

Under what conditions, if any, should be abortion legally permissible

by

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A thesis submitted to the graduate faculty
in partial fulfillment of the requirements for the degree of

MASTER OF ARTS

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Ames, Iowa

2016

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ACKNOWLEDGMENTS

I would like to thank my committee chair, Dr. Alex Tuckness, and my committee members, Drs. Dirk Deam, and John William Clark Wolf, for their guidance and support throughout the course of this research.

In addition, I would also like to thank my friends, colleagues, the department faculty and staff for making my time at Iowa State University a wonderful experience. I want to also offer my appreciation to those who were willing to participate in my surveys and observations, without whom, this thesis would not have been possible.

CHAPTER I: INTRODUCTION

Our society is often divided between good and evil, right and wrong. However, the distinction between the two is not always that self-evident or can be taken light-heartedly. The issue I will address here qualifies as one of the most polarizing issues, whether abortion should be legally permissible and if so, under what conditions.

Posing this question we see people covering the whole strictness spectrum of either abortion-supporting or abortion-condemning groups, advocating their stances, based on arguments that they find concrete enough to win the “contest” and prevail against their adversaries. What are the questions we should ask to judge the legality of abortion? In my thesis I will discuss biology and embryology arguments, as well as arguments about the moral status of the fetus, ethics and the moral framework of abortion. Not limited to that I will address what are the legal rights of the mother and the fetus respectively should be. I will briefly refer to the Law but I will approach the legality of abortion through philosophical argumentation and the role of the state. Through the literature and my personal argumentation I will show why abortion should be legally impermissible with the exception of situations where the life of the mother is at stake both in physical and mental sense, when the burden of the pregnancy is humongous evolution or where severe fetal deformities will lead to a painful and devastating life of the fetus assuming it will be even born in the first place. Other exceptions apply for the situations of rape and incest and generally situations of coercion; both physical and mental.

Research Question:

Under What Conditions, If Any, Should Abortion Be Legally Permissible?

Overview

This research investigates the legality of abortion. In order to do that in chapter two I have started by analyzing the moral status of the fetus; but not limited to that, I have also addressed the eligibility of human beings of all stages to the right to life, showing why we should grant moral consideration to the fetus. In chapter three I have focused on applying the appropriate ethical framework of abortion including what moral duties may or may not exist behind abortion, but also the moral duties we have towards to all stages of personhood, the ones prior to that (human beings before reaching personhood) and the stages of human beings separately. In chapter four I have raised issues of whether abortion should be legal based on the mother's and the fetus's rights and consequences from the perspective of the state. In order to do that I focus on the Court cases *Roe v. Wade* and *Planned Parenthood of Southeastern Pennsylvania v. Casey*, look into the balancing test they had applied and I perform the balancing test as well with more relevant and key factors addressing in length the challenges of abortion. The factors that need to be taken under consideration are: the liberty of persons, physical or mental pain for the mother, non-existence for the fetus and loss of life for the mother, hardships for he mother, appreciation of the fetus's life in the future for not being aborted, the possibility of reducing maternal hardships through adoption processes and the uncertainty that the right we have chosen is the least vital between the two. Lastly I inquire whether the law should permit or restrict fetal experimentation by comparing the winning and losses of the fetus and the medical application of practices enabled by fetal research.

Methodology

The methodology I have used is a review of literature of the most important works on the topic and then I have analyzed the strength of the various arguments. The sources used are: “The fetal position” of Chris Meyers, “A Defense of abortion” by David Boonin, “A defense of abortion” addressed by Judith Jarvis Thomson, “Abortion & Unborn Human Life” by Patrick Lee, “On the Moral and Legal Status of Abortion” by Mary Anne Warren, “Life's Dominion – An Argument About Abortion, Euthanasia And Individual” by Ronald Dworkin, “Embryo – A Defense of Human Life” by Robert T. George and Christopher Tollefsen and “Why Abortion Is Immoral” by Donald Marquis. The selection of these sources had been made in order to encompass a wide variety of perspectives on the issue of abortion. I have also chosen the above sources because the literature is vast and these arguments narrow the scope to key components to answer the question adequately considering the arguments of both sides.

In the first chapter, I introduce the issue, the question to be answered and the procedure I will follow based on my literature in order to come to a conclusion about the findings of my research. In the second chapter, I analyze the moral status of the fetus. I focus on fetal development, brain activity and human advanced intellectual processes in order to show that there is common ground between the two sides but it is introduced differently in either case. This section also includes an analysis of the “principle of utility” as it was introduced by Jeremy Bentham and John Stuart Mill (Bentham, 1789; Mill, 2009). In chapter three I proceed to arguments trying to show that the fetus is human, coming from the Homo sapiens family and qualifies for moral consideration, inquiring whether the concept of personhood could be extended to the early human being. In the third chapter, I address issues creating the moral framework and ethics behind abortion. In the fourth chapter I focus on the rights that govern the morality of abortion, what is

the approach of the state, whether frozen embryos should be used for fetal research as well as the rights of the mother and the fetus trying to prevail one another. In chapter five I summarize based on the arguments I used, why abortion should be legally impermissible with the exceptions of saving the life of the mother, the existence of severe fetal deficiencies, rape and incest.

For clarification purposes I am including in this section the definition of pro-life and pro-choice position addressed by a sociopolitical approach, and despite the wide range of both categories, I will focus on the semi-extremes for the sake of the argument.

Pro-life

The pro-life position impacts both society as well as government and public affairs, and it declares that a new human life is created at the moment of conception and for that reason this early form of human life qualifies for the same rights of protection under the law as any other human being. Additionally, human life is sacred in all stages and it is morally impermissible to end it. As James F. Keenan, S.J. quotes Edward Shils in “The concept of sanctity of life and its use in contemporary bioethical discussion” book, “to persons who are not murderers, concentration camp administrators, or dreamers of sadistic fantasies, the inviolability of human life seems to be so self-evident that it might appear pointless to inquire into it” (Bayertz, 1996). There is a wide spectrum covering the pro-life position from radical pro-lifers, described as fixated on their beliefs on one side to more flexible on the other, where they can be favoring abortion based on the circumstances and deciding on a case by case basis. According to Welch et al. in “Understanding American Government”, in the United States, the pro-life position is associated with several Christian

religious groups, and particularly with the Catholic Church. A number of times the pro-life side is also associated with the Republican Party (Welch, Gruhl, Comer, & Rigdon, 2009, p. 150). While these associations are common, for purposes of this thesis pro-life is defined by support for legal protection of the fetus irrespective of whether the person's religious beliefs or political party.

Pro-choice

The pro-choice position affects both society and politics equally with the pro-life side. Under the constitution and the 14th Amendment, this position defends the woman's legal right to terminate her pregnancy without any state interference with the exception of state's interests being compromised. Again we have a wide range of abortion rights supporters based on the types of abortion, the circumstances under which an abortion is performed and the stage of pregnancy the mother is at. In the United States, the pro-choice position is frequently linked with a less religious point of view, basing their beliefs on natural science like "nutrition", "cell division", brain function and adequate nervous system (Meyers, 2010, p. 30). As above, for purposes of this thesis pro-choice is defined as supporting the legal right of a woman to terminate pregnancy, especially early on in the pregnancy.

CHAPTER 2: THE MORAL STATUS OF THE FETUS

In this chapter, I address the issue of abortion from the perspective of the fetus. What are the premises under which the fetus qualifies for moral consideration? By comparing and contrasting two opposing positions in the first part I examine how robust the pro-life arguments that seek to refute the pro-choice arguments are. In the second part I look into the qualities that differentiate human beings from persons. In that part I also discuss the differences and similarities between different stages of life and their moral status compared to adulthood. In the third part I focus on the definition of personhood, its applications, and whether it can be extended to the fetus. In the fourth part I address the potentiality of the fetus towards personhood and the right of the fetus to have a future of its own. In the fifth and sixth parts I am concentrating on the descent of humans as an adequate criterion to grant moral consideration and consequently the right to life, and if the human essence is made of and works as an extension of the human ancestry.

Introducing The Opposing Sides

Review of Literature

In the abortion debate the opposing sides of advocacy that I analyze are the pro-life side and the pro-choice side, both of them composed of varying degrees of judgments. As Chris Meyers, the author of “The Fetal Position” claims, many of the pro-life side find themselves to be more closely linked to Christianity than the majority of those advocating in favor of the pro-choice side (Meyers, 2010, p. 26). He continues that as far as the pro-choice proponents are concerned, the majority base their philosophy and argumentation in non-metaphysical and non-spiritual notions, approaches and decisions. They emphasize rather measurable qualities, that can be acknowledged

by science compared to a number of pro-lifers (Meyers, 2010). And this is the main weakness of the abortion debate; it is very difficult, almost impossible for a common ground to be found (Meyers, 2010, pp. 27–28). The majority of the pro-life side demonstrates that abortion is morally wrong because it eliminates a human life, whereas a considerable number of people on the pro-choice side manifests that it is morally wrong to restrict peoples’ freedom and the right to privacy (Meyers, 2010). The “battle” is situated between the conflicting rights of the mother from one side and the rights of the fetus from the other. As an extension to this battle, the two opposing sides utilize arguments that will help them to justify their position and be the winners of this fight. The largest group of the pro-life side will advocate the rights of the fetus and that life is too sacred to be eliminated while the pro-choice majority will defend the rights of the mother and the right to privacy, rights not to be coerced physically or emotionally.

Nonetheless, there are also exceptions to the rule; there are a number of pro-choicers who are against abortion and pro-lifers who do not oppose abortion because of religious convictions (Meyers, 2010, p. 28). For the defenders of abortion, human beings are perceived as merely natural, living entities and for that reason, what grants people their moral status are natural traits “such as self – consciousness, the ability to feel pleasure and pain, or the capacity for natural thought.” (Meyers, 2010, p. 27) But the question is whether these kind of characteristics are applicable to fetuses and newborns or not, and if not, what kind of characteristics would grant them moral consideration (Lee, 2010, pp. 10–11). In the group of pro-life advocates, the religious pool contends that all human beings – covering also the unborn – qualify for moral respect because every human being owns a “soul” (Meyers, 2010, p. 27). But even in the group of abortion critics, “there are devout Christians who reject the claim that God forbids abortion and who believes in a

woman's right to terminate her pregnancy. (There is even a political organization called Catholics for a Free Choice.)" (Meyers, 2010, pp. 27–28).

While the pro-life group encompasses the total population of abortion critics, it includes sub-categories like the religious body which is abided by the "Articles of Faith", meaning the strong convictions people have towards God without having any concrete information to base it on, nonetheless, they are prone to follow (Meyers, 2010, p. 28).

"The Sanctity of life principle is a moral prohibition against killing anything with a soul. Since any human being that is alive has a soul, the sanctity of life principle forbids the terminating of any human life from the moment of conception up until there is no sign of life of any kind (until the human being "gives up the ghost," as it were)." (Meyers, 2010, p. 29)

On the other side of the debate there are those with a stronger inclination towards the "naturalistic" (Meyers, 2010, p. 30) view of life, having their own principles and convictions as well. The claims coming from the majority of "naturalists" about humans and the qualities they assign to persons need to be measured by unmistakable and tangible natural features like "growth, reproduction and cell division, nutrition, and so on." (Meyers, 2010, p. 30) According to Meyers, many on the pro-choice side maintain that the basic criterion to be a person is not only to be a person in terms of the developmental stages referred to earlier, but also to resemble a person physically. He, however, recognizes that the above traits do not have any special feature that will grant moral consideration to people (Meyers, 2010, p. 30).

In that sense the human fetus satisfies these developmental conditions from the moment of conception nonetheless, biological processes do not constitute a reason for pro-choicers to consider fetuses as persons since these biological traits can be found in all living organisms even if they are not human (Meyers, 2010, p. 30). So, according to abortion defenders what a human being needs

to have, in addition to the biological processes of development and growth to be granted moral consideration, are certain mental capacities like “consciousness”, “reasoning” (Warren, Feinberg, & Wadsworth, 1984, p. 5), “self-consciousness”, “rationality”, “sentience”, etc. “or the potential for these” (Meyers, 2010, p. 30). On the other hand, human embryos have the basic capacities to think and they will, even though it will be some time before they exercise those abilities; with time, they will evolve appropriately to perform such acts (Lee, 2010, pp. 26–27). Hence all competent human beings, human embryos and fetuses included, qualify for moral consideration because of the “active potentiality” they have to develop into persons (Lee, 2010, p. 25).

Approaching the status of the fetus not from a group-centric approach but from the human life itself, we need to take into consideration the “sanctity of human life argument” which was also addressed by David Boonin in “A Defense of abortion” (Boonin, 2002, p. 28). Boonin perceives the word “sacred” to have more than a single interpretation. From one side it is closely linked to the existence of God and on to His divine power and on the other side is characterized by the fact that something needs to be treated with respect for the value it has itself (Boonin, 2002, p. 28).

Dworkin also addresses the sanctity of life through the “derivative” and “detached objection” to abortion (Dworkin, 1993, p. 11). However, Dworkin does not make any claims about any metaphysical entities and powers.

