history in peer-reviewed medical literature or in accepted medical practice development.⁵



A Nightmare in Philadelphia

On the 38th anniversary of *Roe v. Wade* the Philadelphia *Daily News* reported that a grand jury had indicted abortionist Dr. Kermit Gosnell for eight counts of murder. He was charged with performing illegal late term abortions. Seven of the deaths were fully recognizable babies—6 and 7 months along, who Gosnell or an assistant had delivered live before severing their spinal cords. Gosnell joked that one of the babies he had delivered and then killed was “big enough to walk me to the bus stop.”

Although there were prior complaints regarding the clinic, and the death of a 22-year-old patient from infection, state officials had not followed up with required inspections. The grand jury report stated that state officials feared that closing down Gosnell’s clinic “would be putting up a barrier to women.”⁶

IN THE NEWS

The title of the article was “Abortion: A Nightmare in Philadelphia.” Both sides of the issue were quick to condemn, but then blamed the other.

- Pro-choice advocates blamed the anti-choice movement for harassing and stigmatizing abortion doctors, to the point they were hard to find, leaving only inferior options open for poor women.
- Pro-life advocates felt that the problem was pro-choice absolutists, who insist that women should have access to abortions “as late as necessary.”
- Which is right? One? Both?

The Legal Debate

Until 1973, except in cases where the mother’s life was in danger, abortion was a statutory crime in every state of the nation. In *Roe v. Wade*, the Supreme Court, relying on the constitutional right of privacy emanating from the word *liberty* in the due process clause of the Fourteenth Amendment, legalized a woman’s right to have an abortion. However, this right was not considered to be unrestricted, and the Court recognized the state’s legitimate interest in protecting health, prenatal life, and the standard of medical practice.

The Court’s decision balanced the interests of the woman and the state, allowing the woman greater freedom of action in the beginning of the pregnancy and the state a greater right to regulate the process as the fetus developed. In the decision, the court divided pregnancy into three trimesters of twelve weeks each. In the first trimester, the state has little right to regulate the process, and the decision is that of the woman and her physician. During the second trimester, the state’s interest increases, at least in the area of protecting the health of the woman. Only those regulations that are directed toward this concern will be upheld as legitimate. This is somewhat problematic to those who feel that human life begins with **quickening**, as this usually occurs within the second trimester. One of the arguments against abortion was that fetuses, especially after quickening, are persons and deserved the protection under the Fourteenth Amendment. However, the Court ruled that the term *person* was used historically only postnatally. The third trimester, which begins at the twenty-eighth week of gestation, is where the Court allowed the state to shift its interest to the protection of the fetus. The fetus has reached a point of potential viability outside the womb, and the dominant interest of the state after the twenty-eighth week becomes the protection of this potential life. The Court held that once viable, the fetus cannot be aborted except in those cases where the procedure is essential for the protection of the woman’s life.⁷

With the *Roe v. Wade* decision, the Court set off a firestorm of public debate as citizens and state legislatures attempted to gain an understanding of the dimensions of the ruling and either

resist or embrace its potential outcomes.⁸ One important case that made clear the primacy of the woman's rights in the first trimester was the 1976 *Danforth v. Planned Parenthood of Central Missouri* case. In this case, the Supreme Court examined a statutory provision that required a woman to receive her husband's, or if a minor, her parent's or guardian's, permission prior to having an abortion. The Court held that these requirements were unconstitutional given that they imposed restrictions within the first trimester, a time when the decision was left in the hands of the woman and her physician. In regard to the issue of minors, the Court held that, like adults, minors had a constitutional right to privacy, although the scope of that protection might differ.⁹



Rights of an Unborn Child

Rennie Gibbs was a teenager (16 years of age) and 36 weeks pregnant when she was admitted to an emergency room and diagnosed with fetal demise. The physicians induced labor and delivered a stillborn daughter, who Gibbs named Samiya. The apparent cause of death was the umbilical cord wrapped around the infant's neck. However, the medical examiner declared the baby's death a homicide based on autopsy reports that found trace amounts of cocaine in the baby's system. A grand jury indicted Gibbs for "depraved heart murder, also known as depraved-indifference murder," where a defendant acts with depraved-indifference to human life and where the action results in death. The grand jury concluded that the teen's willful use of crack cocaine during her pregnancy caused the death of the infant. If found guilty, Gibbs potentially faced life in prison. Right to life advocates saw this as a test case for the rights of an unborn child. In *Rennie T. Gibbs v. State of Mississippi*, a panel of the Mississippi Supreme Court dismissed the charges.¹⁰

Similar rights of an unborn child cases include an Indiana woman jailed for a year for attempting suicide while she was pregnant, and an Iowa woman arrested after falling down a flight of stairs and suffering a miscarriage.

Consider these cases in light of the California mother (Laci Peterson) and fetus (Conner Peterson) whose deaths were widely publicized. Her husband, Scott Peterson, was convicted of double homicide under California's fetal homicide law.

The Unborn Victims of Violence Act of 2004 (Public Law 108-212) is a United States law that recognizes a child in utero as a legal victim, if they are injured or killed during the commission of any of over 60 listed federal crimes of violence. The law defines "child in utero" as "a member of the species *Homo sapiens*, at any stage of development, who is carried in the womb" (limited to offenses over which the federal government has jurisdiction and excludes legal abortions).

The *Roe v. Wade* decision that provided women with a right to have an abortion is essentially a negative right in that it provides liberty only from interference. This liberty is somewhat like having an equal right with all others to determine what shall or shall not be done to or with one's body. The right to noninterference does not in itself create the reciprocal obligations for others to provide the means for an abortion. This has been an important battleground between pro-life and pro-choice advocates. In 1976, Congress enacted the Hyde amendment, which restricted the availability of Medicare funding for abortions. Under challenge, the amendment was modified to allow funding for abortions. Under challenge, the amendment was modified by carrying the fetus full term or in cases of incest or rape when the incident had been reported to appropriate governmental agencies.¹¹

Pro-life forces took encouragement from the Hyde amendment. They continued to mobilize campaigns to defeat politicians who supported legalized abortion. Critics of the amendment objected that while abortion was still legal, it had become the privilege of the rich. They asked what a "right" to an abortion meant if you are too poor to afford the necessary services? When you ask this question, you are making an appeal to consideration under the principle of justice. Accordingly, they felt that it was the responsibility of a just society to ensure the value of an individual's rights by guaranteeing access to necessary resources. The reality of the Hyde amendment is that it does primarily affect poor women. This was acknowledged by the late Congressman Henry Hyde during a Medicare funding debate: "I certainly would like to prevent, if I could legally, anybody having an abortion: a rich woman, a middle-class woman or a poor woman. Unfortunately, the only vehicle available is the... Medicaid bill."¹² Currently only 16 states use their funds to cover abortion. Thirty-two states and the District of Columbia basically follow the Amendment as the congressmen intended with small variations.

As part of the Affordable Care Act negotiations, President Obama signed an executive order stating that the ACA, which expands Medicaid coverage, would maintain current Hyde Amendment restrictions.¹³

Decisions such as the *Webster v. Reproductive Health Services* case,¹⁴ in which the Court held that a state could ban public employees and public health facilities from performing or assisting in performing nontherapeutic abortions, gave an indication that the Supreme Court was shifting toward a more conservative stance in regard to the abortion issue. This provided the pro-life advocates with hope that the Court would, in the future, further erode the 1973 *Roe v. Wade* decision.

