

On the Moral and Legal Status of Abortion

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Mary Anne Warren argues for a pro-choice position according to which abortion is always morally permissible. The following argument presents the core of her view: persons have rights; fetuses are not persons, but only potential persons; the rights of persons always morally outweigh the rights of merely potential persons; so the rights of a woman always outweigh those of a fetus. Since one of the most important rights we have is to bodily autonomy or self-determination, it follows that a pregnant woman who wants to exercise that right is morally permitted to do so, even if it means the death of her fetus.

Warren begins by critiquing both Judith Thomson's and John Noonan's views on abortion. In the process, she introduces a crucial distinction between two conceptions of a human being—one of these is biological, according to which humans are members of the species *Homo sapiens*, and the other is moral, according to which humans are *persons*: beings possessed of full moral rights and independent moral importance. You and I are persons. Warren believes, however, that fetuses are not. She defends this position by identifying five criteria of personhood: consciousness, the ability to reason,

self-motivated activity, the capacity to communicate, and self-awareness. She claims that a being who lacks all five of these traits cannot qualify as a person, and that fetuses lack all five. She concludes that fetuses are not persons.

We will be concerned with both the moral status of abortion, which for our purposes we may define as the act which a woman performs in voluntarily terminating, or allowing another person to terminate, her pregnancy, and the legal status which is appropriate for this act. I will argue that, while it is not possible to produce a satisfactory defense of a woman's right to obtain an abortion without showing that a fetus is not a human being, in the morally relevant sense of that term, we ought not to conclude that the difficulties involved in determining whether or not a fetus is human make it impossible to produce any satisfactory solution to the problem of the moral status of abortion. For it is possible to show that, on the basis of intuitions which we may expect even the opponents of abortion to share, a fetus is not a person, and hence not the sort of entity to which it is proper to ascribe full moral rights.

Of course, while some philosophers would deny the possibility of any such proof, others will deny that there is any need for it, since the moral permissibility of abortion appears to them to be too obvious to require proof. But the inadequacy of this attitude should be evident from the fact that both the friends and the foes of abortion consider their position to be morally self-evident. Because proabortionists have never adequately come to grips with the conceptual issues surrounding abortion, most if not all, of the arguments which they advance in opposition to laws restricting access to abortion fail to refute or even weaken the traditional antiabortion argument, i.e., that a fetus is a human being, and therefore abortion is murder.

These arguments are typically of one of two sorts. Either they point to the terrible side effects of the restrictive laws, e.g., the deaths due to illegal abortions, and the fact that it is poor women who

suffer the most as a result of these laws, or else they state that to deny a woman access to abortion is to deprive her of her right to control her own body. Unfortunately, however, the fact that restricting access to abortion has tragic side effects does not, in itself, show that the restrictions are unjustified, since murder is wrong regardless of the consequences of prohibiting it; and the appeal to the right to control one's body, which is generally construed as a property right, is at best a rather feeble argument for the permissibility of abortion. Mere ownership does not give me the right to kill innocent people whom I find on my property, and indeed I am apt to be held responsible if such people injure themselves while on my property. It is equally unclear that I have any moral right to expel an innocent person from my property when I know that doing so will result in his death.

Furthermore, it is probably inappropriate to describe a woman's body as her property, since it seems natural to hold that a person is something distinct from her property, but not from her body. Even those who would object to the identification of a person with his body, or with the conjunction of his body and his mind, must admit that it would be very odd to describe, say, breaking a leg, as damaging one's property, and much more appropriate to describe it as injuring oneself. Thus it is probably a mistake to argue that the right to obtain an abortion is in any way derived from the right to own and regulate property.

But however we wish to construe the right to abortion, we cannot hope to convince those who consider abortion a form of murder of the existence of any such right unless we are able to produce a clear and convincing refutation of the traditional antiabortion argument, and this has not, to my knowledge, been done. With respect to the two most vital issues which that argument involves, i.e., the humanity of the fetus and its implication for the

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moral status of abortion, confusion has prevailed on both sides of the dispute. . . .