Abortion is wrong in principle, according to this claim, because abortion violates someone’s right not to be killed, just as killing an adult is normally wrong because it violates the adult’s right not to be killed. I shall call this the *derivative* objection to abortion because it presupposes and is derived from rights and interests that it assumes all human beings, including fetuses, have. [...] According to the second claim, abortion is wrong in principle because it disregards and insults the intrinsic value, the sacred character, of any stage or form of human life. I shall call this the *detached* objection to abortion, because it does not depend on or presuppose any particular rights or interests. Someone who accepts *this* objection, and argues and

argues that abortion should be prohibited or regulated by law for *this* reason, believes that government has a detached responsibility for protecting the intrinsic value of life. (Dworkin, 1993, p. 11)

Going back to Boonin's argument about the different interpretations of the word sacred, "If one believes that God stands in a special relation to every human being from the moment of conception, then this might provide firm support for the conclusion that each life has the sort of value that makes ending it morally impermissible." (Boonin, 2002, p. 28) However, figures of our society like Pope John Paul II and Bernard N. Nathanson (physician) object to abortion for nonreligious reasons (Boonin, 2002, p. 30).

Even in most pro-life circles the motives for saving the fetus are not primarily religious but anthropocentric.

But few if any critics of abortion are willing to make this concession. Many critics of abortion are avowedly nonreligious. And even those critics of abortion who do believe in religious prohibitions against abortion do not believe that abortion is wrong *only* for reasons that are essentially religious in nature, any more than people who believe in religious prohibitions against theft and murder believe that these forms of behavior are wrong only for religious reasons. (Boonin, 2002, p. 29)

With these arguments Boonin illustrates the importance of addressing abortion through a social angle rather than a religious one. There are "agnostics and atheists" that will contend that human life is "sacred", and thus it should be protected (Boonin, 2002, p. 30). Boonin tries and succeeds in finding a common ground for both critics and supporters of abortion. So the big question here is how can we remove the religious connotation from the "sanctity of life" argument?

Dworkin, basing his argumentation on the Darwinian theory of evolution, claims that we should regard human beings as the result of an ongoing development of the human race throughout the centuries and we should not connect them with religion and the existence of God; they are

sacred “in the nontheistic sense” (Boonin, 2002, p. 30; Dworkin, 1993, p. 76). However, there will be critics who will assert that this is a questionable understanding of the evolution theory since, not only human but every species has undergone this evolutionary procedure and for that reason all species should be eligible for the sanctity of life, without giving more privileges to humans in that sense (Boonin, 2002, p. 31; Dworkin, 1993, p. 76). Nonetheless, pro-lifers will reject that all species have the same moral status. Animals do not have the same moral status as humans (Boonin, 2002, p. 31; Meyers, 2010, p. 62). Since we are perceiving the word “sacred” detached from religion, “to say that one should treat the fetus with reverence is not the same as saying that killing it is morally impermissible” (Boonin, 2002, p. 32). Based on that assumption, Ronald Dworkin poses the question:

Is a fetus a helpless unborn child with rights and interests of its own from the moment of conception? If so, then permitting abortion is permitting murder, and having an abortion is worse than abandoning an inconvenient infant to die. If not, then people who claim to be “pro-life” are either acting in deep error or are sadistic, puritanical bigots, eager not to save lives but to punish women for what they regard as a sexual sin. (Dworkin, 1993, pp. 9–10)

On the other hand, Boonin with a less radical position as far as the status of the fetus is concerned, claims:

To say that one should treat the fetus with reverence is not the same as saying that killing it is morally impermissible. It is to say that in one’s deliberations one must not treat it as just another collection of cells. If P2¹ is true in the nontheological sense, for example, then it would be wrong to wantonly vandalize human embryos in a lab in a way that it would not be wrong to vandalize cancer cells. Perhaps this can be seen more clearly by looking at the other end of life. Picture an adult who has fallen into an irreversible coma and who can be kept alive on life support systems. This is still a living human being and so worthy of reverence if we have accepted P2. But this does not mean that he has a right to life. Reverence for him as a human being does impose certain constraints on us, but it does not mean that

¹ P2 is the reference of Premise 2: “Every human life is sacred” in David Boonin’s book “A defense of Abortion.

we can only kill him under the same sorts of extreme circumstances that might justify killing you or me. Even though he has permanently lost consciousness, for example, it would be inappropriate for us to simply toss him in a garbage can. (Boonin, 2002, p. 32).

For a woman to have an abortion is not equal with a woman having no respect for the human life, especially when this human life is coming from her (Boonin, 2002). Last but not least, if we decide to take the human “zygote” under full moral status it is highly unlikely not to do the same thing with the “sperm and ovum”, Boonin claims (Boonin, 2002, p. 33). They are the reason that a zygote could be created eventually. And taking it to more extreme levels, such claim would also render contraception morally wrong because it prevents the sperm and ovum fusion, which by association we should grant them moral respect (Boonin, 2002, p. 33). “Since critics of abortion, even those who also oppose contraception, do not believe that contraception is morally on a par with abortion, this counts as a further reason to conclude that they cannot successfully appeal to this argument.” (Boonin, 2002, p. 33)

The biggest problem about these debates is the prevalence of misconceptions. For instance, how do we define the term “life”? One can argue that it means “being biologically alive”; if that is the case, then the fetus qualifies to be in the category of “Life” (Meyers, 2010, p. 37). Additionally life indicates the path and achievements somebody had undergone through life (Meyers, 2010, p. 37). Another technique trying to prove that abortion is wrong, that falls into the realm of convincing is the invocation of feelings. Nonetheless, Professor Meyers claims that this particular technique is not suitable in the case of abortion, because it may causes feelings of sympathy, personal assistance and compassion but it does not give any evidence for us to think that abortion is wrong (Meyers, 2010, p. 40). Another strategy used to provoke peoples’ sentimentalism is by presenting the numbers of abortions that been performed in order to alarm

and provoke them to object to “legalized abortion” (Meyers, 2010, p. 40). What these statistics represent are not only human lives that are eliminated rightly or wrongly, but it also shows the social implications that lead to abortion, like poverty, “poor education or lack of easy access to contraception.” (Meyers, 2010, p. 41) However, these numbers do not show anything about the ethics concerning abortion decisions. We should be careful not to over-generalize with issues of abortion. If those numbers show that abortion is morally impermissible, then every abortion regardless of the reason it is performed, should be impermissible (Meyers, 2010, pp. 40–41).

Analyzing the most known pro-choice arguments it is difficult to miss the two most used phrases most abortion defenders utilize. “Abortion is a private decision and so only concerns the pregnant woman and her physician” and “It’s my body, so I can do what I want with it” (Meyers, 2010, pp. 43–44). The complication Meyers points out with the first claim is that the fetus is totally dismissed as an irrelevant factor. Under this premise the pro-choicer could safely argue that the fetus that is going to be aborted has no interest whatsoever, and that renders abortion morally permissible (Meyers, 2010). The second claim assigns the fetus as an infectious piece of non-vital organ of the mother, “like a spleen, appendix or tumor” so she can do whatever she pleases with it (Meyers, 2010, p. 44). This argument can be valid only if by doing so nobody is harmed in the process according to Meyers (Meyers, 2010). And since the issue of the fetus being a fully-fledged person of the community has not been resolved, these arguments cannot determine the debate (Meyers, 2010).

Analysis

Analyzing the literature being covered so far, the majority of abortion critics are driven mainly by the fact that human life is sacred without omitting a touch of their religious ideology

(Meyers, 2010). Many on the pro-life side are distributed through the whole spectrum of Christianity, advocating in favor of the divinity of life and more specifically of human life, regardless of whether this life is conscious or not and such value should not be violated by any means (Meyers, 2010). A large number of pro-choicers on the other hand have a less religion-centric perspective making their beliefs to be driven by the natural world and by more measurable qualities they can retrieve by scientific methods using experimentation (Meyers, 2010). By using more concrete criteria like “self-consciousness”, the ability to feel pain and pleasure, as well as the ability to think (Lee, 2010, p. 10) the pro-choicers perceive human beings mainly as “living organisms” and the morality that they will acquire will be based on non-metaphysical attributes (Meyers, 2010, p. 30) And that is true; when we identify people we use their natural characteristics to define them and automatically the human physique comes to our minds (George & Tollefsen, 2008, p. 71). The human physique can be else translated as genes, feelings, ability for critical thinking as Marry Ann Warren and Chris Meyers have claimed; (Meyers, 2010; Warren et al., 1984) traits that are easily measurable with the scientific equipment of today’s world. The twist is that a large number of the pro-choice side does not grant any rights to human beings until a fair amount of time passes, when these abilities will have already been developed to some extent (Warren et al., 1984). However, when we identify people we do not exclude the metaphysical traits like soul, their potentiality, even rights for that matter.

Abortion critics based on the “sanctity of life” argument, grant moral consideration to human beings – fetuses even from the moment of conception (Meyers, 2010). What both sides fail to grasp is that the idea of human beings, persons and fetuses for that matter are a combination of realities and multidimensional traits. The fact that people consist of genes, does not exclude the less tangible nature they also possess; like soul, potentiality and rights. These are characteristics that

are seemingly impossible to measure. Including both natures, would be the most appropriate way to define life; the combination of “science” and “sanctity of life” (Meyers, 2010, pp. 29–30).

Turning now to the pro-choice side many of them hold their “naturalistic” view (Meyers, 2010, p. 29) about abortion and they may recognize the idea about the metaphysical nature of humans but without assigning moral consideration to it. Regardless of their beliefs in natural sciences and procedures, the human fetus does not qualify for full moral status even though it qualifies under the premises of biological activity and advancement according to Meyers (Meyers, 2010). The fetus undergoes the stages of “growth, development, nutrition” (Meyers, 2010, p. 30), exactly as an adult person. In the future it will be able to perform complex mental and emotional functions like “self-consciousness, rationality, and sentience” (Meyers, 2010, p. 30), etc. As Patrick Lee puts it, we need to find what quality gives moral consideration to persons deprived of their lives intentionally and if this quality “is present also in the killing of unborn human organisms” (Lee, 2010, p. 45). All adults have undergone these fetal and prior-adulthood stages and most likely the fetuses will end up like adult human beings given the opportunity. So why these two entities are so different? Patrick Lee is using the argumentation about the “potentiality of exercising the functions” to show that we should still grant moral rights to fetuses and to inquire whether the claimed characteristics, that offer moral consideration, “is a necessary condition for having basic moral rights” (Lee, 2010, p. 11).

David Boonin, a known abortion defender, trying to understand the meaning of “Life” he gives us a fairly neutral explanation of human life, being “sacred” (Boonin, 2002, p. 28). In his book “Defense of Abortion” he rejects the claim that life is directly linked to God (the metaphysical approach), but rather represents an entity worthy of respect and holiness in its own sense (Boonin, 2002).

Ronald Dworkin will also talk about sacredness, but using the terminology of “derivative” and “detached” (Dworkin, 1993, p. 11). The “*derivative*” objection renders abortion immoral because it deprives the right one has not to be destroyed, based on the premise that it would be wrong to eliminate an adult human, and the “*detached*” objection is closely linked to the revered nature of human life and the instinct of survival (Dworkin, 1993, p. 11). Dworkin makes an important separation between what is good or bad in its own sense (intrinsically) and what it is good or bad because it can be used as a means to a goal (instrumentally) (Dworkin, 1993, p. 71).

The idea of abortion is sinful or wicked because human life is sacred is very different from the claim that is sinful or wicked because a fetus has a right to life. The former offers an argument against abortion that does not in any way presume that a fetus is a person with rights or interests of its own. For just as someone can think it wrong to remove life support from a permanently vegetative patient or to assist a dying cancer patient to kill himself, whether or not death is in the patient’s interests, so one can think it wrong to destroy a fetus whether or not a fetus has any interests to protect. (Dworkin, 1993, p. 12)

Also the fact that human life as we know it today is the result of a long-standing evolution of the human kind gives it an extra degree of holiness, even though the same evolution was undergone by other species as well (Boonin, 2002, p. 30; Dworkin, 1993, pp. 76–77). Based on that premise, Dworkin poses the question of whether the fetus is a child from the moment of conception with the right to life or it is just a way to punish women for having sex because the critics think that it is immoral (Dworkin, 1993, pp. 9–10). The right to life becomes even more complicated if we consider a permanently comatose person still “alive” due to life support. This person should be respected but that does not mean that he has a right to life. Even under those premises it would be immoral to try to kill him as Boonin illustrates (Boonin, 2002, p. 32). All these are instances of human life but in different stages. However, we have to deal with two different ideas here; the right one has not to be killed and the right ones has to life. Thomson

utilizes a very interesting example on “A defense of Abortion” (Thomson, 1971) to distinguish between conflicting rights of a less polarized but similar situation. Thomson is not concerned to prove that the fetus has a right to life and it outweighs the right of the mother to decide what she will do with her body, but rather even if the fetus has a right to life it does not outweigh the right of bodily integrity of the mother (Thomson, 1971). However, the right not to be killed and the right to life coincide at the end; both fetuses and comatose persons have the right not to be killed. If they are not provided with the essential assistance they will not survive and the right not to be killed is violated. So the right not to be killed becomes ultimately a right to life. Of course in the case of the comatose person the assistance comes from a machine and not a person which is the case of the fetus.

Some extreme abortion defenders claim that if we respect the fetus and give them the right to life and moral consideration, we should also claim rights for the sperm and ovum respectively (Boonin, 2002, p. 33). This claim sounds far-fetched. Granting moral consideration to the sperm and ovum is not the same by granting moral consideration to the fetus. The sperm and the ovum by themselves cannot be developed and create a person, only after fusing together and creating the genes and DNA for the fetus which will be unique and that fetus will grow old with exactly the same genes he or she acquired upon conception.