The administration of George H. W. Bush, on January 29, 1988, barred most family planning clinics that received federal funding from providing abortion assistance or counseling.¹⁵ This gag order became a major ethical concern within the health care community as it imposed the government between the patient and the provider. The community began to question what effect this artificial barrier had on the principle of informed consent and patient and provider autonomy. In response to the criticism of the policy, Congress passed a bill allowing abortion to be discussed as an option. However, this was vetoed by President Bush.

One of the first actions of the Clinton presidency was to sign executive orders that partially overturned the gag rule, lifted the ban on the use of fetal tissue in federally funded research. The Clinton administration lifted the barrier to federal aid for family planning centers, which offered abortion counseling, and ended the ban against overseas military hospitals performing abortions if they were paid for by private funds. In 1992, a panel of the U.S. Circuit Court of Appeals for the District of Columbia rejected the gag rule regulation issued by the Bush administration. The appeals court panel held that the administration had acted improperly and had issued the regulation without allowing for the traditional period of public comment.¹⁶

Over the last decade, the abortion landscape at the state level has shifted dramatically. State legislatures in the Northeast and on the West Coast have consistently supported abortion rights; however, legislatures in a substantial number of states have increasingly passed restrictive laws designed to stop or slow the process of women seeking an abortion. Restrictions include¹⁷:

- Abortion ban after 20 weeks
- Personhood measures
- Required pre-abortion counseling
- Extended waiting period
- Mandated performance of a non-medically indicated ultrasound prior to an abortion
- **Trap Laws** (targeted restrictions on abortion facilities and providers.) For example, requiring exact dimensions for exam rooms, hallways, janitors' closets, as well as medically unnecessary requirements for physicians who perform abortions.

The abortion issue still continues to be hotly contested, and it is likely to become even more explosive as positions are stated and restated, and patience and tolerance for the views of others wane. Civil disobedience, harassment, and vandalism are increasingly prevalent across the nation as more traditional methods of changing laws and minds have been exhausted.

The main framework of *Roe v. Wade* is still in place and is the law of the land, in spite of the fears of those who thought that judges appointed by Reagan and Bush would attempt to reopen the case and rethink the issue. We are in the midst of a struggle of titanic proportions with neither side being able to gain a clear victory. Rules that are promulgated by one group when it gains political power are often overturned when the political tide turns.

The unfortunate level of violence with the death of physicians, attendants, and bystanders is an escalation that speaks poorly for all involved. It is a hollow moral victory when pro-life advocates proclaim that fewer and fewer physicians are willing to perform abortions when the basis for their decision may be fear of physical harm for themselves and their families. On the other hand, there is little high ground when, on the basis of privacy, human life is trivialized by those who decide upon an abortion because they do not like the gender of the

fetus. It must seem clear that after over four decades of political and legal struggle, the matter of abortion is one that cannot be decided by legal fiat or shifting political fortunes. We must in the end reason together if we are to bind our wounds. If either side is to truly "win," it should be by the force of their moral argument, not because they were able to coerce public opinion on a given day.

The Moral Issues

The abortion issue involves many of the same concepts that underlie the issues of euthanasia and impaired infants. In each of these issues, there are disputes concerning personhood, sanctity of life, quality of life, autonomy, and mercy—as well as larger concepts such as freedom and social stability. The health care professional is often placed in situations that involve adjudicating among these concepts, and more often is placed in situations in which others make decisions using these concepts. The fact that others make these decisions does not mean the health care professional can ignore them, for he or she is often put in the position of carrying out the decisions. So even if one has no role in the decision-making process, one may need to come to terms with actions that may be morally controversial and emotionally heartrending.

The Two Positions

The pro-life position: Anti-abortion, believes abortion is murder and should be stopped.

The pro-choice position: Believes that the decision to abort is one of personal liberty and thus should be legal.

There are two possible sub positions:

1. One may believe that abortion is wrong but, for whatever reason, is something that should be up to every individual to decide. The issue becomes an individual or personal decision.
2. One may believe there is nothing wrong with abortion or that, while abortion is wrong, it can be outweighed by other considerations.

Sanctity of Life Argument

At its most basic level, the argument for a sanctity of life position would be that the fetus is a live human and, therefore, killing him or her is wrong. Even sanctity of life positions generally allow for a few exceptions. Self-defense is a widely accepted exception to the "thou shalt not kill" proscription. Generally, it is held that if someone is trying to kill you, and the only way in which you can save yourself is by killing the other person first, that action of defense is justifiable. Some have used the self-defense argument as a reason to allow abortions in cases where the mother's life is endangered by the pregnancy. Others refute this by pointing out that

self-defense is permissible only when the attacker is intending to kill you. If a hungry lion was attacking you, it would not be permissible to throw others in its path so as to satiate its hunger and escape being eaten.

Human life is thought to be sacred, or at least inviolable, on the basis of divine mandate, unalienable natural or human rights, or common collective decision. It seems a strange question, but what do we mean when we say *human*? Some argue that having a genetic code of a human being is what is essential. Others argue against this position, stating that the genetic code is not sufficient to establish humanity (acorns have the genetic code of the oak tree, yet we do not confuse the two). This dispute raises the question, Does the potential for becoming a human give an entity the same rights as a human being? Even if we accept that the fetus is a human, we often distinguish the rights of humans based on their age. A twelve-year-old does not have a right to drive, although he certainly has the potential to do so. Nor do minors have the right to drink, smoke cigarettes, or see X-rated movies. We do not generally provide for our children the rights and privileges that we allow the president of the United States, even though we teach them that they can potentially grow up to attain that position.

There are other problems with the genetic code argument. Down syndrome babies do not have the same genetic structure as other human beings; in fact, it is the cause of their condition. Does this mean that they do not have a right to life? The pro-life advocate would respond that a human genetic code is a sufficient but not a necessary condition of beings with a right to life. Thus, other entities may also have a right to life, but one with a human genetic code, in all its varieties, definitely has such a right.

Another question is, When does the right to life exert itself? When does it come into existence? Does the right to life come into existence with conception, with the establishment of measurable brain waves, at quickening, at viability, or upon entrance to the outside world? Figure 8-2 provides the stages of fetal development.

The Facts of Fetal Development

The next set of issues requires some discussion of the facts of fetal development. The union of the sperm and egg gives us what is called a **conceptus**. At that point, the **zygote** has a full genetic code that will determine the sex, hair color, skin color, and a variety of other attributes. At about two or three weeks, the zygote settles into the uterine wall and enters the stage in which it is described as an **embryo**. Pro-choice advocates often point out that the embryo at this stage of development is very dissimilar to what we consider human, having what appears to be a tail and gills. Pro-life advocates would quickly point out that it is a morally dangerous position taken when we base moral judgment on appearance and that whatever is there is human.

At about eight weeks, we call the entity a **fetus**, a term that will extend until birth. By the second trimester, the fetus will normally have begun to move, and the mother will be able to sense the movement at a point that is known as *quickening*. It was once believed that the fetus gained a soul at the point of quickening, but given that the event does not correspond to any

Stages of Human Embryo Development

- **Conception**—The penetration of the egg by the sperm is usually followed twenty-two hours later by syngamy, the alignment of maternal and paternal chromosomes to form a new genotype.
- **Implantation Complete**—In about fourteen days the zygote settles into the uterine wall and enters a stage when it is described as an embryo.
- **Fetus**—At about eight weeks the first neural cells start differentiating. The entity is known as a fetus; it will continue with this description until birth.
- **Distinct human form**—This occurs at about weeks 12 to 16. The fetus in this period responds to stimulation and may feel pain.
- **Quickening**—Occurs at about weeks 17 to 20.
- **Viability**—With modern technology, viability is reached by weeks 22 to 24.
- **Birth**—Normally occurs at 9 months.