Our own inquiry will have two stages. In Section I, we will consider whether or not it is possible to establish that abortion is morally permissible even on the assumption that a fetus is an entity with a full-fledged right to life. I will argue that in fact this cannot be established, at least not with the conclusiveness which is essential to our hopes of convincing those who are skeptical about the morality of abortion, and that we therefore cannot avoid dealing with the question of whether or not a fetus really does have the same right to life as a (more fully developed) human being.

In Section II, I will propose an answer to this question, namely, that a fetus cannot be considered a member of the moral community, the set of beings with full and equal moral rights, for the simple reason that it is not a person, and that it is personhood, and not genetic humanity, i.e., humanity as defined by Noonan, which is the basis for membership in this community. I will argue that a fetus, whatever its stage of development, satisfies none of the basic criteria of personhood, and is not even enough *like* a person to be accorded even some of the same rights on the basis of this resemblance. Nor, as we will see, is a fetus's *potential* personhood a threat to the morality of abortion, since, whatever the rights of potential people may be, they are invariably overridden in any conflict with the moral rights of actual people.

I

We turn now to Professor [Judith] Thomson's case¹ for the claim that even if a fetus has full moral rights, abortion is still morally permissible, at least sometimes, and for some reasons other than to save the woman's life. Her argument is based upon a clever, but I think faulty, analogy. She asks us to picture ourselves waking up one day, in bed with a famous violinist. Imagine that you have been kidnapped, and your bloodstream hooked up to that of the violinist, who happens to have an ailment which will certainly kill him unless he is permitted to share your kidneys for a period of nine months. No one else can save him, since you alone have the right type of blood. He will be unconscious all that time, and you will have

to stay in bed with him, but after the nine months are over he may be unplugged, completely cured, that is provided that you have cooperated.

Now then, she continues, what are your obligations in this situation? The antiabortionist, if he is consistent, will have to say that you are obligated to stay in bed with the violinist: for all people have a right to life, and violinists are people, and therefore it would be murder for you to disconnect yourself from him and let him die (p. 49). But this is outrageous, and so there must be something wrong with the same argument when it is applied to abortion. It would certainly be commendable of you to agree to save the violinist, but it is absurd to suggest that your refusal to do so would be murder. His right to life does not obligate you to do whatever is required to keep him alive; nor does it justify anyone else in forcing you to do so. A law which required you to stay in bed with the violinist would clearly be an unjust law, since it is no proper function of the law to force unwilling people to make huge sacrifices for the sake of other people toward whom they have no such prior obligation.

Thomson concludes that, if this analogy is an apt one, then we can grant the antiabortionist his claim that a fetus is a human being, and still hold that it is at least sometimes the case that a pregnant woman has the right to refuse to be a Good Samaritan towards the fetus, i.e., to obtain an abortion. For there is a great gap between the claim that *x* has a right to life, and the claim that *y* is obligated to do whatever is necessary to keep *x* alive, let alone that he ought to be forced to do so. It is *y*'s duty to keep *x* alive only if he has somehow contracted a *special* obligation to do so; and a woman who is unwillingly pregnant, e.g., who was raped, has done nothing which obligates her to make the enormous sacrifice which is necessary to preserve the conceptus.

This argument is initially quite plausible, and in the extreme case of pregnancy due to rape it is probably conclusive. Difficulties arise, however, when we try to specify more exactly the range of cases in which abortion is clearly justifiable even on the assumption that the fetus is human. Professor Thomson considers it a virtue of her argument that it does not enable us to conclude that abortion is *always* permissible. It would, she says, be "indecent" for a

woman in her seventh month to obtain an abortion just to avoid having to postpone a trip to Europe. On the other hand, her argument enables us to see that "a sick and desperately frightened schoolgirl pregnant due to rape may *of course* choose abortion, and that any law which rules this out is an insane law" (p. 65). So far, so good; but what are we to say about the woman who becomes pregnant not through rape but as a result of her own carelessness, or because of contraceptive failure, or who gets pregnant intentionally and then changes her mind about wanting a child? With respect to such cases, the violinist analogy is of much less use to the defender of the woman's right to obtain an abortion.