There is thus no significant difference between the single fertilized egg and the newborn baby. The only point at which there is a significant difference is between the fertilized egg and the sperm-egg combination before fertilization. Before the egg is fertilized by the sperm, there is not yet a complete human, individual set of DNA. (Meyers, 2010, p. 42)

Turning to the emotional side of abortion, Meyers contends that it is mistaken to approach abortion with banners depicting young babies and fetuses with an end of creating feelings of sympathy and “protective instincts” (Meyers, 2010, p. 40). But the messages that

they pass through are beyond just feelings. These signs also give evidence why abortion is wrong. They raise social issues like poverty and lack of adequate contraceptive knowledge and “poor education” (Meyers, 2010, p. 41). They show human lives had been gone wasted. Of course there are exceptions which render abortion not only permissible but necessary as well.

Now, when it comes to the most popular pro-choice phrases about bodily integrity addressed by the state, the complication is that many of the pro-choice groups forget to put the fetus as part of the coitus equation; they only identified it as the result (Meyers, 2010). Additionally, using phrases like “It’s my body, so I can do whatever I want with it” poses risks because it devalues the fetus as a non-human entity, a subject, without giving any room that it could evolve to something more than what it is already (Meyers, 2010, p. 44). Yes, it is the woman’s body and she can do whatever she wants with it. The state gives her the right to privacy and the disposition of her body the way she wants to. The fetus though is a part of her and not a part of her body in order to remove it if she is pleased to do so (Meyers, 2010). It is a part of her but a different organism, different entity which happens to carry it for nine months until it has its body developed enough to live outside of her. This claim can only be valid if nobody is harmed. Since there is no evidence yet of the fetus being a person or not, this argument has no standing (Meyers, 2010, p. 44). And since there is no evidence confirming the status of the fetus, then the complexity of conflicting interests becomes more intense.

Potentiality Argument

Review of Literature

We often come across the belief that potential persons should be protected instead of being eliminated when we are dealing with the issue of abortion. A large number of pro-lifers who advocate against abortion, use this argument not based on any religious thesis but on the value of life and the potential human beings have. The strength of this argument resides on what the fetus will evolve to and not what it is right now (Meyers, 2010, p. 121). This argument illustrates the characteristics the fetus will acquire in the future that will make him or her a person and not the qualities it has being a fetus. As both Chris Meyers and Patrick Lee demonstrate, fetuses have moral status identical to the one of persons because they have the potential to be persons someday (Lee, 2010; Meyers, 2010). Chris Meyers trying to illustrate the power of this argument in a rather unorthodox way, poses the question “what if the fetus to be aborted would have been the next Mozart?” (Meyers, 2010, p. 122) or any other personality enjoying universal recognition and who offered great things to humanity. Discarding this fetus would be highly erroneous because it would deprive mankind from the “greatness” such a person would give in the future (Meyers, 2010, p. 122). The potentiality argument can be closely linked to utilitarianism and consequentialism. “The right act would be whichever one would lead to the greatest overall increase (or least overall decrease) in the happiness of everyone affected.” (Meyers, 2010, p. 122)

A different form of the potentiality argument is the existence of a great person’s worth in its own sense, regardless of the effects it has on others (Meyers, 2010, p. 122). Meyers notes that the problem with this version of the argument is that some people worth more than others; it singles out a rather large group of people and devalues them for not have the potentiality to achieve something great (Meyers, 2010). The potentiality argument against abortion claims that the lives

of such great people is of so much value that it would be wrong to have an abortion because it would deprive people of such a beneficial existence (Meyers, 2010, p. 123). The complication with this theory however is that “while it may be true that the fetus could grow up to be a great person like Einstein or Martin Luther King Jr., it could also grow up to be a terrible person like Hitler or Ted Bundy.” (Meyers, 2010, p. 123) A number of people who were to be aborted and they did not have a greater tendency to turn bad rather than good. This turning emphasizes the severity and dominance of social problems, because these people growing in poverty or been neglected by their parents, have a higher possibility to turn “villain” (Meyers, 2010, p. 123).

The third version of the potentiality argument, and maybe the most down to earth version, is based on the premises that the fetus will grow to be an ordinary person with neutral inclination towards turning good or bad (Meyers, 2010). “And one does not need to be a great person, or even a good person, to deserve moral consideration” (Meyers, 2010, p. 124). Just the potentiality of growing up to be a person, grants the fetus with moral consideration (Meyers, 2010). The process of becoming a person is part of its natural development that to some degree, comes about automatically.

A different approach to the potentiality argument is given in “Defense of Abortion” by David Boonin.

A zygote has the potential to develop into an individual just like us. It follows from this that, at the very least, the zygote is an individual with the potential to develop into an individual with a right to life. The question is what follows from this. There are several distinct arguments that attempt to show that what follows from this is that the zygote already has a right to life. Perhaps the simplest argument from potentiality is one that rests on a general assumption of the following sort: Potential possession of a right entails actual possession of a right. If an individual is such that it is developing into a being that clearly has a given right, then this fact about it justifies conferring the right on it already. Call this the potentiality argument. (Boonin, 2002, p. 46)

Adults have moral responsibilities that children do not have, and older people cultivate moral virtues they did not have when they were younger. The question, then, is whether, given all this, there is any reason to think the assumption true of rights in general, or of the right to life in particular. (Boonin, 2002, p. 46)

In “A Defense of Abortion”, Boonin refers to Wilkins’s example to refute the potentiality argument by illustrating the case of Jimmy Carter that when he was six years old, he was a potential president of the United States (Boonin, 2002).

When Jimmy Carter was six years old, he was a potential president of the United States, but even though the president of the United States has the right to command the armed forces, it does not follow that six-year-old Jimmy had even a very weak right to command the armed forces, let alone a right on a par with actual presidents. (Boonin, 2002, p. 46; Wilkins, 1993)

The fact that the president of the United States has a number of responsibilities as well as the power and the authority to govern the whole nation including directing military activity, does not mean that a six-year-old boy, like Jimmy Carter, no matter his family’s political heritage, would have the authority to order such an action; not to mention that he does not have the same privileges like already elected presidents have (Boonin, 2002, p. 46). “This example shows that potential rights do not entail actual rights, and that the assumption needed to ground the potentiality argument must be rejected.” (Boonin, 2002, p. 46). But there are additional problems with this claim.

Firstly, “[To say that] a fetus is a potential child is to say more than merely that it is possible that it will become one; it is to say that a child is something that the fetus is developing into. But all we can really say of Carter is that it was possible in 1930 that he would one day be elected president.” (Boonin, 2002, p. 47) Secondly, the authority to give orders to the military is not something you are born with, at least not nowadays. This power is assigned to you from already

elected officials through the process of indirect vote, whereas the right to life is not (Boonin, 2002). Thirdly, the right to assign missions to the military can be only possessed by one at a time (Boonin, 2002). This is not the issue with the right to life.

“So the fact that an individual who will possibly be given a conventional, exclusive right in the future does not now possess this right does not show that an individual who is developing into the sort of individual who has a certain natural, non-exclusive right does not have it now.” (Boonin, 2002, p. 47) Wilkins, trying to fix this inconsistency, gives another example to illustrate the importance of his claim that that “potential rights entail actual rights.” (Boonin, 2002, p. 47) He gives the example of a medical student who is a perfectly competent and a future doctor-to-be. Nobody excludes the possibility of this person changing his mind and choose a different career, but education and expertise wise earning his medical diploma is the most obvious outcome (Boonin, 2002, pp. 47–48; Wilkins, 1993).

Such a student has the right to participate in a limited way in the diagnosis and treatment of some illnesses under the supervision of his teachers. The right in question is of course restricted, but it is not on that account a ‘partial’, ‘quasi,’ or ‘weak’ right. (1993: 127) (Boonin, 2002, p. 48; Wilkins, 1993)

To defend his argument, Boonin argues that even in the case of the “potential” doctor, he still needs to possess the typical qualifications for the career he has chosen to follow (Boonin, 2002, p. 48). Otherwise, not showing the appropriate documentation can lead to serious legal trouble, let alone the social stigma and disapprovals. Another point Boonin uses is that there is no issue of potential right of the student since the licensed doctor just grants the right of performing medicine under an arranged, finite period of time to the student, without the student acquires any new or different status – “under the supervision of his teachers” (Boonin, 2002, p. 48). An additional point Boonin illustrates is the possession of current properties and that “even if this is a

right possessed by these students, it seems far more plausible that it is a right they possess in virtue of their properties as actual medical students, rather than in virtue of their properties as potential doctors.” (Boonin, 2002, p. 48)

An extension to the potentiality argument is the future value argument and the future-like-ours argument (Marquis, 1989). Their common ground is that they value life not because of what it is now, but what it is going to be in the future. So abortion is morally wrong because it deprives potential person from future experiences which are of great value to them (Marquis, 1989, p. 190; Meyers, 2010, p. 127).

When I am killed, I am deprived both of what I now value which would have been part of my future personal life, but also what I would come to value. Therefore, when I die, I am deprived of all of the value of my future. Inflicting this loss on me is ultimately what makes killing me wrong. This being the case, it would seem that what makes killing any adult human being *prima facie* seriously wrong is the loss of his or her future. (Marquis, 1989, p. 190)

Many pro-lifers support that our future has value to us, even if we do not want it now (Meyers, 2010, p. 128). Chris Meyers uses the examples of a person who is sleeping and a severely depressed person. Both instances do not value their future but that does not mean that they will not desire it when the first person wakes up and the second one overcomes his depression (Meyers, 2010, pp. 128–132). The same rule applies to fetuses. To say that something is valuable to a person does not necessarily mean that this person longs for it (Meyers, 2010, p. 131). Fetuses might not be able now to perceive their future. Our future which has value for us can take many forms and change through time. As Meyers puts it, “the future that would be better for me is the one that I will prefer *at the time I am experiencing it.*” (Meyers, 2010, p. 133)

Analysis

When we hear the word “potential”, great things come to our mind. However, to have the potential to become a person doesn’t always come with a meaning of “greatness” (Meyers, 2010, p. 122), because simply being is important in its own sense. People have the potential to do great things given the opportunity, but even if they do not provide the human kind with the treatment that will eliminate cancer, their lives are still of great value to them (Meyers, 2010). This argument is based on what the fetus is going to be in the future given the opportunity to grow and develop to an adult (Meyers, 2010). This is what gives it moral consideration. As Chris Meyers claims, it would be a pity to deprive humanity of a contribution of such magnitude; of a person that it is destined to do great things; like “Mozart”, “Einstein” or “Mother Teresa.” (Meyers, 2010, p. 122)

Mobilizing the utilitarian theory, “the right act [...] would lead to the greatest overall increase (or least overall decrease) in the happiness of everyone affected.” (Meyers, 2010, p. 122) In other words the woman who wants to have abortion but for some reason does not perform it, will definitely be negatively affected since she does not want that child, but the suffering that the fetus – potential person – will have is greater if it is aborted (Meyers, 2010). In that sense the suffering of the fetus seems to outweigh the suffering of the mother and for that reason it would be morally right to follow the case that maximizes utility; have the mother endure the “burden” of pregnancy for nine months for the child to be born, and if she cannot keep it for any reason, then she should put it up for adoption. In that way, utilitarian theory wise, “the greatest overall increase of happiness” will have been served (Meyers, 2010, p. 122).

However, the problem with the potentiality argument as portrayed by Chris Meyers, is not just about the greatness one can offer to the world but it also discriminates against people who do not have a special quality in order to be saved. (Meyers, 2010). Human life is priceless. This argument tries to show that by claiming that even fetuses are not fully persons yet because they

lack the criteria for moral consideration addressed by Warren, they will grow to be fully persons at some point in the future (Lee, 2010; Warren et al., 1984). This is because they change status throughout different stages but they do not change their essence. The initial “*material*” is the same from the moment of conception. So in order to overcome that age – capacities gap, they need to be granted a special moral consideration. After all, we do not know who is capable of offering that greatness to the world or who is going to be the next Mozart; not until they grow enough to give that signs and if they are going to be after all (Meyers, 2010).

The potentiality argument gives the fetuses more worth in order to save them from elimination and help them to grow; all of them. It does not make distinctions on who will be eliminated and who will not. And that does not mean that their lives per se are worth more than others, but they need that “boost” of value to be able to survive (Meyers, 2010).

Another complication that Chris Meyers presents is the possibility of having a fetus growing up to be the next Hitler instead of the next mother Teresa (Meyers, 2010, p. 123). We cannot possibly know what the fetus is capable of becoming. We should expect that this fetus has equal possibilities of becoming like Mother Teresa as well as the next Hitler (Meyers, 2010, p. 123). What is also unfortunately true is that children that are born in poverty, or neglected by their parents are more prone to “become a villain than a saint.” (Meyers, 2010, p. 123). People usually turn to illicit methods in order to survive and fight poverty. It does not mean though that they are intrinsically bad, but the situation made them to follow that path based on the instinct of survival. Of course there is a big factor to human actions is called genes, but there is also another one called family environment which shapes the character of people in both good and bad ways. So if there are families that neglect their children or lack the financial resources, it would be better for the children in either case to be put up for adoption. As insensitive as it may sound, that way the

children will end up most likely to good homes who have the means to raise them properly without creating them complexes and lead them to criminal and evil behaviors, at least in most cases. The possibility and necessity of adoption diminishes the likelihood for these people to “turn to a life of crime” (Meyers, 2010, p. 123). Even Adolf Hitler’s case – known for his crimes against humanity – the intense relation with his father, the double rejection of Vienna’s Academy of Fine Arts as well as the lack of financial resources paired with his political beliefs resulted in the person we identify today as the biggest criminal of mankind. Even in the case of Hitler no one knew who he was going to be and how he would affect his environment, not to mention the world. If he was treated differently from his family, if his father was more understanding, World War II might have been prevented (“Adolf Hitler - Military Leader, Dictator - Biography.com,” n.d.).