FIGURE 8-2 Stages of Human Embryo Development

major medical changes, most have disregarded the moment of being able to sense the motion of the fetus as important to the abortion issue. By the fifth month, neurologically, the fetus can feel pain, and therefore at least enters into a status that we afford all creatures that feel pain. In the sixth month, the fetus enters a period of potential viability, where it could possibly survive apart from the mother. Neurologically, the fetus also develops minimal consciousness during this last trimester.

Birth generally occurs after nine months, but the infant at this point is still completely dependent on the mother, or at least some mother. Pro-life theorists argue that there is very little difference between the fetus prior to birth and the infant at the moment of birth. It is left up to the pro-choice advocates to come up with an argument that would explain how the newborn has a right to life that somehow was not present in a fetus five minutes prior to birth. Since the changes are so gradual throughout development of the fetus, it is difficult to point to a stage that clearly separates a human from a pre-human.

Killing and Self-Defense

Up to this point we have assumed that killing is always wrong. But it is not true that all killing of human beings is impermissible, for there is a widely accepted exception: self-defense. If someone is about to kill you, and the only way to save yourself is to kill the other person first, then killing is permissible, at least for most people. Some believe that this means we should allow abortions when the mother's life is in danger. Others point out that killing, in self-defense is permissible only when your attacker is intentionally trying to kill you.

You may not, for example, kill an innocent person who threatens your life by accident. You cannot shove an innocent person in front of a speeding car in order to save yourself.

The problem with the moral assessment of such actions arises from what we may call the “multiple character” of most actions. When I turn on a light, I am not only providing illumination to a room, I may also be signaling an accomplice, testing the electricity, or any number of things. One attempt to come to terms with such complex actions—actions that have more than one meaning or consequence—focuses on the multiple character of human action. The doctrine of *double effect* comes to us from the philosopher St. Thomas Aquinas. The doctrine asks us to distinguish the intended effect of an action from other unintended effects. This doctrine has been used to justify the death of fetuses under certain circumstances that threaten the life of the mother. Ovarian cancer sometimes must be treated with a full hysterectomy, and such an operation results in the death of the fetus. Note that the intention here is to save the mother, not to kill the fetus. Note also that it would be impermissible, according to this doctrine, to perform an abortion to save a mother from death if the procedure involved the direct killing of the fetus. It is permissible only if the death of the fetus is an indirect cause of the death of the fetus. Figure 8-3 provides the criteria for the doctrine of double effect.

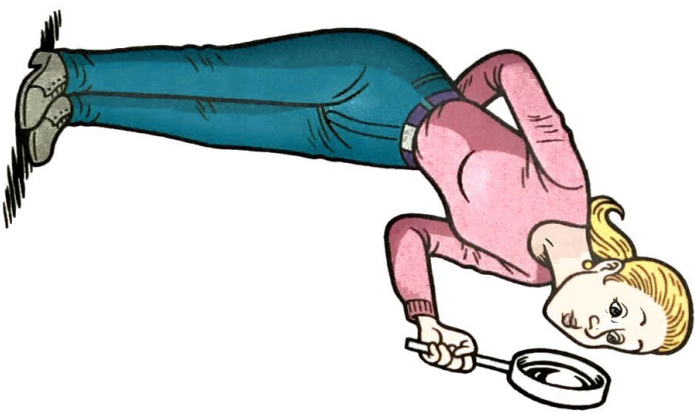


FIGURE 8-3 Doctrine of Double Effect

- The course chosen must be good or at least morally neutral.
- The good must not follow as a consequence of the secondary harmful effects.
- The harm must never be intended but merely connected as causally intended.
- The good must outweigh the harm.

“HUMAN” OR “PERSON”?

Mary Anne Warren has argued for a distinction between “human” and “person.”¹⁶ While one is human by virtue of one’s genetic code, a **person** is a member of the moral community. One becomes a member of the moral community by having certain characteristics recognized by the community as grounded in moral status and, in particular, rights. There are various characteristics that might qualify one for personhood. The following list of traits central to personhood is worth consideration:

1. Consciousness of objects and events
2. The ability to feel pain
3. Reasoning
4. Self-motivated activity
5. The capacity to communicate
6. A concept of the self¹⁹

While one may differ about one or more traits included on this list, it does seem to capture most people’s understanding of personhood. If an entity were not conscious (permanently), it is not permissible to kill people when they are asleep; it would be difficult to summon any objection to injuring such an entity.

The same goes for the ability to feel pain. However, the other characteristics are more controversial. What sort of reasoning do we have in mind? A dog who chooses one direction over another at a fork in the road is using some sort of reasoning. Do we wish to include dogs as persons? Some animal rights theorists make the odd but possibly valid argument that some adult mammals have rights while human fetuses do not. Notice also that injured humans who can no longer reason are not persons under this criterion either. The important point is that it is difficult to pose criteria that include fetuses but not animals, that exclude animals and permanently comatose humans without also excluding fetuses.

What about self-motivated activity? It is difficult to imagine any being having moral standing that did not direct its own actions or at least have the motivation to do so. On the other hand, one might argue that as long as it feels pain, then it should not feel pain needlessly if it is innocent.

The requirement that an entity be able to communicate is a rather stringent one. Newborns cannot really communicate, so if this were a necessary condition of personhood, even infanticide would be permissible. Some philosophers, such as Michael Tooley, have taken the position that infanticide is permissible because newborns have no concept of self.²⁰ Tooley is thinking primarily of defective newborns; nevertheless, it is clear that the last two criteria are problematic.

One might object to the practice of listing characteristics of personhood altogether. After all, the idea of restricting moral standing to only those humans with certain characteristics has led in the past to racism, sexism, and religious intolerance. But one might also argue that historically, the problem has been that race, sex, and religious affiliation have not matched

up with any rational division of entities. The problem, then, is not having criteria but having bad criteria. Note that adult humans of any race, sex, or religious affiliation do meet the above criteria. Furthermore, unless we are to be *specterists* and arbitrarily assign moral standing to humans, we must come up with criteria for personhood. One can imagine, after all, that we will someday encounter aliens that are clearly not possessed of a human genetic code and on whom we may wish to confer personhood.

Warren does not argue that personhood requires all of the above characteristics. The first three or four would probably be sufficient. What we should note is the fact that a conceptus meets none of the criteria. The earliest possible point that a fetus could feel pain would be at eight weeks, when brain activity becomes detectable, since feeling pain involves brain activity. This does not mean that an eight-week-old fetus can feel pain; eight weeks is the earliest date at which pain would be possible. The other characteristics generally do not manifest themselves until after birth.

The Viability Argument

Another criterion for personhood not mentioned by Warren, **viability**, focuses on the characteristic of biological independence. Some argue that a fetus has standing only when it becomes viable outside the mother. The idea is that personhood requires some sort of independence from other people, particularly the mother. Since the fetus has standing only as a dependent on the mother, it follows that the mother has the last word on whether it comes to viability. Once viability is achieved, however, the mother no longer has exclusive say over the fetus; indeed, the state might have a compelling interest in seeing to it that viable fetuses come to term. The reasoning is that once a fetus is viable, it is no longer completely dependent on a particular mother and therefore if others wish to take the burden from the original mother, they should be allowed to do so. Given the number of people having difficulty adopting children, such an argument is not without merit. If another person wishes to take care of and raise a baby instead of its being aborted, it is hard to imagine anyone objecting.