Indeed, the choice of a pregnancy due to rape, as an example of a case in which abortion is permissible even if a fetus is considered a human being, is extremely significant; for it is only in the case of pregnancy due to rape that the woman's situation is adequately analogous to the violinist case for our intuitions about the latter to transfer convincingly. The crucial difference between a pregnancy due to rape and the *normal* case of an unwanted pregnancy is that in the normal case we cannot claim that the woman is in no way responsible for her predicament; she could have remained chaste, or taken her pills more faithfully, or abstained on dangerous days, and so on. If, on the other hand, you are kidnapped by strangers, and hooked up to a strange violinist, then you are free of any shred of responsibility for the situation, on the basis of which it could be argued that you are obligated to keep the violinist alive. Only when her pregnancy is due to rape is a woman clearly just as nonresponsible.

Consequently, there is room for the antiabortionist to argue that in the normal case of unwanted pregnancy a woman has, by her own actions, assumed responsibility for the fetus. For if x behaves in a way which he could have avoided, and which he knows involves, let us say, a 1 percent chance of bringing into existence a human being, with a right to life, and does so knowing that if this should happen then that human being will perish unless x does certain things to keep him alive, then it is by no means clear that when it does happen x is free of any obligation to what he knew in advance would be required to keep that human being alive.

The plausibility of such an argument is enough to show that the Thomson analogy can provide a clear and persuasive defense of a woman's right to obtain an abortion only with respect to those cases in which the woman is in no way responsible for her pregnancy, e.g., where it is due to rape. In all other cases, we would almost certainly conclude that it was necessary to look carefully at the particular circumstances in order to determine the extent of the woman's responsibility, and hence the extent of her obligation. This is an extremely unsatisfactory outcome, from the viewpoint of the opponents of restrictive abortion laws, most of whom are convinced that a woman has a right to obtain an abortion regardless of how and why she got pregnant.

Of course a supporter of the violinist analogy might point out that it is absurd to suggest that forgetting her pill one day might be sufficient to obligate a woman to complete an unwanted pregnancy. And indeed it *is* absurd to suggest this. As we will see, the moral right to obtain an abortion is not in the least dependent upon the extent to which the woman is responsible for her pregnancy. But unfortunately, once we allow the assumption that a fetus has full moral rights, we cannot avoid taking this absurd suggestion seriously. Perhaps we can make this point more clear by altering the violinist story just enough to make it more analogous to a normal unwanted pregnancy and less to a pregnancy due to rape, and then seeing whether it is still obvious that you are not obligated to stay in bed with the fellow.

Suppose, then, that violinists are peculiarly prone to the sort of illness the only cure for which is the use of someone else's bloodstream for nine months, and that because of this there has been formed a society of music lovers who agree that whenever a violinist is stricken they will draw lots and the loser will, by some means, be made the one and only person capable of saving him. Now then, would you be obligated to cooperate in curing the violinist if you had voluntarily joined this society, knowing the possible consequences, and then your name had been drawn and you had been kidnapped? Admittedly, you did not promise ahead of time that you would, but you did deliberately place yourself in a position in which it might happen that a human life would be lost if you did not. Surely this is at least

a prima facie reason for supposing that you have an obligation to stay in bed with the violinist. Suppose that you had gotten your name drawn deliberately; surely *that* would be quite a strong reason for thinking that you had such an obligation.

It might be suggested that there is one important disanalogy between the modified violinist case and the case of an unwanted pregnancy, which makes the woman's responsibility significantly less, namely, the fact that the fetus *comes into existence* as the result of the result of the woman's actions. This fact might give her a right to refuse to keep it alive, whereas she would not have had this right had it existed previously, independently, and then as a result of her actions become dependent upon her for its survival.

My own intuition, however, is that *x* has no more right to bring into existence, either deliberately or as a foreseeable result of actions he could have avoided, a being with full moral rights (*y*), and then refuse to do what he knew beforehand would be required to keep that being alive, than he has to enter into an agreement with an existing person, whereby he may be called upon to save that person's life, and then refuse to do so when so called upon. Thus, *x*'s responsibility for *y*'s existence does not seem to lessen his obligation to keep *y* alive, if he is also responsible for *y*'s being in a situation in which only he can save him.