In the previous cases we talked about fetuses and their potentiality based on outcomes. Nonetheless, fetuses do not need any inner privilege in order to be eligible for moral consideration. Moral consideration is based on continuation to maturity and personhood regardless of good and evil. The fetus does not need to have any special future but merely a future and so the potential to act into it to qualify for moral consideration (Meyers, 2010). “The fetus has the same right to life as a fully developed person” and “whatever moral obligations we have to a person like you and me, we have the same moral obligations to a potential person” based on Meyers’ literature (Meyers, 2010, p. 124). The fact that the fetus is at a different stage, is a matter of time and not essence. It will not change species category; it is and will continue to be human. So what gives moral consideration to the fetus is simply the capacity to evolve into a person (Meyers, 2010, p. 124).

Boonin, on his book “A Defense of Abortion” attempts to show that the potentiality argument is defective, it does not apply and it has no rationale behind it. In order to achieve that

he utilizes Burleigh T. Wilkins' Jimmy Carter example and his potentiality to be a president of the United States with the potentiality of a fetus to become a person and try to reverse it (Boonin, 2002). The problem with this argument, as Boonin correctly highlights, is that this right is given. People have to cast their votes in order to designate a president (Boonin, 2002, p. 47). You are not born destined to be a President. You need the ideal circumstances. The potentiality of becoming a person after being born is greater than the possibility of becoming the President of the United States. So this contrast seems quite flawed and unfortunate. Trying to make up for the inconsistency of the previous example, Wilkins (Wilkins, 1993) had given the example of a "medical student" being a "potential doctor" (Boonin, 2002, pp. 47–48).

Being President, or doctor are very specific notions. No one knows what a fetus is going to follow as their future career. Nobody can be that specific at such an early stage. In that sense it would be better to say that the fetus has the possibility of becoming a doctor or a President. If the circumstances are right and the appropriate factors coincide, then there is the possibility of someone becoming doctor or President. Potentiality is the inherent capacity for growth or development, whereas possibility is an option or choice and usually used in context with future events (Merriam - Webster, n.d.-b).

Using the third instance of the potentiality argument would seem more appropriate. Fetuses should not be compared with employment specializations like President, doctor or lawyer. They should be compared with the nature of the person. Fetuses have the integral ability of developing and growing into persons (Meyers, 2010, p. 124). They do not need any permission or special qualifications to do so. There is also no chance of being something different in the future apart from persons. Human beings and therefore fetuses cannot change their essence and switch to different species category. They started as human beings and they will end as human beings and

more specifically persons. After all it is called the potentiality argument and not the possibility argument.

When it comes to future value argument and the future-like-ours addressed by Marquis, what is important is not the *now* but the *after* (Marquis, 1989). Even if we do not see any value to our future, it does not mean that our future has no value at all. What we can see now is the present and not the future. Situations change, people change and their desires also change. According to Meyers, “the future that would be better for me is the one that I will prefer *at the time I am experiencing it.*” (Meyers, 2010, p. 133) This justification is rational and consistent with future events and experiences. It is possible that our desires will change in the future, but that does not mean that we do not have desires now. The same applies to the fetuses. The fetal stage resembles the state of a person when he sleeps. At that point we do not have desire for the future but we will have when we wake up. “My future does not lose any of its value to me when I take a nap.” (Meyers, 2010, p. 133) So the fetus’s future can have value (to the fetus itself or at least to the person it will become) because it will, at some point in the future, have a desire to have conscious experiences further in the future.” (Meyers, 2010, p. 133)

Human Beings And Persons

Review of Literature

Earlier we talked about a comatose person. The word “*person*” was used intentionally to add value to the human being and grant him the right to life. However not all human beings are persons, but all persons are human beings. A human being has the meaning of a biological entity prone to all the natural procedures of growth and development, whereas a person has to do with the attainment of mental and psychological abilities like “rational thought”, emotions and self –

consciousness (Meyers, 2010, p. 30; Warren et al., 1984, p. 4). Patrick Lee in “Abortion and Unborn human life” (Lee, 2010) makes an important observation; fetuses and newborn babies have different moral status because of their differences. However, are those differences meaningful enough to be addressed as “morally relevant” (Lee, 2010, p. 10)? Apart from the differences, these two categories resemble a lot. Patrick Lee emphasizes the major distinctions, but one could also stress out how they resemble to each other (Lee, 2010, pp. 9–10).

For example, at all stages these beings are of the same species, have human parents, have the same genetic structure, and so on. The real question is: what differences and what similarities are morally relevant? We need a criterion which distinguishes morally relevant differences and similarities from morally irrelevant differences and similarities. (Lee, 2010, p. 10)

In “On Moral and Legal Status of Abortion” by Marry Anne Warren, the required characteristics to be considered a person would be at least one of the following: “consciousness, reasoning, self-motivated activity, the capacity to communicate and indefinite variety of types of messages, and the presence of self-concepts.” (Warren et al., 1984, p. 5) With a first look, it seems that fetuses do not qualify under that definition of “Personhood” (Warren et al., 1984). Nonetheless, fetuses do qualify under the premises of the potential they have in the future to perform such intellectual activities.

Analysis

Fetuses do not satisfy any of the criteria Warren puts; they do not have rationality, sentience, self-awareness or “reasoning”, at least at that stage (Warren et al., 1984, p. 5). However, upon conception, they are distinct individuals. Human fetuses have the fundamental ability for all these psychological and mental “traits”, and they will be able to perform them eventually, but not immediately (Lee, 2010, p. 11). In that sense, fetuses are not only human beings but also potential persons and for that reason they should be considered for moral rights (Lee, 2010). As Patrick Lee

contends, there are indeed many differences in status between fetuses and newborn infants with the latest qualifying for moral consideration compared to the prior (Lee, 2010). It is true that newborn infants have better chances to become persons because they are already being born, overcoming the danger of severe deformities that would prevent them from being born. Also, their body is more developed than the one of fetuses' and they have a better ability to perceive the world than a fetus (Lee, 2010). Another important distinction is that they no longer need to live inside their mother in order to be able to survive, however, assistance is needed. Also newborn infants and babies constitute the transition point between human beings and persons, who may not satisfy the mental and psychological characteristics yet but they will in the near future. On the other hand, we could also say that fetuses qualify for personhood because of the potentiality to become persons given the time and opportunity to grow (Lee, 2010; Meyers, 2010).

Philosophy And The Definition Of Personhood

Review of Literature

As a consecutive issue as to what differentiates human beings and persons, I will focus on the definition of personhood in general and whether it can be extended to the early human being.

George and Tollefsen in their book "Embryo – A Defense of Human Life", investigate the issue of personhood (George & Tollefsen, 2008). They start their analysis by giving the example of the existence of an "oak tree" (George & Tollefsen, 2008, p. 58). They claim that people, like the oak tree, may go through many changes, but their nature remains the same. "For the entity in your backyard would cease to exist if it ceased to be an oak tree, [...] It will cease to exist as an oak tree only when it dies (i.e., it ceases to exist)." (George & Tollefsen, 2008, p. 58)

So an important part for our understanding of the nature of any entity firstly entails the recognition of the difference between its “accidental properties” and those properties that give this entity an identity (George & Tollefsen, 2008, p. 59). However, its characteristic essential properties may change with time but this does not make it less than an entity of the species it is (George & Tollefsen, 2008, p. 59).

In the question what we are, George and Tollefsen reply that we are “living organisms of the human species”, aka “human beings” (George & Tollefsen, 2008, p. 59). “When you look in the mirror you see a member of the species *Homo sapiens*, and you recognize that human individuality as yourself.” (George & Tollefsen, 2008, pp. 59–60). Another characteristics we possess and make us humans, are: “reason – the ability to think critically, abstractly and logically, and the ability to choose – to make decisions based on reason, rather than mere blind impulses.” (George & Tollefsen, 2008, p. 60)

According to George & Tollefsen this perception is not extended to the morality of the fetus (George & Tollefsen, 2008, pp. 60–61). How can we recognize the possession of substantial properties to the fetus?

Constitutionalism

A worth-mentioning theory to the issue of abortion is Constitutionalism. This theory has the effect of ascribing to human beings two different natures; the “human animal” and the “human person” (Baker, 2000; George & Tollefsen, 2008, p. 67). Constitutionalism’s advocate is Lynn Rudder Baker and according to Constitutionalism a “human person” is formed from the “human animal”, but it is not its duplicate (George & Tollefsen, 2008, p. 67). The “human animal”

(corporeal nature) comes first and it is there through the whole life of the human being regardless if that human being acquires the “human person” or not (George & Tollefsen, 2008, p. 67).

The Nature of Animal Persons

“Readers and authors of this book, and all other humans are animals.” (George & Tollefsen, 2008, p. 77) Animalism is very consistent with what we are because it addresses our corporeal nature. However, if we engage in animalism, it means that we accept only the one side of us, excluding the mental capacities like reason and self-consciousness that reside on the “human person” as claimed by Baker (George & Tollefsen, 2008, pp. 77–78). What defines our species should primarily have to do with something that is required to be a person. Person and intellectual properties coincide. However, we cannot be mainly “animals” because if that was the case, we could live without developing these mental capacities. “On the Animalist view, psychology is absolutely irrelevant to personal identity.” (George & Tollefsen, 2008, p. 78) George and Tollefsen claim that the fact that we are human animals does not mean that we exercise only the one side of our nature. Being the species we are, even as human animals, enables us with mental capacities, even if they are not implemented yet (George & Tollefsen, 2008, p. 79). The person side is not separated from the “animal” side. “Rather these particular individuals – RPG, CT, and you, the reader, members of the thesis *Homo Sapiens* – all are themselves persons, have always been persons, and we will cease being persons only when we cease to be, by dying.” (George & Tollefsen, 2008, p. 81)

This also applies to early human beings as well. They are located in the field of human species, which given the opportunity to be born, they already own the material that will lead to adults’ mental capacities. (George & Tollefsen, 2008, p. 79).

Analysis

In “Embryo – A Defense of Human Life” George and Tollefsen using the example of an oak tree to address that people do not change nature or species because they have changed the stage they are at. The only way to stop being what they are is by dying (George & Tollefsen, 2008, p. 58). Then we do not have the same tree, in fact we have no tree. So, as the authors of the “Embryo – A Defense of Human Life” highlight, in order to comprehend the nature of any being, we need to distinguish between “accidental properties” and the properties that actually determine this being (George & Tollefsen, 2008, p. 59).

Taking this concept and placing it to the issue of abortion we can see that age, maturity, even appearance characteristics like hair, face, growth are accidental properties of the human being that change through time, but it does not change the fact that we are human beings (George & Tollefsen, 2008, p. 59). No matter how many stages we pass through, we will continue to be human beings, we will continue having the essence of the human being and its identity no matter where we are. When we go in front of a mirror we recognize a member of the human species as the authors claim (George & Tollefsen, 2008, p. 59). We look different but our essence and nature is the same. We have different external appearance, we can be either male or female, with different backgrounds, mentality, knowledge but we have the ability to think, make decisions, self – conscience and sentience. But even those mutual characteristics do not appear to be to the same extent in everyone. We are so different in our accidental qualities and at the same time we are the same in nature. And because of these intellectual properties of brain activity philosophers classify people as persons (George & Tollefsen, 2008, p. 60).

Having that definition of personhood highly connected to brain activity excludes embryos from this category (George & Tollefsen, 2008, p. 61). The idea of personhood is intertwined with adulthood, omitting embryos without categorizing them. Since embryos have not developed the capacities of rational thinking, self-consciousness, etc. yet it means that they do not qualify to be in the same category as other, more developed human beings (Lee, 2010; Meyers, 2010; Warren et al., 1984). However, fetuses already have the capacities for such mental functions but they are currently inactive. They will be active when the now fetuses will go through the stages of development and reach the point of the mental activities' activation stage. This is the reason to appoint them with the same moral respect as we are entitled to (George & Tollefsen, 2008; Lee, 2010; Meyers, 2010).

Constitutionalism takes personhood a step further by claiming that persons are “distinct from their bodies.” (George & Tollefsen, 2008, p. 66) The idea of Constitutionalism is that “human persons” are formed by mere biological organisms called “human animals” (George & Tollefsen, 2008, p. 67). The animal side pre-exists the person and continues to be there even the person has already gone (George & Tollefsen, 2008, p. 67). When this animal nature finds itself into the appropriate environment of developing memories, character and other intellectual features, then it has reached the point of being recognizable as human person (Baker, 2000; George & Tollefsen, 2008, p. 67).