The objection to using viability as a criterion for personhood is that it varies over time and place. What this means is that as medical technology develops, what counts as a person will change. More troubling still is the fact that a fetus would be a person in a major hospital in the United States but not in a developing country without sophisticated medical facilities. One wonders why the idea of a variable concept of personhood is so problematic. After all, personhood is not a natural property that one can discern, like sodium in salt. It is a moral property, which means it is a matter of human decision whether to grant it to an entity. Furthermore, what is wrong with viability varying from place to place? People die all the time all over the world because of a lack of medical facilities. In fact, there is a certain sense to this sort of variability. In some places where infant mortality is high, personhood decisions are often postponed to up to three years of age, at which point the baby is given a name. Such a practice

makes sense in the light of the emotional weight given to the loss of a child who is regarded as a person.

There are some philosophers who believe that there is more to the abortion question than the issue of personhood. Judith Thomson has argued that even if we were to grant personhood to the fetus (which she is not willing to do), abortions may still be permissible.²¹ Thomson uses the method of analogical thought experiments. She builds a scenario that leads us to the conclusion she wants. Then she shows us how our view on the abortion issue should follow the same reasoning. The method of analogy is very powerful, for it requires only our assent to consistency. You will find these arguments outrageous as well as enlightening. The following arguments are worthwhile, if only as logic exercises, even if they fail to convince.

The Violinist Analogy

Thomson asks us to imagine a famous violinist whose kidneys are failing (Figure 8-4). The Society of Music Lovers, we are also asked to imagine, decides to kidnap you in the middle of the night and hook you up to the violinist for nine months or so until a kidney donor can be



FIGURE 8-4 The Violinist Analogy

found. Thomson asks us whether we would feel obligated to remain hooked to the violinist for nine months or whether we would consider it morally permissible to unhook ourselves from the violinist. She anticipates that our answer will be that it is permissible to unhook ourselves because of our rights over our own bodies. The application to the abortion issue is clear. If it is morally permissible to unhook ourselves from the violinist, then, by the same reasoning, it must also be permissible to have an abortion, and this is true even if we regard the fetus as a person.

One might argue that there is a disanalogy involved, for pregnancy is not like a kidnapping. Rather, it is voluntary. However, what about the case of rape? Rape is, by definition, involuntary, yet many regard abortion in rape cases to be just as wrong as in voluntary pregnancies, since it is not the baby's fault; it was brought about involuntarily. Such people must therefore agree to staying hooked to the violinist for nine months. Some are willing to "bite this bullet" but many others will find themselves in a contradictory position. Notice, though, that if we are not willing to bite the bullet, we are then obligated to agree that there is at least one case when personhood may be overridden for other reasons. This is crucial, since it provides a wedge for the pro-choice person to slip an exception into the otherwise impregnable right to life of innocent persons. Once we accept this exception, so the reasoning goes, we will also be forced to accept others.

The Rapidly Growing Child Analogy

This analogy attempts to call attention to the case of abortion when the mother's life is in danger. Imagine yourself in a house with a rapidly growing child. In fact, the child is growing so rapidly that you find your exits blocked by the baby and on the verge of suffocation. The only way for you to survive is for you to kill the baby. Again, Thomson believes we will agree that killing an innocent is permissible in this case. Hence, we have another exception to the right to life of innocent persons. This case, like the one we have just considered, has problems. Is it true that it is acceptable to kill innocent people to save ourselves? Consider another case. You find yourself caught in a flooding tunnel and the only exit is blocked by a fat man who is lodged in the exit. The water will eventually force him out, but you will have drowned by that time. Would you be within your rights if you used dynamite to dislodge and therefore kill the fat man? Many, if not most, would say that doing so is not permissible. The argument would be that it is only right to kill in self-defense, when the other person is intentionally trying to kill you. But this does not work either, for most would regard it as permissible to kill a deranged man in self-defense even though the person is not responsible for his insanity. The only thing clear here is that self-defense cases are far from morally unambiguous. What is interesting, in spite of the ambiguity of the reasoning behind self-defense, is that the vast majority of people regard saving the life of the mother a clear case of permissible abortion. There is a vocal minority, however, who would make distinctions between cases of danger to the mother's life, namely those enamored with the doctrine of double effect.

The Carpet-Seed Children Analogy

The final analogy we will borrow from Thomson is meant to call attention to the case of failed contraception. Imagine that instead of the reproductive process being as we understand it, people will be rather concerned to make sure their screens are in good working order. But we can also imagine that in spite of such diligence, holes develop in one of our screens and some seeds germinate in our carpet. Are we obligated to bring these children to term, or would we be permitted to get the vacuum cleaner from the closet (Figure 8-5)? Thomson thinks that vacuuming should be permitted. The analogy, as we have indicated, is with faulty contraception.

If one is inclined to agree to vacuuming up the carpet-seed children, one should also agree to abortion in the case of faulty contraception. The idea is that we are not responsible for

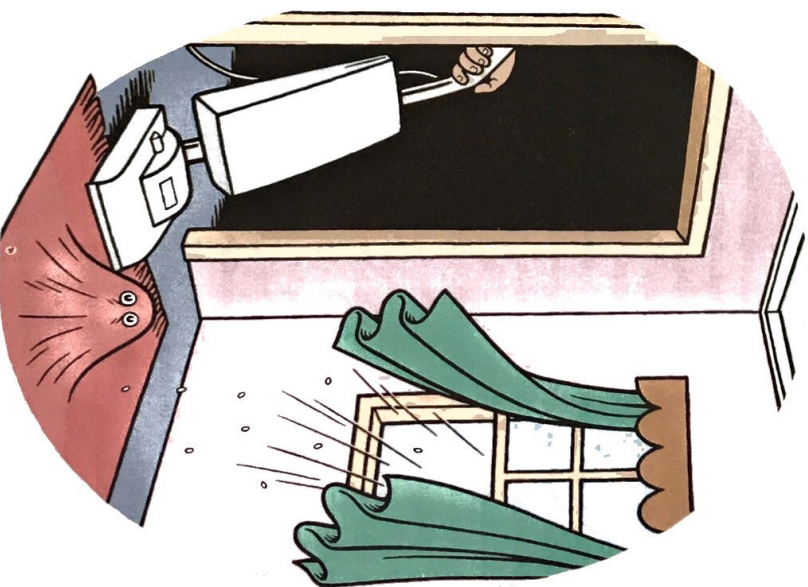


FIGURE 8-5 The Carpet-Seed Children Analogy

unintended pregnancies if we take reasonable precautions. This brings us to the rather large topic of women's choice, on which pro-choice theorists rest so much of their case.

The Argument from Reproductive Liberty and the Priority of the Fetal Tissue

For many women, it is unthinkable to imagine a woman not having the decision of whether to continue a pregnancy. They argue that if a woman is to be free, she must have control over her reproduction, and that, given the immense responsibility of raising children, it is crucial that women be allowed to determine when it happens. Others counter that adoption is always another option, which brings the obligation down to nine months, much of which does not really interfere with a person's life. (However, it is important to note that adoption does not really work as an alternative to abortion since there are roughly 1 million abortions every year but only 50,000 couples waiting to adopt.) But the pro-choice person will respond that even this asks too much of a woman. If a woman is to compete in the marketplace with men, she cannot have pregnancy interrupting her career. To regard a woman's career—or more generally her life plan—as having so little importance that it must be set aside by the contingency of unwanted pregnancy is to regard women as less important than men. This is true whether the woman works at home or in the marketplace. What is crucial is that a woman have control over her life plan in the way a man has control. If your plan is to raise two children, then to impose a third is to violate the woman's right to choose the course of her life. This is what leads many women to say that if men became pregnant, there would be no abortion controversy.