Whether or not this intuition is entirely correct, it brings us back once again to the conclusion that once we allow the assumption that a fetus has full moral rights it becomes an extremely complex and difficult question whether and when abortion is justifiable. Thus the Thomson analogy cannot help us produce a clear and persuasive proof of the moral permissibility of abortion. Nor will the opponents of the restrictive laws thank us for anything less; for their conviction (for the most part) is that abortion is obviously *not* a morally serious and extremely unfortunate, even though sometimes justified act, comparable to killing in self-defense or to letting the violinist die, but rather is closer to being a morally neutral act, like cutting one's hair.

The basis of this conviction, I believe, is the realization that a fetus is not a person, and thus does not have a full-fledged right to life. Perhaps the reason

why this claim has been so inadequately defended is that it seems self-evident to those who accept it. And so it is, insofar as it follows from what I take to be perfectly obvious claims about the nature of personhood, and about the proper grounds for ascribing moral rights, claims which ought, indeed, to be obvious to both the friends and foes of abortion. Nevertheless, it is worth examining these claims, and showing how they demonstrate the moral innocuousness of abortion, since this apparently has not been adequately done before.

II

The question which we must answer in order to produce a satisfactory solution to the problem of the moral status of abortion is this: How are we to define the moral community, the set of beings with full and equal moral rights, such that we can decide whether a human fetus is a member of this community or not? What sort of entity, exactly, has the inalienable rights to life, liberty, and the pursuit of happiness? Jefferson attributed these rights to all *men*, and it may or may not be fair to suggest that he intended to attribute them *only* to men. Perhaps he ought to have attributed them to all human beings. If so, then we arrive, first, at Noonan's problem of defining what makes a being human, and, second, at the equally vital question which Noonan does not consider, namely, What reason is there for identifying the moral community with the set of all human beings, in whatever way we have chosen to define that term?

I. On the Definition of 'Human'

One reason why this vital second question is so frequently overlooked in the debate over the moral status of abortion is that the term 'human' has two distinct, but not often distinguished, senses. This fact results in a slide of meaning, which serves to conceal the fallaciousness of the traditional argument that since (1) it is wrong to kill innocent human beings, and (2) fetuses are innocent human beings, then (3) it is wrong to kill fetuses. For if 'human' is used in the same sense in both (1) and (2) then, whichever of the two senses is meant, one of these premises is question-begging. And if it is used in two different senses then of course the conclusion doesn't follow.

Thus (1) is a self-evident moral truth,² and avoids begging the question about abortion, only if 'human being' is used to mean something like "a full-fledged member of the moral community." (It may or may not also be meant to refer exclusively to members of the species *Homo sapiens*.) We may call this the *moral* sense of 'human'. It is not to be confused with what we will call the *genetic* sense, i.e., the sense in which *any* member of the species is a human being, and no member of any other species could be. If (1) is acceptable only if the moral sense is intended, (2) is non-question-begging only if what is intended is the genetic sense.

In "Deciding Who is Human,"³ Noonan argues for the classification of fetuses with human beings by pointing to the presence of the full genetic code, and the potential capacity for rational thought (p. 135). It is clear that what he needs to show, for his version of the traditional argument to be valid, is that fetuses are human in the moral sense, the sense in which it is analytically true that all human beings have full moral rights. But, in the absence of any argument showing that whatever is genetically human is also morally human, and he gives none, nothing more than genetic humanity can be demonstrated by the presence of the human genetic code. And, as we will see, the *potential* capacity for rational thought can at most show that an entity has the potential for *becoming* human in the moral sense.

2. Defining the Moral Community

Can it be established that genetic humanity is sufficient for moral humanity? I think that there are very good reasons for not defining the moral community in this way. I would like to suggest an alternative way of defining the moral community, which I will argue for only to the extent of explaining why it is, or should be, self-evident. The suggestion is simply that the moral community consists of all and only *people*, rather than all and only human beings;⁴ and probably the best way of demonstrating its self-evidence is by considering the concept of personhood, to see what sorts of entity are and are not persons, and what the decision that a being is or is not a person implies about its moral rights.

What characteristics entitle an entity to be considered a person? This is obviously not the place to

attempt a complete analysis of the concept of personhood, but we do not need such a fully adequate analysis just to determine whether and why a fetus is or isn't a person. All we need is a rough and approximate list of the most basic criteria of personhood, and some idea of which, or how many, of these an entity must satisfy in order to properly be considered a person.