Lynn Rudder Baker, an advocate of constitutionalism claims that if the necessary circumstances are not met and the human being is destroyed before becoming a person, then we will still have a human being (George & Tollefsen, 2008, p. 67). Baker's point is that person and human being are not isolated and subtracted from themselves. The living body is not a person by itself neither in the fetal nor senile stages (George & Tollefsen, 2008, p. 68). That does not mean

though that we should dismiss the human beings in these categories as non-persons. Both fetuses and infants as well as elderly are capable of life without possessing mental capabilities. Human beings, members of the *Homo sapiens* family, should be treated with respect and moral consideration, no matter the stage they are at because the human animal side is not distinct from personhood as Baker claimed (George & Tollefsen, 2008, pp. 66–67). And if this human animal life can exist on its own, without personhood, then it is worthy of moral consideration (George & Tollefsen, 2008, pp. 67–68).

Fetuses should be included in the category of human animals due to their material side and origin. Returning back to persons, having in mind that they started as human animals inevitably raises questions. Can both natures coexist or do we have only one? The rational approach would be that primarily we are human animals. We started as fetuses acquiring the identity of human animals and we continue to be as such plus personhood until we die. (George & Tollefsen, 2008, p. 58). So the one nature is supplemental to the other if we want to have a human being that qualifies for personhood.

With all that being said, we start with the axiom that “we [...] humans are animals.” (George & Tollefsen, 2008, p. 77) It is one of the theories that describe exactly how humans are. And it indeed attracts many proponents. Lynne Rudder Baker though tries to prove why animalism is unsuitable to explain personhood (Baker, 2000; George & Tollefsen, 2008). She claims that in order to be a person, we need to possess traits connected to personhood (Meyers, 2010; Warren et al., 1984). She continued that the notion of person is linked with psychological conditions and logical and ethical factors. That means that if we are essentially animals our mental capacities do not emerge from our animalistic nature (Baker, 2000; George & Tollefsen, 2008, p. 78). If we are primarily biological organisms we can get along in life without the mental attributes. And this is

where dualists intervene and claim that these psychological features is a condition of personhood. If a human being lacks the ability of rationality, “self-consciousness” and choice then is not a person (George & Tollefsen, 2008, p. 79; Warren et al., 1984). This is the reason why fetuses are excluded from the category under the label of personhood. Nonetheless, being a member of the human species, fetuses will come to develop these capacities at some point in the future. The same stands for infants and babies. These intellectual capacities are not active yet or at least not developed to the degree they are on the adults, but they will be eventually (George & Tollefsen, 2008). Given the opportunity and excluding severe fetal deformities, early human beings already possess the intellectual properties and natural inclination to perform human functions of that kind which grant personhood. The weakness of dualism that automatically results in excluding specific groups of humans including fetuses, seniors and people in coma.

What dualism fails to recognize is that since people are in the position of developing such functions to perform the above intellectual tasks must have acquired them from somewhere. These capacities were already situated in them as fetuses and they would go stronger by time leading to their peak when they were old and mature enough (George & Tollefsen, 2008, p. 79). Consciousness and rationality do not magically appear inside people. They have been already ingrained in them from the moment of conception. The same stands for the elderly people and the ones in a coma. We have not stopped to consider whether they are persons or not. We have not stopped to think if they are eligible for moral consideration; because they are (George & Tollefsen, 2008). The reason for not doing so is because it would seem outrageous to think that they are not. Even if their mental and intellectual capacities are not what they used to be in the past. Advanced cerebral functions may seem to be a requirement for personhood but there should be a different, universal requirement that will include all different categories and ages of the human race.

And this is the strength of animalism. It claims that there are two natures in people and acknowledges them both. We are united entities comprised by both brains and body. Animalism leads us to think that being a member of the *Homo sapiens* race purports that we are born persons and will only stop to be ones when we stop being physically alive (George & Tollefsen, 2008, pp. 80–81).

The Parsimony Argument

Review of Literature

“All are living members of the same species, *homo sapiens*.” (Boonin, 2002, p. 20) A number of abortion defenders does not agree with this claim when it comes to the fetus. There are plenty of times where a competent number of pro – lifers uses the deposition such as the one presented in Congress in 1981 of “when human life begins” (Boonin, 2002, p. 21) where one of the statements was: “The fact that after fertilization has taken place, a new human has come into being, is no longer a matter of taste or of opinion. The human nature of the human being from conception to old age is not a metaphysical contention, it is plain experimental evidence.” (Boonin, 2002, p. 21).

The way scientists use the term “*human being*”, is displayed as an “individual living member of the species “*homo sapiens*” and not an “individual with a right to life” (Boonin, 2002, p. 21). So the claim that “If an individual is a human being, then that individual has a right to life” (Boonin, 2002, p. 21) should be examined to either be accepted or denied. At that point, Boonin poses the question of whether being classified as “*human being*” is enough “to accept that a human fetus has the right to life from the moment of its conception” or not, if we assume that life begins at conception (Boonin, 2002, p. 21).

In Boonin's example of gathering ten humans with a confirmed right to life, "there is little doubt that, although they might differ in many important respects, all ten individuals we select would have at least this one property in common: All would be members of the species *homo sapiens*." (Boonin, 2002, pp. 21–22) So no matter who we choose, he or she would be a human being. So, "being a member of the human species is a sufficient condition for having a right to life. Since every human fetus is a member of the human species, this would in turn imply that every human fetus acquires a right to life at the moment of its conception." (Boonin, 2002, p. 22)

According to David Boonin the parsimony argument should be dismissed because species membership is not enough and cannot stand by itself (Boonin, 2002). Looking all the same does not mean that they are the same or that we should have the same moral consideration for them. Boonin continues by asking what if one of the human beings we thought we have collected is actually not that human but is in fact an extra-terrestrial form of life with even more or less the same "DNA structure" as the others; the chances of thinking about killing it are minimal (Boonin, 2002, pp. 22–23). Using a different instance of a human being, Boonin points out the case of the person in an irreversible coma not having the same right to life as conscious people have. Removing that person from life support would be morally wrong, but that does not mean that he has the same right to life with conscious people (Boonin, 2002, p. 23). According to Boonin, situations like people in a coma cannot be used to prove that a fetus has a right to life as well by association. "The fact that the only actual uncontroversial cases of individuals with a right to life are human beings provides no support for the claim that all human beings have a right to life." (Boonin, 2002, p. 23)

The parsimony argument could be coupled with the species essence argument since they are complementary to each other. This argument was suggested by Schwarz who claims that "it is

an error to dismiss the category of human beings as not (in itself) morally significant” (Boonin 2002, p.23). Presenting this argument from the aspect of personhood, it defines the person as “a being who has the basic inherent capacity to function as a person, regardless of how developed this capacity is, or whether or not it is blocked, as in severe senility.” (Boonin 2002, p.23) However, Schwarz continues by giving an explanation of that definition asserting that “Functioning as a person refers to all the activities proper to persons as persons, to thinking in the broadest sense.” (Boonin, 2002, p. 23) Boonin pinpoints some impediments to Schwarz’s theory. Fetuses with severe deficiencies and humans in an irreversible coma will never qualify as persons in Schwarz’s theory since they will never develop mental functions or “function as a person” on their existence (Boonin, 2002, p. 24).

Analysis

The parsimony argument entails that all people have at least one mutual characteristic: “all are living members of the same species, Homo sapiens.” (Boonin, 2002, p. 20) No matter who we choose out on the streets, all will be members of Homo sapiens. But according to David Boonin, being member of the human species does not automatically grant a right to life so there must be a different characteristic these humans and generally humans possess to make them eligible for moral status (Boonin, 2002). The fact that the right to life has different gravity for the alien, the comatose person and the fetus based on Boonin’s example is irrelevant. The existence of one does not threaten the existence of the other. The problem with Boonin’s argumentation is that even if these different examples have not the same right to life, it would be immoral for a third person to play God and decide who lives and who does not. And in the case of the person in coma, the person does not lose his moral status. He is just pausing it. The gravity of their right to life might be

different but it does not mean that they are not any. The person in a coma has a right to life less than conscious people have but it does not mean that it would be morally right to unplug him from life support.

Approaching the species essence argument, a human being can qualify for being a person if he can “function as a person” (Boonin, 2002, p. 24) regardless of the current capacity to do it. Boonin tries to refute this argument as not true. His justification is that not every member of the *Homo sapiens* species has this ability. He brings the example of fetuses with severe deficiencies that will not let them grow and develop any abilities at any point (Boonin, 2002, p. 24). Fetuses in such conditions do not have the potentiality of being actual persons and chances are that they will not even be able to make it to birth. Boonin also attacks Schwartz argument by presenting the case of a person irreversibly brain damaged, with no possibility of recovering and have “permanently lost the ability to function as a person” (Boonin 2002, p.24). Let’s suppose that this is true, that these people do not have a right to life. If that was the case, then there should not be any people in a coma inside hospitals. If these brain-damaged persons did not have a right to life, then the doctors, without any notice, would be able to unplug them from the life support machine. But this is not the case. These brain-damaged people used to be actual persons with the ability to function as such. The fact that now they lack this ability and most probably will never get it back, does not make it permissible to be treat them with disrespect. In cases like that we see an agreement between pro-life and pro-choice advocates. However Schwarz refers to the situations where there is disagreement about the right to life and not about the exceptions.

Conclusion

All that been said, what is the moral status of the fetus? The answer is that fetuses and newborns do have the same moral status as actual persons do; severely deformed cases are excluded. This claim is established throughout the arguments used in this chapter. Regardless of religious reasons, human life should be protected. Human life is in some sense sacred and human beings should not be deprived of it. Even Dworkin recognizes it when he claims the “detached objection to abortion”, giving a “sacred character of any stage or form of human life” (Dworkin, 1993, p. 11)

Additionally the soul can be interpreted as character and can be closely associated with emotions and intellectual traits which can be measured. In that sense the opposed groups talk about the same entity giving it different names. Last but not least, when it comes to human beings and persons the only difference between them is the stage they are at. The essence remain the same, the descent is the same and the general development is fairly the same with minor exceptions. For all these reasons I believe that we should grant moral consideration to the fetus apart from extreme circumstances.

The strengths of the arguments used in that chapter is that fetuses come from the same “family” as adults do, and they will be developed using the same procedure to become adults being at a different stage from them. The weaknesses of these arguments are that they may be from the same “family” – Homo sapiens – however, the difference of stages is significant and there is no “self-consciousness” at the stage of fetal development (Lee, 2010; Meyers, 2010). Somebody would claim that newborn do not have self-consciousness either, but still qualify for moral consideration. That is true. From that aspect, the differences between fetuses and newborns are not significant (Lee, 2010). However, newborns have developed an adequate nervous system that

fetuses, at least at early stages of conception, do not have. On the other hand newborn and adults have been through fetal stages as well and they have developed to be newborn and adults respectively. Using the potentiality argument as the basic argument, we should be able to give to the fetus moral consideration not for what they are now but for what they are going to be in the future (Meyers, 2010).

CHAPTER 3: ETHICAL DUTIES AND OBLIGATIONS

While the previous chapter focused on the status of the fetus, this chapter focuses on the question of what ethical framework should we use and what moral duties may or may not exist. In this chapter I address issues concerning the idea of personhood as a whole and then specifically about early human beings, covering the whole spectrum of fetuses and babies. The arguments used in this chapter will focus on issues of descent, assuming ourselves as the recipient of the actions, utilitarianism and consequentialism (Bentham, 1789; Mill, 2009), posing the questions we should ask based on the circumstances we are in. I will also use the weight of consequences that follow every action especially when it comes to the right to life and corporeal integrity. After studying rights and obligations of the “contracting” parties I dive into pure philosophical analysis of personhood, exploring the double nature of persons and our tendency to focus more on one side rather than the other. I acknowledge the fact that there is an overlap as some arguments address more than one questions, but I will focus on the questions of existence and morality only of persons and fetuses. This subject will be the link to the next chapter – chapter four – where, based on what have been claimed so far and what the rights of each party are, I will investigate what the law should be and the role of the state.

The Kindred Species Argument

Review of Literature

Boonin in “A Defense of Abortion” cites the commission on embryo research chairman words claiming that the human fetus constitutes a different classification compared to the non-human fetuses because of the human descent and the fact that they are the future life coming from our own species (Boonin, 2002, p. 26). This entails that we should have more consideration for the

fetus because it comes from the same category as adult human beings do and that they need to be considered differently from non – human fetuses. Boonin calls this The Kindred Species Argument (Boonin, 2002, p. 26). So, two issues come effortlessly to mind; “is favoring the interests of one’s own species over the interests of others morally justified and, if it is, can this fact be used to ground the conception criterion?” (Boonin, 2002, p. 26).

Boonin tries to show that there is no causation between the “obligations” people have towards the fetus and the fetus’s right to life (Boonin, 2002, p. 27). People have the right to help others but that does not mean that someone is forcing them to do so (Boonin, 2002; Meyers, 2010). The “duties” people have towards the fetus are irrelevant to the fetus’s right and the rights other people have towards us, the right to life included (Boonin, 2002, p. 27). These responsibilities should be perceived as unilateral.

To highlight the difference between duties and rights, Boonin uses a comparison of human fetuses and “mature pigs” to show that even if people have “greater duties” to human fetuses than to “mature pigs”, it does not presuppose that human fetuses right to life outweighs the ones pigs have, if any (Boonin, 2002, p. 27).