At this point, pro-life people argue that women can “just say no.” Women do not have to engage in sex. In fact, it is argued that the root of the abortion problem is precisely the modern attitude toward sex. Notice that we are now in another area of intense and deep disagreement. What we find at this level of argument are differing ideas concerning sexuality, ideas that ultimately come down to one's religious or most deeply held moral beliefs. We will discuss this broad topic later in the chapter, for now we must point out that even married women want the choice as to the time of pregnancy.

Some might argue that we are making altogether too much of the possibility of failed contraception, and that if women were merely responsible with contraception, there would be no problem. The problem with this argument is that even the pill sometimes fails, and further, many women either cannot take the pill at all or are advised not to take the pill longer than five years. Contraception other than the pill is rather less effective, and unwanted pregnancies are bound to happen. We must also remember what it is we are asking of people. We are asking that they act perfectly rational in situations that we all know to bring out a great deal of irrationality. This is, of course, less of a problem the older we get, but the abortion issue is not one just for adults; it is one that is most tragic for minors. According to the

Alan Guttmacher Institute, more than 17 percent of abortions are performed on teenagers. More than 50 percent of the females are under 25.

It is in this light that we must understand why there are so many abortions. Take, for example, the typical first sexual experience for many children. Much of the time, intercourse is not on the evening's agenda, but as the night progresses, things get too hot and heavy for many teenagers to resist. Since intercourse was not planned, it is also unlikely that the teens thought ahead to bring contraceptives. Again, we must notice what we are asking of children: to behave with complete rationality in an unfamiliar situation in which their hormones are working against rationality. Now it is true that this problem can be somewhat overcome if we supply all teenagers with contraceptives, as well as sex education before they reach the age of sexuality. But many, if not most, abortion opponents would reject such practices as encouraging promiscuity.

In any case, we should not rely on the fear of pregnancy to play much of a role in preventing promiscuity. We should also respond to the idea that “if you play, you pay.” The idea here is that if you consent to sex and get pregnant, it is only just. This sort of vindictiveness has no place in moral philosophy, and it certainly makes no sense from the social point of view. Should we regard children as punishment? Some argue that the task of raising a child is too difficult and demanding to turn it over to someone who is regarded as irresponsible in the first place. No one believes that “babies should have babies”; the question is how to prevent it. Given the well-known cycle of poverty of under-age, single mothers, the overriding social problem according to pro-choice theorists is teenage pregnancy, not abortion. The crucial question concerns our overall quality of life rather than biological existence. It is pointed out, for example, that 40 percent of the families of the women who have abortions have incomes well below the poverty line. So, if these children come to term, they will end up growing up in difficult circumstances and making the job of getting out of poverty more difficult for those who will raise them.

Pro-choice advocates worry about the inevitable “backstreet abortion” if abortion is made illegal, and they also worry about the quality of women's lives if they are denied the basic autonomy of reproductive self-control. The pro-life theorist, on the other hand, will see the social problem as just another manifestation of the rampant immorality of the modern age. The pro-life theorist will argue that it is quite possible to grow up “decent” in a poor household, and that to believe otherwise is to be elitist. The pro-life advocate considers the element of autonomy in reproduction more of a matter of “convenience” than a life plan that has priority over the continued existence of the fetus. It should be clear from this radical disagreement over the value of women's reproductive autonomy that we are dealing with deep-seated moral beliefs. The one side believes that self-realization through the development of one's life plan (one's “biographical life”) is all important, while the pro-life theorist points to the sanctity of human “biological life.” This radical disagreement over basic beliefs makes it possible to understand the violent emotions that have been unleashed in the political battle over abortion.

TRADITIONALISM VS. MODERNISM

The abortion issue is just the most obvious point of conflict between people with different worldviews. There have been studies of the social backgrounds of pro-life and pro-choice activists, and the results are revealing. Pro-life activists tend to be more traditional and religious. They believe that sex should be reserved for marriage, if not merely for procreation. Pro-choice activists tend to be less traditional and religious, more career-oriented with higher incomes. They also tend to believe that sex is a natural expression of oneself. What is clear is that we have the well-known conflict between conservative traditionalists and liberal modernists. The former are distrustful of deviations from tradition and see society's problems as the result of straying from the traditional mores. Pro-choice activists, on the other hand, see the social problems precisely the traditionalist rejection of sex education and contraception that is the source of the problem. In the modernists' view, there would be many fewer abortions if these reforms were allowed to be instituted without resistance. For traditionalists, it is only their own resistance to the full implementation of the liberal program that prevents wholesale chaos and immorality. But since we are already in a "chaotic" situation, pro-life advocates are relying rather heavily on the possibility of a religious revival that many would resist.

Another point of view of the traditionalism versus modernism perspective on abortion is possible. Some would argue that the pro-life position is actually the more progressive of the two. The argument tries to place the attempt to give rights to the fetus within the line of development we have seen in the civil rights and women's movements. Just as people realized that African Americans, women, and homosexuals deserve the same rights as heterosexual white males, it is argued, we must extend the liberalizing program to the fetus.

ABORTION AND THE FREEDOM OF RELIGION

Given that the abortion disagreement lies so deep in our religious and moral frameworks, we are led to ask whether abortion should be regarded as a case of religious disagreement and therefore subject to the constitutional guarantee of freedom of religion. If one's view of abortion is really a result of one's religious beliefs, it would seem that the government should play no role in restricting it. It should come as no surprise that pro-life theorists reject the idea that their views on abortion are the result of their religious views but rather maintain that they are the result of basic moral reasoning. They point to the fact that while the above characterization of pro-choice and pro-life activists is true, it is also true that many nonreligious people and members of the more liberal religious sects are also opposed to abortion. They also point out that freedom of religion is not absolute. One cannot murder or steal and then argue that it should be allowed because it is part of his or her religion. Since the issue is whether abortion is murder, the freedom of religion does not come into play.

Pro-choice theorists argue that even if disagreement on abortion cuts across the various religions, as well as atheism, it is still the case that the issue is one that lies rather deep—as deep as any other religious views one might have. Abortion views tend to reflect one's most deeply held beliefs, so even if the views are not religious in the partisan sense, they are equally profound. It is argued that the disagreement is so profound that the best solution would be the same one that resulted from the religious wars of earlier centuries: tolerance.

Many people see tolerance as the best way out of our present situation. It is unlikely that one side is going to come up with an argument that will cause the opponents to suddenly "see the light" and switch sides. One problem with this continuing controversy over abortion is the way that it skews politics. People are more and more becoming one-issue voters rather than assessing the candidates' positions on all of the issues. We may also be losing good candidates because they live in areas in which the majority has a different view on the abortion issue. On the other hand, some argue that one's abortion stance is crucial to determining whether a politician understands the changing needs of women and modern social conditions generally (pro-choice) or the decline in moral standards (pro-life).