In searching for such criteria, it is useful to look beyond the set of people with whom we are acquainted, and ask how we would decide whether a totally alien being was a person or not. (For we have no right to assume that genetic humanity is necessary for personhood.) Imagine a space traveler who lands on an unknown planet and encounters a race of beings utterly unlike any he has ever seen or heard of. If he wants to be sure of behaving morally toward these beings, he has to somehow decide whether they are people, and hence have full moral rights, or whether they are the sort of thing which he need not feel guilty about treating as, for example, a source of food.

How should he go about making this decision? If he has some anthropological background, he might look for such things as religion, art, and the manufacturing of tools, weapons, or shelters, since these factors have been used to distinguish our human from our prehuman ancestors, in what seems to be closer to the moral than the genetic sense of 'human'. And no doubt he would be right to consider the presence of such factors as good evidence that the alien beings were people, and morally human. It would, however, be overly anthropocentric of him to take the absence of these things as adequate evidence that they were not, since we can imagine people who have progressed beyond, or evolved without ever developing, these cultural characteristics.

I suggest that the traits which are most central to the concept of personhood, or humanity in the moral sense, are, very roughly, the following:

1. consciousness (of objects and events external and/or internal to the being), and in particular the capacity to feel pain;
2. reasoning (the *developed* capacity to solve new and relatively complex problems);

3. self-motivated activity (activity which is relatively independent of either genetic or direct external control);
4. the capacity to communicate, by whatever means, messages of an indefinite variety of types, that is, not just with an indefinite number of possible contents, but on indefinitely many possible topics;
5. the presence of self-concepts, and self-awareness, either individual or racial, or both.

Admittedly, there are apt to be a great many problems involved in formulating precise definitions of these criteria, let alone in developing universally valid behavioral criteria for deciding when they apply. But I will assume that both we and our explorer know approximately what (1)-(5) mean, and that he is also able to determine whether or not they apply. How, then, should he use his findings to decide whether or not the alien beings are people? We needn't suppose that an entity must have *all* of these attributes to be properly considered a person; (1) and (2) alone may well be sufficient for personhood, and quite probably (1)-(3) are sufficient. Neither do we need to insist that any one of these criteria is *necessary* for personhood, although once again (1) and (2) look like fairly good candidates for necessary conditions, as does (3), if activity is construed so as to include the activity of reasoning.

All we need to claim, to demonstrate that a fetus is not a person, is that any being which satisfies *none* of (1)-(5) is certainly not a person. I consider this claim to be so obvious that I think anyone who denied it, and claimed that a being which satisfied none of (1)-(5) was a person all the same, would thereby demonstrate that he had no notion at all of what a person is—perhaps because he had confused the concept of a person with that of genetic humanity. If the opponents of abortion were to deny the appropriateness of these five criteria, I do not know what further arguments would convince them. We would probably have to admit that our conceptual schemes were indeed irreconcilably different, and that our dispute could not be settled objectively.

I do not expect this to happen, however, since I think that the concept of a person is one which is very nearly universal (to people), and that it is

common to both proabortionists and antiabortionists, even though neither group has fully realized the relevance of this concept to the resolution of their dispute. Furthermore, I think that on reflection even the antiabortionists ought to agree not only that (1)-(5) are central to the concept of personhood, but also that it is a part of this concept that all and only people have full moral rights. The concept of a person is in part a moral concept; once we have admitted that *x* is a person we have recognized, even if we have not agreed to respect, *x*'s right to be treated as a member of the moral community. It is true that the claim that *x* is a *human being* is more commonly voiced as part of an appeal to treat *x* decently than is the claim that *x* is a person, but this is either because 'human being' is here used in the sense which implies personhood, or because the genetic and moral senses of 'human' have been confused.