Ronald Dworkin in his book “Life’s Dominion – An Argument About Abortion, Euthanasia And Individual Freedom” follows a more radical approach by saying that fetuses have no interests because they cannot perceive their own interests (Dworkin, 1993, p. 15). To give emphasis to his argument, he claims that “not everything that can be destroyed has interests in not being destroyed” and he presents the example of a sculpture (Dworkin, 1993, p. 15). Undoubtedly it would be wrong to destroy either private or public property and deprive people of such sight - seeing, but the actual sculpture will not feel offended or sad for being destroyed (Dworkin, 1993). In addition to that, there is the parameter of pain. No being, neither human nor animal, should feel

pain and there are clear advantages for them to refrain from it (Dworkin, 1993, p. 16). “But a fetus cannot be aware of pain until late in its mother’s pregnancy, because [...] electrical brain activity arises in a fetus’s brain stem, and it is capable of reflex movement, by approximately the seventh week after conception”. (Dworkin, 1993, p. 17) So with a not adequately developed system the fetus is unable to feel actual pain. According to Dworkin the development of the complete nervous system is estimated between the 22nd and the 23rd week of pregnancy, meaning almost on the seven month of pregnancy (Dworkin, 1993, p. 17).

However, not only physical pain is hurtful and should be avoided but also emotional suffering (Dworkin, 1993, p. 17). Humans are capable of feelings more than pain or its absence – “to enjoy or fail to enjoy, to form affections and emotions, to hope and expect, to suffer disappointment and frustration.” (Dworkin, 1993, pp. 17–18) Based on Dworkin, the mental capabilities people possess enable them to experience a wide spectrum of feelings and even if there is no actual pain involved their interests can be compromised because of indictment, confinement or duress (Dworkin, 1993, p. 17). He continues by claiming that the fetus does not fall into this category because it does not have interests yet. “An immature fetus cannot have interests and therefore cannot have an interest in surviving.” (Dworkin 1993, p.18).

Analysis

Boonin criticizes the fact that fetuses come from the same family as adult people have already done and that should be enough for them to be protected and qualify for a right to life given that they are not impaired and that they will be able to survive (Boonin, 2002). The Kindred Species argument is based on the mindset applied to interpersonal relationships; it makes perfect

sense to develop more protective instincts towards our people rather than to “strangers” as Boonin calls the other species (Boonin, 2002, p. 27). But how we behave in one category, does not really affect the other with the exception of conflict of interests. Even the Commission of Embryo Research classified the human embryo in a different category from the other embryo creatures because of its descent (Boonin, 2002, p. 26). So Boonin claims that even if we have the same obligations to fetuses as the ones we have towards people, we should not assign a higher value to our kind. He continues by saying that the responsibilities we have towards them do not change their rights and the rights of others (Boonin, 2002, p. 27).

I will partially agree with Boonin. The obligations we might have towards fetuses do not change their rights or the rights of other species. However, our obligations towards them can change their life, or to put it more accurately, our obligations towards them can provide or deprive them from having a life. So their rights are affected. Our obligation is to respect them and not to kill them. This inevitably interacts with their existence, even with their right to life by association.

As far as the pigs’ example is concerned (Boonin, 2002, p. 27), it is wrong to compare two different things to begin with and human fetuses have a greater right to life than mature pigs. It is not that the other species should be disregarded as inferior to the human race but it is a matter of brain, “rationality” and “self-consciousness” capabilities they are prone to develop (Meyers, 2010; Warren et al., 1984). The pigs do not have mental capacities and their functions are based on mere survival instincts. As Warren and Meyers claimed, the above traits are characteristics of personhood and pigs, no matter how mature they can be, they cannot acquire them. Fetuses though, will possess them at a later stage and that is why they should have a different treatment (Lee, 2010; Meyers, 2010). Also it is not about preferring a species over another. These are two distinct issues. It does not mean that by saving a fetus, a member of the human species, we destroy a pig, a member

of the animal species. This comparison is utterly irrelevant and irrational. This hypothesis, could apply in the scenario that we have two members of the human species at different stages.

Ronald Dworkin raises a valid point about pain in later fetal stages (Dworkin, 1993). The fetus has not an interest in surviving now, but that does not mean that it will not have in the future. Also, Dworkin's comparison of the fetus with the sculpture is challengeable (Dworkin, 1993, p. 16). It would be wrong and unfair to compare an entirely beautiful but lifeless piece of marble with the fetus that has the potential of turning out to be a person given the time and the opportunity. In case of a dead body, violating it would be ethically inappropriate and wrong to it. It may seem harmless and nobody is in pain but it is not right mainly because of the respect not just for human species but also because of the respect of life (Meyers, 2010).

The Golden Rule

Review of Literature

In most instances the evidence used to convince about the right or wrong, do not come from hard sciences like mathematics, biology and physics, but through argumentation, definitions, philosophy and invocation to sentiment. Analyzing the morality of abortion is no exception to the rule; The Golden Rule is a very convenient method to approach the issue of abortion. The Golden Rule says: "do unto others as we do have them do unto us." (Meyers, 2010, p. 139) The usefulness of this argument is that instead of examining the status of the fetus, puts the researcher in the position of the subject in question (Meyers, 2010). It also directs people towards the instinctive approach. This rule makes people see the issue from a very personal point of view by putting themselves in the position of the subject; in our case the fetus (Meyers, 2010, p. 140). So when people are asked about abortion under the perspective of the golden rule they reply: "I would not

want to have been aborted, so I cannot say that it is OK for someone else to have an abortion.” (Meyers, 2010, p. 139).

But even the golden rule is not perfect. For example, what happens in case an individual is a masochist as Meyers correctly wonders (Meyers, 2010, p. 140)? Applying that rule to people not sharing the same preferences with the masochist, being around him would be devastating but from his point of view would be perfectly ok (Meyers, 2010, p. 140). A better version of the rule has to satisfy two elemental premises on moral decisions; the “universalizability principle” and the “prescriptivity principle” according to “Gensler, along with some other philosophers” (Meyers, 2010, p. 140). The universalizability principle is applied to “relevantly similar moral beliefs”, whereas the prescriptivity principle corresponds to more specific and individual “moral beliefs and corresponding attitudes, preferences, motivation or actions” who return to oneself (Meyers, 2010, pp. 140–141). So the updated version of the golden rule changes to this: “if you think that it would be morally permissible to do a certain act to someone, then you must consent to the idea of someone doing the same act to you (in similar circumstances).” (Meyers, 2010, p. 141) Returning to the example of the masochist, it would be permissible for a masochist to start hitting another masochist since the second masochist would enjoy it but if the second person is not a masochist will definitely not enjoy it and there would be the same feeling of discomfort if the masochist not been beaten but caressed instead (Meyers, 2010).

So before we perform any action concerning others we should take a moment and think whether we would enjoy that considering their own preferences and motivation. There are some points that need to be highlighted. Firstly, what is critical in applying the golden rule based on the circumstances, is of those to whom it is being applied to (Meyers, 2010, p. 142). Seeing the golden rule in the abortion context someone must put themselves in the position of the fetus and ask

“whether or not I can consent to the aborting of the fetus that *was to become me.*” (Meyers, 2010, p. 144) Secondly, the formal golden rule requests from us to put ourselves in an imaginary situation as the main character and based on our current mentality and understanding decide the line of action (Meyers, 2010, p. 144). The third complication has to do with a pro-choice allegation. “If the formal golden rule commits us to the claim that abortion is wrong, then it also commits us to the claim that contraception and even abstinence are equally morally wrong.” (Meyers, 2010, p. 144) Avoiding pregnancy only prevents possible persons. There is a very big difference between the two words; “*potential*” person means that it is “capable of becoming real” and given the appropriate circumstances it will evolve to the point that it will be an actual, fully developed person, whereas in the case of possible people there is nothing there that can evolve to something; they can exist at some point but not until the suitable circumstances come into place (Merriam - Webster, n.d.-a, n.d.-b). Additionally, “abstaining from sex or using contraception does not cause the nonexistence of anything, for there is nothing acted on. Abortion involves acting on some existing thing, a thing that has the power to develop into a person.” (Meyers, 2010, p. 145) A “potential person” can be anybody without any specific exclusive traits; it could be any future person (Meyers, 2010, p. 147).

Analysis

The power of golden rule is that it put us inevitably at the point of the question making it personal (Meyers, 2010). Do to others what you want to be done to you (Meyers, 2010, p. 139). The application of this rule can have many complications if the proper boundaries are not set

(Meyers, 2010, p. 140). The idea of pleasure and pain is not the same for everyone; like the example of the masochist (Meyers, 2010, p. 140). The boundaries that we need to set are the “universalizability principle” and the “prescriptivity principle” (Meyers, 2010, p. 140). But what it is of grave importance is the recipient of the consequences (Meyers, 2010); in our case the fetus. So we are asked to put ourselves in the position of the fetus and be the receiver of the consequences. Many extreme abortion advocates take it a step further and claim that if abortion is immoral, then “contraception” and “abstinence” are immoral as well as abortion in terms of preventing human life (Meyers, 2010, p. 144). It needs to be a distinction at that point. There is nothing morally unacceptable in abstinence or contraception. Avoiding pregnancy does not harm anybody or create undue burden and frustration to anyone. Abortion is wrong because someone is harmed, and this someone is a potential person. Whereas in the case of contraception or abstinence there is nothing there to be destroyed (Meyers, 2010). These ways prevent conception in the first place depriving of possible people but not potential ones. The distinction between these two categories of people is enormous. In the case of the potential people we have an entity, given the opportunity, it will grow and develop to be a fully grown member of the society. But in the case of possible person there is nothing there to grow and develop and be a person in the long run (Meyers, 2010). And as Meyers illustrates, if granting moral rights to potential people is challenging, it would be impossible to grant moral status to possible people (Meyers, 2010, p. 145).

Consequences

Review of Literature

As declared before, “the rightness or wrongness of an action is determined entirely by the overall consequences of that act.” (Meyers, 2010, p. 122) This theory is known as utilitarianism.

The rightness of an action is evaluated based on the best overall consequences” or “the *least bad* consequences” (Meyers, 2010, p. 182). And by consequences, we mean the final result of an action. For the utilitarian theory what only matters is the end, without labeling a person as “good or bad” and without looking into “motives” (Meyers, 2010, pp. 182–183).

Bentham, Mill And Sidgwick

“Consequentialism is broader than utilitarianism, but as a specific theory, utilitarianism came first.” (George & Tollefsen, 2008, p. 87) The difference between the two is that Consequentialism judges the rightness or wrongness of an action based on its consequences, whereas utilitarianism as a subset of consequentialism judges the rightness or wrongness of an action based on the best or least bad outcome (George & Tollefsen, 2008, p. 87).

The three fathers of utilitarianism are Jeremy Bentham, John Stuart Mill and Henry Sidgwick (George & Tollefsen, 2008, p. 87). In his book “An Introduction to the Principles of Morals and Legislation” Jeremy Bentham makes two important assertions of the human motivation for action; “Nature has placed mankind under the governance of two sovereign masters, pain and pleasure. It is for them alone to point out what we ought to do, as well as to determine what we shall do.” (Bentham, 1789, p. 13; George & Tollefsen, 2008, p. 87) “Bentham asserts that the fundamental principle of morals and law is the Principle of Utility.” (Bentham, 1789; George & Tollefsen, 2008, p. 87) However, Bentham is interested in the prosperity of the society as a whole and not just individually. Meaning that an action is compatible with the “principle of utility” when the propensity to increase the happiness of the community is greater than any action trying to reduce it (Bentham, 1789; George & Tollefsen, 2008, p. 88). “Bentham’s utilitarianism is

“hedonistic”, it identifies good and bad with pleasure and pain – and consequentialist – it identifies the best action as the one that maximizes good consequences.” (George & Tollefsen, 2008, p. 88)

John Stuart Mill on the other hand, did not agree with Bentham’s particular form of hedonism. He claimed instead that there were “higher and lower pleasures”, excluding the idea of pain, purporting that “some kinds of pleasure,” he wrote, “are more desirable than others,” and he identified these as “pleasures of the intellect, of the feelings, of the imagination, and of the moral sentiments.” (George & Tollefsen, 2008, pp. 88–89) However, the basis of his theory – the “principle of utility” – remained the same in promoting the greatest amount of happiness altogether. (George & Tollefsen, 2008, p. 89; Mill, 2009)

Henry Sidgwick, the great 19th century utilitarian, “adopted psychological hedonism, the doctrine that only pleasurable states of consciousness are valuable, and that there are no intrinsic differences of value as between such states.” (George & Tollefsen, 2008, p. 89) And this is because according to Sidgwick it would be the only way where intensification would be likely. Having too many different values, there would be no common denominator in order to choose which maximizes happiness over the others (George & Tollefsen, 2008, p. 89).

Contrary to the theory of utility, a satisfying action does not always entail that it is good for us. And there are many times we follow less satisfying actions not because they like them but because they are beneficial for us (George & Tollefsen, 2008, p. 90).

Chris Meyers states in “The Fetal Position”, that utilitarians only consider happiness as “intrinsically good” (good itself, independently of how it came to be) and only pain as “intrinsically bad” (Meyers, 2010, p. 184). He distinguished between intrinsically and instrumentally actions. “Intrinsically” has to do with something being good or bad in its own sense, where

“instrumentally” good has the meaning of something being good or bad as an intermediary step for a different end (Meyers, 2010, p. 184). The problem with Utilitarianism is that it makes judgments based on each situation without having a universal line of action apart from the scope of the outcome itself (Meyers, 2010, p. 187). The abortion issue is not the exception to the rule. Since utilitarianism has different application to each abortion case we need to form a “rule of thumb” based on what happens in most ordinary cases (Meyers, 2010, p. 188). However, we need to include that there will be exceptions to the rule when not abiding by it will provide better results (Meyers, 2010, p. 188).