THE ENVIRONMENTAL PERSPECTIVE

Recall Thomson's carpet-seed children, whereby we tried to imagine children being the result of airborne seeds. Such a possibility is certainly far-fetched, but it does bring up an important point: that it is a contingent result of the evolutionary process that we have as many children as we do. One can easily imagine humans reproducing like frogs and many other creatures and giving birth to thousands of offspring in order to survive as a species in a situation of high infant mortality. One can also imagine that as humans advanced, they could eventually overcome the environmental forces that make it necessary to have so many offspring. Imagine that the only way to prevent our froglike humans from developing into adults is abortion. In such a case not only would it be permissible to have abortions, it would probably be necessary since the world would otherwise be quickly overpopulated. It would be necessary, also, if we were to have anything like the family structure that we have now. The suggestion is that human life, at least in its early stages, is not as valuable as some make it out to be. What would turn out to be more important would be a strong family structure. Once a family was ready to commit to a child, the sanctity of life would come into play, but fetuses would have very little value without such commitment. This is in line with an environmental perspective that sees humans as members of a biotic community with duties to maintain a balance of numbers with other members of that community.

The People's Republic of China offers an interesting historical and cautionary lesson on the difficulty encountered when population control is attempted by governmental fiat.²²

In 1949, shortly after the communist revolution, Chairman Mao Zedong encouraged the population to multiply to increase available manpower. Although not an official policy, government propaganda encouraged large families and condemned and at times banned contraceptives. As a result, the population doubled straining China's food supply. From 1959 to 1961, famine in China killed an estimated 15 to 30 million people.

To reduce the rate of population growth, the Chinese government introduced the one-child policy in 1979 for the majority Han population and enforced it with social pressure, loss of benefits, fines, sterilizations, and forced abortions. One of the unintended results is that in recent decades, millions of female babies have been aborted in China, because of a historical preference for male offspring. This unintended gender imbalance has left the country with too many boys and too few girls. The nation now needs millions of brides for young men looking to start families.

In 2013 the one-child policy was relaxed, which allowed over 12 million couples to apply for a second child. However, only 12 percent of the eligible couples applied. Modern Chinese couples now facing monetary and social pressures to succeed in the new economic environment are deciding to stop with one child or have none at all. In 2016, the one-child policy was officially rescinded.

China's one-child policy may have worked too well, as the nation now faces a national birth rate below the replacement level of 2.1 and in some urban areas lower than 1. The government's new problem is how to encourage younger families to have more children so they can provide for an ever-enlarging elderly population.

The problems associated with an aging population are not restricted to China as low birth rates are also a product of personal choice. Many nations such as the United States, Canada, Chile, and Japan are rapidly graying with larger proportions of their population nonworking and depending on pensions and increased health care. On the other hand, many nations of the Third World will remain young. However, nations with younger populations will not stop the population aging countries from reshaping the world's population to the point that almost a fourth of all people on Earth will be over 65 by 2100.

Although the Chinese restrictions on individual reproduction are a severe example, there are many individuals throughout the world who believe that an environmental perspective requires that we maintain and perhaps even encourage the use of abortion as a tool to control world population. One cannot derive a right to an abortion directly from the need to curb population growth—contraception seems better for a number of reasons—however, an aggressive attitude toward family planning fits well with an attitude of respect for nature. Pro-choice advocates often point out that many in the pro-life movement are anti-abortion and anti-contraceptive but do not have the same level of emotional commitment to advocating against the death penalty. This has led many to see pro-life people as pro-birth rather than truly pro-life.

THE FAMILY PLANNING PERSPECTIVE

The family planning perspective also asks why we should favor accidental babies over planned babies. What gives a baby who happens to be conceived when a woman is the age of 18 more right to life than the one she would have had at 28? Given that people have the right to choose the size of their family—something that will be necessary in the long run anyway—it makes sense that they should also have the right to choose at what point they will have their children. Optimally, people want children to come when the family is financially and emotionally stable. Marriage is difficult enough without the added strain of unwanted children. Given the social problems of poverty, single parenthood, child abuse, and so on, some argue that it may be time to reconsider what is really important to the family structure.

A pro-life perspective would regard such a point of view as absurd and maybe even horrifying. Once a baby is conceived, it is a person in their view, thus possessing a right to life. In such a frame of reference, it makes no sense to compare this baby with a possible baby ten years from now. Rights belong only to existing beings. The pro-life view would see family planning as another example of the decadent culture of permissiveness.

IN VITRO FERTILIZATION

On July 25, 1978, a few days before term, a baby described by her doctors as being “nice, healthy, normal,” was born and given the name of Louise Brown. The only thing not normal was that Louise had been conceived outside the human body in a laboratory dish and then implanted in her mother. Her birth received enormous press attention as the world was alerted to the birth of the first “test tube baby.” Actually the term is somewhat misleading; she should perhaps have been titled the first “test tube embryo,” which was then followed by the “first embryo transfer” into the mother. The normal medical expression used for the process is *in vitro fertilization* (fertilization in glass).

In vitro fertilization is a procedure in which eggs are removed from a woman and fertilized in a laboratory dish (by either the husband or another man). The embryos are then implanted in a woman (the donor or some other woman) where the egg may be brought to term. This procedure is in itself uncontroversial. The ethical issues arise because the process typically results in extra, or “spare,” embryos that may then be disposed of, frozen, or experimented on, none of which is without its detractors. The spare embryos are necessary since the procedure is not an easy one for the donor, because not all the eggs fertilize, and because the implantation process may fail and thus have to be repeated.



A Modern Dilemma

This dilemma is about a modern fertility dispute—one that involves a pair of frozen female embryos, an unmarried couple, a physician, a signed contract, and an angry ex-boyfriend who is suing the woman for the right to unfreeze the two embryos and bring them to term. The one-time couple created the embryos in an IVF clinic and had them frozen for later use. A contract had been signed with the stipulation that the embryos could only be brought to term if both partners agreed. However, the man argues that the contract is void because it did not specify what was to happen if they broke up. As a Catholic, it is his view that the embryos are unborn children and he offers to take all the parenting responsibility and costs if the woman will let him have them. He insists that “We created these embryos for the purpose of life” and that they should not “sit in a freezer until the end of time.”²³

What do you consider to be important in making your decision?

1. Is this a legal case about the validity of a contract? Is this a debate about when “personhood” starts? Is this about forcing his ex-girlfriend to have kids she does not want with a man she does not want to be with? Does it matter in your decision that the man can have other children?
2. Would you feel different if the woman wanted to bring the embryos to term but the man did not?

Currently there are hundreds of thousands of human embryos, each the size of a pinhead, stored in cylinders filled with liquid nitrogen at more than 430 fertility clinics in the United States.²⁴ Some have questioned what their status should be. The process of in vitro fertilization involves the freezing of embryos, rating them for quality, discarding those that hold genetic defects, and at some future time, for those that are not needed, thawing them and disposing of them. For those who believe that human life is sacred from the moment of conception, then the processes of in vitro fertilization and what happens to excess embryos becomes a moral dilemma. Do the rationalistic and impersonal practices of the in vitro processes undermine the respect for life and the concept that life begins at conception? It would seem that those who hold this view would attempt at least to limit the number of embryos harvested to the minimum number necessary, and if the excess embryos are discarded, that some ceremony of recognition of what they are would be performed. This might be similar to the special cremation services performed at some medical schools for cadavers that have been used for anatomy classes prior to their disposal.

Two other issues arise with regard to the freezing of the embryos. First, although the 90 percent success rate with thawed embryos may be acceptable for laboratory animals, it probably is not acceptable with humans, particularly if the failure or partial failure is not

detectable until later in life. Second, once frozen, the embryos may outlive the donor and thus raise the possibility of postmortem conception and birth.