Now if (1)-(5) are indeed the primary criteria of personhood, then it is clear that genetic humanity is neither necessary nor sufficient for establishing that an entity is a person. Some human beings are not people, and there may well be people who are not human beings. A man or woman whose consciousness has been permanently obliterated but who remains alive is a human being which is no longer a person; defective human beings, with no appreciable mental capacity, are not and presumably never will be people; and a fetus is a human being which is not yet a person, and which therefore cannot coherently be said to have full moral rights. Citizens of the next century should be prepared to recognize highly advanced, self-aware robots or computers, should such be developed, and intelligent inhabitants of other worlds, should such be found, as people in the fullest sense, and to respect their moral rights. But to ascribe full moral rights to an entity which is not a person is as absurd as to ascribe moral obligations and responsibilities to such an entity.

3. Fetal Development and the Right to Life

Two problems arise in the application of these suggestions for the definition of the moral community to the determination of the precise moral status of a human fetus. Given that the paradigm example of

a person is a normal adult human being, then (1) How like this paradigm, in particular how far advanced since conception, does a human being need to be before it begins to have a right to life by virtue, not of being fully a person as of yet, but of being *like* a person? and (2) To what extent, if any, does the fact that a fetus has the *potential* for becoming a person endow it with some of the same rights? Each of these questions requires some comment.

In answering the first question, we need not attempt a detailed consideration of the moral rights of organisms which are not developed enough, aware enough, intelligent enough, etc., to be considered people, but which resemble people in some respects. It does seem reasonable to suggest that the more like a person, in the relevant respects, a being is, the stronger is the case for regarding it as having a right to life, and indeed the stronger its right to life is. Thus we ought to take seriously the suggestion that, insofar as "the human individual develops biologically in a continuous fashion the rights of a human person might develop in the same way." But we must keep in mind that the attributes which are relevant in determining whether or not an entity is enough like a person to be regarded as having some of the same moral rights are no different from those which are relevant to determining whether or not it is fully a person—i.e., are no different from (1)-(5)—and that being genetically human, or having recognizably human facial and other physical features, or detectable brain activity, or the capacity to survive outside the uterus, are simply not among these relevant attributes.

Thus it is clear that even though a seven- or eight-month fetus has features which make it apt to arouse in us almost the same powerful protective instinct as is commonly aroused by a small infant, nevertheless it is not significantly more personlike than is a very small embryo. It is *somewhat* more personlike; it can apparently feel and respond to pain, and it may even have a rudimentary *form* of consciousness, insofar as its brain is quite active. Nevertheless, it seems safe to say that it is not fully conscious, in the way that an infant of a few months is, and that it cannot reason, or communicate messages of indefinitely many sorts, does not engage in self-motivated activity, and has no self-awareness.

Thus, in the *relevant* respects, a fetus, even a fully developed one, is considerably less personlike than is the average mature mammal, indeed the average fish. And I think that a rational person must conclude that if the right to life of a fetus is to be based upon its resemblance to a person, then it cannot be said to have any more right to life than, let us say, a newborn guppy (which also seems to be capable of feeling pain), and that a right of that magnitude could never override a woman's right to obtain an abortion, at any stage of her pregnancy.

There may, of course, be other arguments in favor of placing legal limits upon the stage of pregnancy in which an abortion may be performed. Given the relative safety of the new techniques of artificially inducing labor during the third trimester, the danger to the woman's life or health is no longer such an argument. Neither is the fact that people tend to respond to the thought of abortion in the later stages of pregnancy with emotional repulsion, since mere emotional responses cannot take the place of moral reasoning in determining what ought to be permitted. Nor, finally, is the frequently heard argument that legalizing abortion, especially late in the pregnancy, may erode the level of respect for human life, leading, perhaps, to an increase in unjustified euthanasia and other crimes. For this threat, if it is a threat, can be better met by educating people to the kinds of moral distinctions which we are making here than by limiting access to abortion (which limitation may, in its disregard for the rights of women, be just as damaging to the level of respect for human rights).

Thus, since the fact that even a fully developed fetus is not personlike enough to have any significant right to life on the basis of its personlikeness shows that no legal restrictions upon the stage of pregnancy in which an abortion may be performed can be justified on the grounds that we should protect the rights of the older fetus; and since there is no other apparent justification for such restrictions, we may conclude that they are entirely unjustified. Whether or not it would be *indecent* (whatever that means) for a woman in her seventh month to obtain an abortion just to avoid having to postpone a trip to Europe, it would not, in itself, be *immoral*, and therefore it ought to be permitted.