Wanting to put theory into practice, Meyers mobilizes a classic case that we need to apply utilitarianism where the potential mother wants to have an abortion. The pregnancy poses no significant risk for the mother, with no fetal deficiencies for the baby to prevent it from growing up and satisfying the conditions for its normal upbringing (Meyers, 2010, p. 188). What would be the consequences for both the mother and the fetus? In case the mother wants to proceed with the abortion, in an early stage and since the embryos cannot feel pain prior to the 36th week of gestation because of the insufficient nervous system, the feeling of pleasure or pain will be eliminated (Dworkin, 1993, p. 17; Meyers, 2010, p. 188). However, Utilitarianism considers the long-term results. Having an abortion the future person would never be born, and for that reason abortion would cause neither pain nor pleasure; meaning neither good nor bad consequences (Meyers, 2010, p. 189). In case the woman does not perform the abortion, if its life has more “suffering” than “happiness”, it would be better if it did not exist (Meyers, 2010, p. 189). For that reason it would be right to have an abortion providing that utilitarianism maximizes happiness for everyone. But most of us have a decided preference to continue living so the fetus will share the same desire as well (Meyers, 2010, p. 189).

Now we need to consider the consequences for the mother. Prohibiting abortions under the reasoning of abortions affecting the physical and psychological condition of the mother would be an example of “paternalism” (Meyers, 2010, p. 191). And then the question comes up:

Are paternalistic laws morally justifiable? Many philosophers including J. S. Mill (the most famous utilitarian) have argued against paternalism on the grounds that the individual usually knows better than anyone else what is best for himself. On the other hand, there are many activities that people engage in, that are “risky or potentially detrimental to their health. Mountain climbers and hang gliders risk injuries that are easily as bad as and much more likely, than the injuries that occur to those who do not wear seatbelts. (Meyers, 2010, p. 192).

Analysis

The idea of consequences helps people to distinguish what they should do based on the consequences of such action and it has its ties to utilitarianism (George & Tollefsen, 2008; Meyers, 2010). The consequences are the ones that shape the line of action based on the estimated result. What classifies an action as morally right is the one with “the best overall consequences (or the least bad ones)” (Meyers, 2010, p. 182). The end is the only criterion for Utilitarianism (Meyers, 2010).

Starting with utilitarianism and Jeremy Bentham’s theory, people are managed and influenced by pleasure and pain and the principle which dictates our line of actions is “the fundamental principle of morals and law, the Principle of Utility” (Bentham, 1789; George & Tollefsen, 2008, p. 87). Based on that idea we should work for the good of the community and not just ourselves. Putting it to abortion context, this would mean not only see how an unwanted pregnancy will affect the mother but also the fetus to be aborted. Based on the utility version of Bentham, the greater good that should be served and the wrong that should be avoided, is highly connected with the number

of people affected by its consequences. (George & Tollefsen, 2008, p. 88) And that is closely related to the issue of fetal research.

On one hand we see that according to the principle of utility theory, abortion's rightness or wrongness depends on the consequences meaning the "pain" and the "pleasure" the parties receiving, undergoing and performing an abortion (Meyers, 2010). Losing your life is definitely classified under the "pain" category, whereas freeing yourself from an unwanted pregnancy goes to the "pleasure" category (Meyers, 2010). The equation of consequences though is not that simple. Since every abortion case is different, it should be judged on the appropriate premises (Meyers, 2010, p. 187). For instance, losing your life, will create pain mostly to you, but it would create less pain than having a life of misery that would cause pain and grievance to other people as well (Meyers, 2010). Another example where abortion would be the right thing to do is when the life of the mother is at stake or there are severe fetal deformities that would prevent the fetus from being developed or even being born. In this case abortion prevents people from extra pain that would be inflicted if abortion was wrong which is consistent with Bentham's "principle of utility" (Bentham, 1789). But if there are no fetal deficiencies or risks in the life of the mother, abortion is wrong because it creates "pain" (not physical) to the fetus for not being born and lack of pleasure to the infertile couple who would adopt it if it was put up for adoption. On the other hand, Bentham's theory of utility would consider the fetal experimentation right. It is true that it would inflict "pain" to the fetuses in terms of experiences and desires that would like to live later in the future, but the benefits that would come from this experimentation would help cure a big number of people since stem cells are only produced once in our bodies, when we were fetuses, and because their "neutrality" they can be converted to any organ of the human body (George & Tollefsen, 2008, p. 11; Meyers, 2010).

John Stuart Mill distancing himself from Bentham's idea of hedonism, he classified and in pleasures as "higher and lower pleasures", "pleasures of the intellect, of the feelings, of the imagination, and of the moral sentiments" (George & Tollefsen, 2008, pp. 88–89). This distinction is important because it illustrates different levels of pleasure based on the degree of their anticipation (George & Tollefsen, 2008, p. 89). The general idea of utility remains the same – maximizing happiness altogether – based on consequences but without the factor of pain (George & Tollefsen, 2008, p. 89). I believe that in the case of the fetal research question and the potential benefits coming out of it, the answer would be positive. It would be more pleasant to save ten people than two based on Mill's theory.

Henry Sidgwick has given a totally different insight to utilitarianism. He acknowledged that only "consciousness" and the different levels of pleasure that reflect it are valuable (George & Tollefsen, 2008, p. 89). The other states do not have any significant differences. The ultimate goal is consciousness and its pleasures (George & Tollefsen, 2008). We need a common denominator in order to be able to appreciate, a solid ground to make our decisions (George & Tollefsen, 2008). If there excessively different possibilities and more than one values, it would be difficult for us to distinguish which option is better and outweighs the others (George & Tollefsen, 2008, p. 89). However, we do not always follow the options that cause us greater pleasure, but the ones that they are better for us (George & Tollefsen, 2008, p. 90). Sidgwick's contribution to utilitarianism was critical because it showed the need for a baseline created with different values and pleasures, like a game theory structure, which is going to help us distinguishing the best option both increasing pleasure and be more valuable than the other options (George & Tollefsen, 2008, p. 89). So in the question of embryonic experimentation, Sidgwick's theory appears to be more complicated than the other two. To decide whether we

should perform experiments to fetuses or not, we should take into consideration the “different values” that come into play with the corresponding “pleasures” as they were addressed by the fathers of utilitarianism. The life of the fetus is valuable to it and it is going to appreciate it later in life after developing the proper mental capacities. The experimentation on the fetus is valuable to researches as the means and to patients as the end. Stem cells are not that easily created after all. Taking these hypotheses into consideration, I believe that fetal researchers would be benefited more having the cure for a number of debilitating diseases. However, somebody could claim that it does not worth it to kill one in order to save five others.

Game theory is a good example of Utilitarianism; we weigh the consequences and we choose the one that benefits us the most. Actions can be the “end” or the “means” to a goal and that also classifies them as either right or wrong based on the goal (Meyers, 2010, pp. 182–185). And because every situation is different, it need to be resolved individually (Meyers, 2010, p. 187). The only universal point and common ground in utilitarianism is the action based on the best outcome possible.

Utilitarianism also applies to abortion. In a normal case where the mother wants to abort the fetus without her health being compromised, it would create more pain to abort the fetus and deprive it of its life that for the woman to endure the gestation period for nine months (Meyers, 2010, p. 188). However, if risks of the health of the mother was in place or severe fetal deformities that would result in a very difficult and painful life for the mother and the child, then the best solution would be for her to have an abortion for both of them (Meyers, 2010, p. 189). Abortion is generally performed in early stages where the fetus is incapable of feeling any pain. However, most of the people are glad that they are alive so looking at the long term, it would be morally right for the fetus to be born (Meyers, 2010, pp. 189–190).

From the side of the mother, outlawing abortions would create a great distress in women affecting them both physically and psychologically, compelling them to find illicit means to perform abortions consisting of unskilled doctors and inappropriate facilities that will not only compromise their physical health but also their mental health. This is known as the “Back-Alley Argument” (Meyers, 2010, p. 198).

In the question of whether paternalism is morally justifiable, I will agree with J. S. Mill that paternalism is not morally justifiable, because people know where their optimal result lies (Meyers, 2010, p. 192). People base their decisions on their own experiences and desires. Irrespectively of gender, people should not judge how a woman handles her life and what the situation is, since there is no universal line of action.

Abortion is definitely not a pleasant procedure and interacts directly with the psychology of the woman. So, what are the feelings involved? Aggressive anti-abortion protesters confronting them as they enter the clinic is a definitely a factor to the anxiety and guilt these women feel after having an abortion (Meyers, 2010, p. 193). After all, nobody wants to be condemned. A number of these women feel at ease in their mind (Meyers, 2010, p. 193) after having an abortion but there are also others that have conflicting feelings about it because they might have wanted to keep it, but for personal or health reasons they could not. The protesters outside the clinics play an important role in increasing the anxiety and guilt levels of these women by creating an unintended, self-inflicted social stigma.

However, the consequences affect all the parties involved. If the child is given up for adoption that action will bring great happiness to the adopting couple who wants but cannot have biological children of their own. However, giving up a child for adoption is never an easy thing to do. But talking about consequences the mother that gives up her newborn must consider also the

consequences of giving it up; both for her and for it. Most of the consequences will be positive for giving the child up for adoption since she could not raise it properly.

Moral Philosophy And The Early Human Being

Review of Literature

Moral philosophy functions as the guide regulating what is critical in order to answer questions having to do with proper behavior towards others, covering the whole age spectrum of human beings, and what actions should be avoided (George & Tollefsen, 2008, p. 83). Some interesting questions for moral philosophy would be: “is it permissible to experiment upon embryonic human beings for the sake of the benefits, especially health benefits that might be made available from such experimentation? Could we create embryos for precisely such purposes? Could we use leftover embryos from in vitro fertilization?” (George & Tollefsen, 2008, p. 84) A relevant ethical theory that addresses the ethics of scientific research and needs to be discussed is consequentialism.

Utilitarianism And Consequentialism

Such theories continue to be faced with the problem, as we shall call it, of incommensurability: there is no way of commensurating, or weighing, a multiplicity of values of different kinds, all of which offer different benefits and provide different reasons for action. Other theorists have followed the “commensurating project” by spotting wishes as the foundation of the principle for utility. Whatever takes full advantage of favorable treatment or longing fulfillment is to be attended. (George & Tollefsen, 2008, p. 91)

At the same moment we have to deal with the negative aspect of it. George and Tollefsen wanting to make a clear distinction between good and bad pleasures and desires, they compare Hitler, Mother Theresa and Gandhi (George & Tollefsen, 2008, p. 92). Since utilitarianism is based

on pain and pleasure, and in Bentham's case, it refers to pleasure of the society as a whole, should all pleasures weigh the same? (George & Tollefsen, 2008, p. 91) According to Peter Singer, Professor of Bioethics in Princeton, "utilitarianism is committed to the equal consideration of the interests of all sentient creatures. These interests are to be understood in terms of the creature's ability to experience pain and pleasure." (George & Tollefsen, 2008, p. 92)

If a being suffers, there can be no moral justification for refusing to take this suffering into consideration. No matter what the nature of the being, the principle of equality requires that the suffering be counted equally with the like suffering – insofar as rough comparisons can be made – of any other being. (George & Tollefsen, 2008, p. 92) (Singer, 1993, p. 57)

Singer contends that considering that there are entities who get involved with pain and pleasure, they should be part of the utilitarian equation (George & Tollefsen, 2008, pp. 92–93). This inference is overwhelmingly important since it includes not just humans but also "animals such as dogs or monkeys or even rats, can experience pain and pleasure." (George & Tollefsen, 2008, p. 93) However, human embryos in really early stages are not able of feeling either and for that reason in Singer's view they do not have moral status and may be used and tested whenever researchers feel to do so (George & Tollefsen, 2008, p. 93). To add to that, "Singer recognizes that sapient beings that have an achieved capacity for reason and self-awareness, have lives of greater worth than beings that have not achieved such a capacity." (George & Tollefsen, 2008, p. 93)

This argument brings us to an urgently important point when it comes to morality defined by utilitarianism and consequentialism; following this mentality we will always have human beings that they are "dispensable" for the good of the society (George & Tollefsen, 2008, p. 93). "For it treats the greater good, a mere aggregate of all interests or pleasures or preferences of individuals, as the good of supreme worth and value, and demands that nothing stand in the way of its pursuit." (George & Tollefsen, 2008, p. 93)

All that being said, the authors of the book (George & Tollefsen, 2008) claim that many supporters of utilitarianism cannot understand human rights and consequences outside of the area of literature (George & Tollefsen, 2008, p. 94). Not having a personal idea feels easier to dismiss a life, even if it is not that developed yet and it seems less than a life (George & Tollefsen, 2008, p. 93). An extreme claim would be that fetuses cannot feel pain or pleasure and thus they do not have moral status at all. But a human embryo is a human being that given the opportunity will be alive and prosper, otherwise it will cease to exist (George & Tollefsen, 2008, p. 94). George and Tollefsen claim that utilitarianism and consequentialism misuse “human embryos as mere material for scientific research” (George & Tollefsen, 2008, p. 94). This is either a result of missing the importance of early human life because it is pain-free, or maximizing happiness of the benefited ones has a different weight since we are looking into the prosperity of the whole society (George & Tollefsen, 2008, p. 94). For that reason they should be reformed in order to be able to identify the fair from the unfair treatment of human beings at any stage of development (George & Tollefsen, 2008).