On the other hand, there are great potential uses that we could make of in vitro techniques. Women could postpone pregnancy without risking either infertility or the diseases of pregnancy that afflict older women by conceiving at a young age (thus avoiding the old-age dangers like Down syndrome), but then getting pregnant through implantation at an older age. This could aid women whose career choices, maturity issues, or economic situations are such that pregnancy later in life is preferable. In vitro also offers the possibility of identifying genetic abnormalities while providing an alternative to amniocentesis during the second trimester. It could also then provide a more palatable “abortion in vitro” for embryos identified as having some disease or defect.

A more recent set of issues has arisen with the use of embryonic tissue in medical research with the aim to provide treatments for diseases like Parkinson’s and treatments like transplantation. These issues typically recall the arguments raised in the abortion debate over the beginning of life or personhood. For those who hold that it is wrong to abort anytime after conception, then any procedure that leads to the loss of the embryo is also wrong. But someone who believes that abortion is permissible would not likely be troubled by the use of embryos in research.

Although we have already examined most of these issues, it may be opportune to address the embryo specifically at this point. We are dealing with a blastocyst that has around one hundred cells, is approximately the size of the end of an eyelash, and completely lacks cellular differentiation. It contains mitochondria, cytoplasm, and the DNA of the mother and father. The key element is the DNA. Some people worry about the destruction of the embryo in stem cell research, but it should be noted that while the egg wall, the cytoplasm, and the mitochondria are destroyed, the DNA is not. It is precisely what gets used to form cell lines, and it should also be noted it will therefore outlive the DNA of frozen embryos.

SURROGACY

The practice of surrogacy occurs when a woman agrees to carry a baby to term and give it up to another set of parents to raise. The contracting couple may be unable to contribute genetic material for some reason or the female may be unable to carry the baby to term. Sometimes this is done for money, sometimes as a favor. It is the practice of surrogacy for money that causes the most concern, although some dislike the practice whether or not money is exchanged. Some people believe that it is unethical for a woman to be used, even with her consent, as an incubator for others. Others believe that this is just another economic opportunity for women who often have few other economic options. But this does not allay the concerns of those opposed to the practice; indeed, it makes the whole arrangement more likely to be one that involves coercion. Others remark that given the rigors of pregnancy, one should be paid even if grave

economic necessity is not involved. However, there are others who question what the payment is for: Is it for the use of the "apparatus" for the nine months, or for the baby? If it is for the baby, then we have gotten into the question of the legitimacy of selling humans.²⁵

Some worry that it is too hard on a woman to carry a baby to term and give it up at birth. Pregnancy is viewed as a deeply personal experience that should never be undergone for the sake of others. On the other hand, it is for this very reason that surrogacy can be a supreme gift to another.

What if the birth mother changes her mind? This is a very difficult circumstance. If the genetic material is that of the birth mother and a partner besides the contracting parents, and if the woman agrees to return any money paid to her, then one might be willing to let the baby remain with the birth mother. Others would argue that "a deal is a deal" and that the birth mother should give up the baby. One's position in this case will depend on whether one believes biological connectivity is more important than contractual agreements.²⁶

If the biological material is not solely that of the birth mother and her own partner, but is contributed in whole or in part by the contracting couple, then the issue is more complex. Now the case for the birth mother rests solely on the biological connectivity that comes from pregnancy. But the contracting parents also have biological connectivity because of the genetic material. They also have the contractual agreement on their side. These reasons would tend to favor the contracting parents. But again, some are loathe to remove a baby from the birth mother against her will.

Technology has brought us face to face with new and difficult issues, and merely consulting tradition will be of little use. Kantians will probably find the whole practice of surrogacy problematic since the birth mother is clearly being used as an incubator and not regarded as a rational actor. One could give a Kantian argument in favor of surrogacy on the basis that as long as there is no overt coercion and if the woman either is paid or agrees to donate her body and time for selfless reasons, then she is acting as a rational and autonomous individual. She is simply using her body like any manual laborer. Those Kantians who disagree with the practice are more likely to compare the practice to a clinical form of prostitution without the act of sex. One might wonder how one can think of the practice as prostitution given that sex is not involved, but those who do will point to the highly personal and invasive nature of pregnancy as the key analogical factors.

Utilitarians are faced with very complicated utility calculations. The simplest calculation says that everyone benefits: the birth mother is given money and the contracting parents get a child they could not otherwise have. A utilitarian argument against surrogacy could grant this simple calculation but then argue that the long-term consequences would be negative in one or more ways, such as commodifying what should be a noncommodified part of life, demeaning women by regarding them as incubators, depersonalizing a very personal aspect of life, or possibly creating a lower class of women whose main function in life is to produce children for others.

Another utilitarian argument against surrogacy argues that the pain of separation to the birth mother outweighs the happiness gained by the contracting parents. This might be a difficult argument to make in general since the surrogates, at least initially, feel that the pain of separation is worth a monetary reward. Most cases of surrogacy seem to bear this out. While some birth mothers change their minds, most go through with the deal and feel as if the outcome is the best one.

Surrogacy is now a fairly well-accepted practice in spite of the misgivings of some people. As long as the practice is regulated so that no coercion is used and the practice does not create a class of "breeders," the ethics of surrogacy are unlikely to be too problematic except in cases of changes of mind. If the practice does become coercive or create a class of breeders, then surrogacy should be reconsidered.

CONCLUSION

Throughout this chapter on the ethical issues surrounding reproduction, there has been little information with regard to the health provider's role and professional autonomy. The reason is that the abortion issue is not essentially a health issue but rather a social issue that takes place in the health care arena. Abortion, in most instances where it is performed, is legal. The American Medical Association in its Code of Medical Ethics, Current Opinions document, 2.01 states:

The Principles of Medical Ethics of the AMA do not prohibit a physician from performing an abortion in accordance with good medical practice and under circumstances that do not violate the law.²⁷

One's attitude toward abortion is often very intense, close, and personal. As a matter of professional autonomy, it would seem that health care providers with deeply held beliefs with regard to this matter would not be required to participate in the process. However, this may require that the provider ascertain the philosophical view of the institution where he desires employment prior to accepting duty there. It makes very little sense to look at only the salary and fringe benefits of a hospital and then find yourself working at an institution where the daily practice of abortion creates for you severe moral distress.

Health care providers, regardless of their personal feelings concerning abortion, cannot ignore the social realities of our time, such as the liberation of women and the problems of teenage mothers. As a matter of role duty, we must come to understand that people of intellect and honor have come to very different decisions regarding the issue. As health care providers, we do not have the luxury of treating patients with whom we have formed a patient-provider relationship with anything but the highest level of professional concern, regardless how we may feel about their decisions on reproductive issues.

Abortion is an extremely emotional issue in that it makes us consider some very important and deep moral concepts, such as personhood and the value of human life. While it

is important to understand the facts of fetal development, there is no getting around the problem of philosophical disagreement over fundamentals. Abortion also requires that we review our moral intuitions.

Whatever your view on abortion, it should be clear that the issue is a difficult one that reaches to the depths of our most profound thoughts on what is important in life. Nothing indicates that the controversy will end anytime soon, so how is a sensitive person to regard opponents on the issue? If one imagines that a fetus is a baby, how much effort on its behalf is rational? An adult who rushes into the street to save a toddler who has entered the pathway of an onrushing car would be considered a hero. What, then, is so extraordinary about blocking a doorway or lying down in front of an abortion clinic, if what you see yourself doing is saving babies? If, on the other hand, your view of a fetus is that of a piece of tissue—even one with remarkable potential, but still only a piece of tissue—jumping in front of cars or blocking doorways is very strange behavior indeed.