4. Potential Personhood and the Right to Life

We have seen that a fetus does not resemble a person in any way which can support the claim that it has even some of the same rights. But what about its *potential*, the fact that if nurtured and allowed to develop naturally it will very probably become a person? Doesn't that alone give it at least some right to life? It is hard to deny that the fact that an entity is a potential person is a strong *prima facie* reason for not destroying it; but we need not conclude from this that a potential person has a right to life, by virtue of that potential. It may be that our feeling that it is better, other things being equal, not to destroy a potential person is better explained by the fact that potential people are still (felt to be) an invaluable resource, not to be lightly squandered. Surely, if every speck of dust were a potential person, we would be much less apt to conclude that every potential person has a right to become actual.

Still, we do not need to insist that a potential person has no right to life whatever. There may well be something immoral, and not just imprudent, about wantonly destroying potential people, when doing so isn't necessary to protect anyone's rights. But even if a potential person does have some *prima facie* right to life, such a right could not possibly outweigh the right of a woman to obtain an abortion, since the rights of any actual person invariably outweigh those of any potential person, whenever the two conflict. Since this may not be immediately obvious in the case of a human fetus, let us look at another case.

Suppose that our space explorer falls into the hands of an alien culture, whose scientists decide to create a few hundred thousand or more human beings, by breaking his body into its component cells, and using these to create fully developed human beings, with, of course, his genetic code. We may imagine that each of these newly created men will have all of the original man's abilities, skills, knowledge, and so on, and also have an individual self-concept, in short that each of them will be a *bona fide* (though hardly unique) person. Imagine that the whole project will take only seconds, and that its chances of success are extremely high, and that our explorer knows all of this, and also knows that these people will be treated fairly. I maintain that in such a situation he would

have every right to escape if he could, and thus to deprive all of these potential people of their potential lives; for his right to life outweighs all of theirs together, in spite of the fact that they are all genetically human, all innocent, and all have a very high probability of becoming people very soon, if only he refrains from acting.

Indeed, I think he would have a right to escape even if it were not his life which the alien scientists planned to take, but only a year of his freedom, or, indeed, only a day. Nor would he be obligated to stay if he had gotten captured (thus bringing all these people-potentials into existence) because of his own carelessness, or even if he had done so deliberately, knowing the consequences. Regardless of how he got captured, he is not morally obligated to remain in captivity for *any* period of time for the sake of permitting any number of potential people to come into actuality, so great is the margin by which one actual person's right to liberty outweighs whatever right to life even a hundred thousand potential people have. And it seems reasonable to conclude that the rights of a woman will outweigh by a similar margin whatever right to life a fetus may have by virtue of its potential personhood.

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

NOTES

1. Judith Thomson, "A Defense of Abortion," *Philosophy and Public Affairs* 1 (1971), pp. 47-66.
2. Of course, the principle that it is (always) wrong to kill innocent human beings is in need of many other modifications, e.g., that it may be

permissible to do so to save a greater number of other innocent human beings, but we may safely ignore these complications here.

3. John Noonan, "Deciding Who Is Human," *Natural Law Review* 13 (1968), p. 134.
4. From here on, we will use 'human' to mean genetically human, since the moral sense seems closely connected to, and perhaps derived from, the assumption that genetic humanity is sufficient for membership in the moral community.

Mary Anne Warren: On the Moral and Legal Status of Abortion

1. Warren claims that if we allow that the fetus is a person, then the pro-choice case collapses. Do you agree with her assessment? Why or why not?

2. Warren identifies five criteria of personhood. Do you think the fetus lacks each of these traits? If so, might there be a sixth criterion of personhood that the fetus does fulfill?
3. If even third-trimester fetuses are not persons—because they fail to fulfill any of the five criteria Warren associates with personhood—then newborn infants also fail to be persons. Is this correct? If so, would Warren's position also morally permit infanticide?
4. Warren argues that the rights of persons always outweigh the potential rights of potential persons by means of her astronaut example. Does this example establish what she thinks it does? Why or why not?
5. How important is a being's potential in determining its moral status?