Perhaps what is missing in the debate is a level of tolerance and civility that considers the opposing view to be wrong but perhaps rational. We have reached an intensity in the debate where pro-choice advocates call the pro-life advocates “terrorists” while the pro-life movement continues to cast the pro-choice side as “baby killers.” It is not likely that “baby killers” and “terrorists” are the kinds of people who will be able to sit down and reason together. Confrontations have become increasingly violent and costly as one town after another becomes a battleground.

Is there a possibility that one day people on both sides of the issue will be able to set aside their differences and come to some agreement? Maybe there is some hope in the fact that the authors of this book disagree on the abortion issue yet were able to work together in order to write the book.

KEY CONCEPTS

- Pro-choice and pro-life advocates have debated the merits of the *Roe v. Wade* decision for more than four decades. While each side has honed its arguments well, they do not appear to be closer to resolution.
- In the past several years, the contest has not been directed toward the issue itself as much as toward related wedge issues such as late-term abortion, double penalties for the murder of a pregnant woman, the use of fetal tissue in research, and whether the government should provide funding for abortions in federally funded programs.
- Although the pro-choice arguments presented involve issues such as rape and incest and these issues do exist, most abortions performed are related to lifestyle issues.
- The sociological backgrounds of the debaters seem to divide the advocates along traditionalist and modernist lines. Pro-life advocates appear to be more traditional and religious, while pro-choice advocates appear to be more secular and liberal modernists.

- In vitro fertilization in and of itself appears to create few ethical problems. The ethical issues are generally involved with what to do with the extra or spare embryos that are created as part of the process.
- Surrogacy is a practice that is gaining acceptance. However, issues regarding disagreements between the participants, whether one is selling a service or a baby, and whether women providing the service stereotype and demean other women, complicate the process.

REVIEW EXERCISES

- A.** On March 28, 1992, the *Wall Street Journal* reported that the New Jersey Supreme Court had tossed out the appeal of a man seeking to stop his girlfriend from having an abortion. Much has been written about the woman's right over her body, but relatively little about the father's rights. Does a man have the right to veto an abortion? Does he have the right to veto a pregnancy? What duties logically follow from such rights?
- Use this exercise to assess the doctrine that says that for every right you have there must be someone with a correlative duty.
- B.** RU 486, or mifepristone, has been used by literally thousands of women for early first-trimester abortions. It does this by blocking the naturally produced hormone, progesterone, the absence of which causes the uterine wall to shed its lining and any fertilized egg. What is the appropriate position to take on RU 486, “the abortion pill”?
- How is RU 486 different from the IUD? The cervical cap? The traditional pill? Compare the different forms of contraception with regard to the abortion issue. Could one be for contraceptives and against RU 486?
- C.** One development in contraceptive technology is the “underarm pill.” It is a low-dosage, slow-release pill implanted under the arm that lasts for five years.
- We have discussed the severe problems of teen pregnancy in some areas. How would you feel about mandatory implantation in teenage girls in problem areas, for example, high schools where 90 percent of all girls are pregnant before graduation?
- What about a national policy of underarm pill implantation? Should we implant all girls of a certain age to avoid discrimination? We could respect the wishes of certain groups who would reject the implantation, so one could also petition not to receive the pill. But then should the state be required to help to raise a child who is the result?
- Should the parents who engage in child abuse be required to wear an underarm pill?
- D.** Some abortion foes object to fetal tissue research on the grounds that it will lead to more abortions, or at least to a feeling that the immorality of abortion may be partially offset by the fact that the tissue will be put to good use. Is this fear justified?

E. Some states have a parental consent law stating that minors must get permission from parents or a judge before having an abortion. Imagine a similar law that adds a provision that if the parent refuses to allow the abortion it is the parent's responsibility to raise the child, not the minor's. Which would be the better law?

F. Rule utilitarians regard rights as human creations, as merely good rules that yield the greatest happiness for the greatest number. Consider the right to life from the perspective of the rule utilitarian and determine whether such a view could support the pro-life side, the pro-choice side, or both.

G. Some states have passed what is called the "informed consent" law. Such a law would require anyone considering an abortion to wait twenty-four hours and to view pictures of fetuses at the same stage as her fetus. Would such a law be a good idea? Do we require heart patients to witness open-heart surgery before they undergo the operation themselves? Is this a good analogy?

H. Do health professionals have the duty to participate in abortions even if they find them morally repugnant?

I. Examine the following statistics. What, if anything, can we learn from them? Which side does each statistic support?

- In 2014, there were 1,300,000 abortions reported.
- In the same year, there were 346 abortions per 1,000 live births.
- 83 percent of all abortions are performed on unmarried women.
- About 1.0 percent of all abortions take place after 20 weeks. About a quarter of all teenage pregnancies in the U.S. end in abortion.
- 6 percent of all women having abortions have been informed the fetus has a defect.
- 55 percent of all teenagers who have an abortion inform their parents.
- The risk of *death* associated with a full-term *pregnancy* and delivery is 8.8 *deaths* per 100,000, while the risk of *death* linked to legal *abortion* is 0.6 *deaths* per 100,000 women.
- Less than one percent of all abortions requested each year are a result of rape or incest.
- In the United States about 700 women die each year from pregnancy-related problems.

Use these statistics to examine the relationship between facts and values.

J. Some consider human reproduction a negative human right (a negative right is one that others should not interfere with). When you consider the difficulty and associated harms found in the modern examples of The People's Republic of China and Romania, where

governments exerted control, do you agree that human reproduction is a right not to be interfered with? Explain your position.

K. Most advanced nations of the world limit elective abortions after 20 weeks gestation. Provide a pro and con argument for such a law.

NOTES

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3. Lawrence B. Finer, Lori F. Frohwrith, Lindsay A. Dauphinee, Sushela Singh, and Ann M. Moore, "Reasons U.S. Women Have Abortions: Quantitative and Qualitative Perspectives," *Perspectives on Sexual and Reproductive Health* 37, no. 3 (2005):110–118. (<https://www.guttmacher.org/pubs/journals/3711005.pdf>).
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5. Letter from P. J. Seward, Executive Vice President, American Medical Association to the Honorable Rick Santorum, United States Senator, dated May 19, 1997.
6. Christine Flowers, "Abortion: A Nightmare in Philadelphia," *Philadelphia Daily News* as reported in "Talking Points," *The Week* (February 4, 2011): 20.
7. *Roe v. Wade* (1973), 410 U.S. 113, 164.
8. M. Faux, *Roe v. Wade* (New York: New American Library, 1988).
9. *Danforth v. Planned Parenthood of Central Missouri* (1976), 428 U.S. 52.
10. Laura Bassett, "Judge Tosses Murder Case Against Mississippi Mom with Stillborn Baby," *Huffington Post*, April 13, 2014, http://www.huffingtonpost.com/2014/04/03/judge-tosses-mississippi-_n_5086215.html.
11. *Harris v. McRae* (1980), 448 U.S. 297.
12. John Light, "Five Facts You Should Know about the Hyde Amendment," *Moyer and Company*, 2015.
13. Light, 2015.
14. *Webster v. Reproductive Health Services*, 492 U.S. 490, 190 S.Ct. 3040 (1989).
15. *Rust v. Sullivan* (1991), 111 S. Ct. 1750, U.S.
16. George Pozgar, *Legal and Ethical Essentials of Health Care Administration* (Burlington, MA: Johns and Bartlett Learning, 2014), 222.