Analysis

The authors of “Embryo – A Defense of Human Life” ask themselves whether it is acceptable or not to perform experiments in early human beings that might or might not provide insight for curing diseases (George & Tollefsen, 2008, pp. 7–8). Would it be permissible to produce fetuses in labs to serve that cause? Would it be all right to use the embryos that were not implanted during the IVF treatments? (George & Tollefsen, 2008, p. 10) Is it morally erroneous to

employ embryo destructive research even if the possible benefits are exceptionally helpful for future treatments? In all these questions there are consequences, both good and bad. The most appropriate theory to address these effects is consequentialism (George & Tollefsen, 2008).

Consequentialism, as the word itself reveals, is the theory maintaining that the consequences of one's conduct are the ultimate basis for any judgment about the rightness or wrongness of that conduct (George & Tollefsen, 2008). Consequentialism though goes hand in hand with utilitarianism, seeking both the actions that increase happiness and have the least of bad consequences like the amount of pain inflicted (George & Tollefsen, 2008, p. 87).

Utilitarianism And Consequentialism

The problem with different values and pleasures as addressed by J. S. Mill and Henry Sidgwick earlier in the chapter causes the issue of imbalance (George & Tollefsen, 2008, p. 91). It seems preposterous to evaluate “a multiplicity of values of different kinds, all of which offer different benefits and provide different reasons for action.” (George & Tollefsen, 2008, p. 91) Theorists that did not want to deal with the issue of “incommensurability” have just chosen favorites or wishes to address the “principle of utility” (Bentham, 1789; George & Tollefsen, 2008, p. 91). We should not ignore the fact that with good pleasures and desires, bad pleasures and desires come along (George & Tollefsen, 2008, p. 92). A very good example that George and Tollefsen give is the question why should we evaluate Hitler’s and Mother Teresa’s or Gandhi’s desires the same (George & Tollefsen, 2008, p. 92). However we need to take into consideration all desires, both good and bad. We should take into consideration the desires of all conscious attended members equally no matter how conflicted they may seem (George & Tollefsen, 2008, p. 92). Wherever there is inflicting pain we need to take it to account. In that sense and based on historic

events, we should value Mother Teresa's desires more than Hitler's (George & Tollefsen, 2008, p. 92).

Peter Singer, Professor of Bioethics in Princeton, takes this theory a step further by acknowledging not only the pain of humans but also the pain of animals needs to be taken into consideration (George & Tollefsen, 2008, pp. 92–93). And that is very true. Being members of different species does not mean that they are inferior and should not be treated as such. However, Singer excludes human embryos excluded from this acknowledgment because they are unable to feel pain in early stages and for that reason they do not have moral status and can be used freely from researchers to experiment on them (George & Tollefsen, 2008, p. 93). It is not a lack of respect towards fetuses but respect towards human life as the bigger picture. “Singer recognizes that sapient beings that have an achieved capacity for reason and self-awareness have lives of greater worth than beings that have not achieved such a capacity.” (George & Tollefsen, 2008, p. 93) He supports that human beings that have not yet developed these kind of capacities, have very little space for moral consideration if any (George & Tollefsen, 2008, p. 93). At that point I would like to add that it is not a matter of mental achievements but the greater good is at stake. The problem with Singer's claim is that having these capacities acquired a little after birth, makes not only fetuses but also young children vulnerable defenseless towards the greater good (George & Tollefsen, 2008, p. 93). Experimentation in infants is absurd.

The problem with this claim is that maybe fetuses and young children have not developed the capacity of consciousness yet, but after some stage in the fetal existence, they can very well feel pain, not to mention the pain in young children. Using that mentality we will always have entities that they are “dispensable”, will not be treated as equals or beings from the same race and they will be compromised for the greater good (George & Tollefsen, 2008, p. 93). We can see that

even inside families where the interests of the developed members outweigh the ones of the less developed members (George & Tollefsen, 2008). From the moment this sacrifice promotes the general good, it is moral and justified according to utilitarianism and consequentialism (George & Tollefsen, 2008, p. 93).

The problem with utilitarianism and consequentialism is that when it comes to human rights and actions that will affect people, its advocates can only base their knowledge on the existing literature (George & Tollefsen, 2008, p. 94). They make their claims from a safe distance without the danger of compromising their lives or bodily integrity. When utilitarians use the example of fetuses not being able to feel pain in order to back up their arguments, seem to forget that fetuses are human beings as well, come from the same family as persons and given the opportunity, they will grow up and develop the same capacities as persons. It sounds cruel to dismiss human beings like that just because they have not developed the appropriate capacities to feel pain and perform advanced mental functions. We could say that it feels like punishment for not developing these attributes earlier and faster. Utilitarianism and Consequentialism do not treat human fetuses as humans but as objects, that cannot evolve to anything more than that, based on the theories they have established so far (George & Tollefsen, 2008, p. 94). However human beings are not theories or not books; they have life, mind and a soul. They should not be treated the way books write; they should be treated as what they really are; human beings. George & Tollefsen propose that these theories are so unsuitable to be used on the fetal issue because they do not provide a fair treatment (George & Tollefsen, 2008, p. 94). The problem is that they focus too much on the common good that we seem to forget we deal with human beings. There should be an inclination towards the individual pleasure and pain as well.

Conclusion

Based on what has been claimed so far, I believe that we should have respect for the fetus since it is coming from the same family as all human beings (George & Tollefsen, 2008; Lee, 2010; Meyers, 2010). The people that they are now adults had to pass through the same stages fetuses do, until they achieve the stage adults are. Their essence has not changed (George & Tollefsen, 2008; Meyers, 2010). And to talk with measurable qualities, not even their DNA for that matter. They have the same DNA from conception until the day they will die (George & Tollefsen, 2008; Meyers, 2010). Also it is a matter of fair treatment; do what you want to be done to you in the same circumstances and with the same desires as the Golden Rule prescribes (Meyers, 2010). The same feeling of happiness that we are alive and we were not aborted will share fetuses when they will come to the stage we are and appreciate their lives (Meyers, 2010). Taking into consideration the consequences of abortion, the consequences of the fetus depriving of its life would be more devastating than the one's of the mother, considering there are no extreme situations (Meyers, 2010). But even looking at it from a clearly philosophical view, people consist of a double nature body and mind; utterly distinct but coexisting (George & Tollefsen, 2008). And this is the requirement for personhood. We cannot have a person without the one or the other. All human beings, with the exception of severely deformed beings, no matter the stage of development and immediately exercisable abilities, qualify for this requirement. Lastly in utilitarianism, where the objective is the highest "pleasure" or the least of pain" (Bentham, 1789; Mill, 2009) in a cumulative scale, losing a life outweighs the grievance over corporeal integrity. Of course utilitarianism and abortion work on a case by case outcome but in order to decide we need to apply the "principle of utility" to the side affected the most (Bentham, 1789). The strengths of this chapter is that it makes us be in the fetus position and how would we react if we were to be aborted.

It also encourages us to play both the role of the mother and the fetus and put the consequences on a scale and see which one prevails as the strongest. However, the weaknesses of the arguments of this chapter is how people use or should use the “principle of utility” in Bentham’s sense. The “end” is what maximizes “happiness” and diminishes “pain” (Bentham, 1789; George & Tollefsen, 2008; Meyers, 2010; Mill, 2009). Nonetheless, how do we choose the factors which are going to give us the greatest pleasure or the least pain? And which factor is more important than the other, since we have a big pool of values and pleasures perceived differently from people? We should also not forget there are “pains” that can create “pleasure” and “pleasures” that can create “pain” (George & Tollefsen, 2008).

CHAPTER 4: THE LEGALITY OF ABORTION

So far we have examined abortion through the lens of the status of the fetus and the ethical duties we have towards it. The previous chapters demonstrated that abortion is morally wrong with the exceptions of health issues, abnormal development, rape and incest. Are these arguments sufficient to settle the question of legality since the law permits “wrong” actions? To answer the question of legality I will focus on the woman’s rights on corporeal integrity argumentation, Thomson’s argument about any claim we have on another’s body, and when state coercion is considered morally permissible. In this chapter the basis of my inquiry will mainly be the woman in contrast to the previous chapters. In order to address the legal side of abortion I will focus on the Supreme Court cases *Roe v. Wade* and *Planned Parenthood of Southeastern Pennsylvania v. Casey* where they had applied a balancing test to investigate whether the right to body or the right to life weigh more. While the Supreme Court had performed in both cases a balancing test between the State’s interests in protecting potential persons or the woman’s right to her body based on the fetal viability with or without the trimester framework, I will perform the balancing test in conjunction with an aspect of the utilitarian theory to answer the question of what it entails to violate either right and which party is affected more by the applied action. The questions I am going to address for the balancing test will be connected with the gains and the losses for both sides in situations – not just addressing the ability of survival outside the womb - where the life of the mother is at risk, where there are fetal deficiencies or they are both healthy but there are other factors like financial ones where the mother would consider having an abortion. Through my balancing test and different parameters like the consequences following certain acts, I will show why the fetus’s right to life can outweigh the right of the mother to life when there are no health issues, both mental and physical, rape and incest. Comparing the severity of both harms, losing a life is a bigger harm than

enduring a number of hardships if any. The difference with both balancing tests of the Supreme Court is that they were more sympathetic towards the mother and the potential hardships rather than be impartial in favoring either side. The last issue I am going to address is the morality of experimentation on frozen embryos emerging from the IVF Treatment. I will approach the legality of abortion through the philosophical argumentation spectrum with a discussion of the role of the state. I will refer briefly to the necessary legislation for the sake of the argument.

Woman's Rights

Review of Literature

When we think of “women’s rights” we tend to form an image in our minds of women marching down the streets protesting for fair treatment and equality. But this is not a caricature of women’s rights. It is a rather painful but real representation of women striving for an equal and fair treatment from the society. Despite the astounding improvement towards gender equality, women still are the recipients of violence, discrimination, and institutional barriers to equal participation in society. All this repression, and the struggle for equal opportunities in work, income and education have made them a fierce defender of their rights which they have so arduously acquired, the right to bodily integrity included.

As we turn direct our attention to the issue of abortion in conjunction with the woman’s rights, we will frequently come across the sentence “it’s my body, I can abort if I want to.” (Meyers, 2010, p. 159) At first this argument seems perfectly reasonable and normal or maybe we tend to focus on the first part - which is a strong and true argument - without assigning the appropriate consideration to the second part under specific circumstances. “It’s my body”; this phrase shows the authority a woman has over her body (Meyers, 2010, p. 160). The woman’s body

is hers and she can dispose it as she wishes. Considering though the second half of the sentence – “I can abort if I want to” – her statement is not valid (Meyers, 2010, p. 160). The body might be hers but since she is pregnant, there is a part of her body that it is not her body. It is part of her body but only in the sense of attachment due to the necessity of the fetus to grow and develop (Meyers, 2010). As Meyers says: “I have the right to swing my fists about wildly – never mind if one of them strikes an innocent person in the face.” (Meyers, 2010, p. 160).

A more justifiable establishment of that principle would be “all persons have a right to determine what happens in and to their bodies, as long as by doing so they do not thereby infringe upon the rights on others.” (Meyers, 2010, p. 160) Since the pregnant woman and her fetus are interconnected we also have a conflict of rights that needs to be taken under consideration. “The pregnant woman’s right to her own body conflicts with the fetus’s right to life.” (Meyers, 2010, p. 163) In that case we have two possible actions; the woman keeps the fetus against her will or the woman is having an abortion and the fetus is deprived of its life (Meyers, 2010, p. 163). The answer though is not that simple. Having the “right to the use of one’s own body” protects people from coercion, whether it comes from the close family environment, or from different sources, other than the family (Meyers, 2010, p. 163). By using the term coercion I am referring to the application of convincing someone to do something utilizing practices of intimidation and/or force. As Meyers claims coercion in the issue of abortion could work both ways: “This is why, those who favor abortion rights call themselves “pro-choice”. On their view, mandatory abortions would be at least as unjust as banning abortions, if not more so.” (Meyers, 2010, p. 162) The right of people to their own body protects them from certain harm. It is what makes rape unacceptable and illegal (Meyers, 2010, p. 163). On the other hand, the right to life is the most basic right (Meyers, 2010). If that is the case, then the right to life outweighs the right to bodily integrity. In order to decide which of

these highly conflicted interests prevails, we need to put them “side by side” and compare them under a consequentialistic light.

Women’s Rights, Fetal Rights and the Role Of The State

When the conflict of rights is too difficult to be determined based on philosophy and common sense, a neutral party – in our case the State – is the most appropriate settler of this conflict. What is the position of the state concerning abortion and its parties’ conflicting rights? Before answering this question, we need to answer what is the stance of the State concerning bodily integrity. The state has the obligation to protect people against any kind of coercion and it is appropriate – and mainly in place – where there is harm or conflicting harms. Its goal is to prioritize the prevention of the most serious harm and promote welfare and prosperity to the community. The word harm here is used to describe debilitating health conditions and the necessity of being hospitalized. It is irrelevant whether the coercion comes from the family environment or not. In the case of abortion, as claimed earlier, the State is the mediator and the ultimate judge to decide whose interest is more at stake by identifying which right between the two outweighs the other.

The term *fetal rights* came into wide usage following the landmark 1973 Abortion case *roe v. wade*, 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147. In that case, the Supreme Court ruled that a woman has a constitutionally guaranteed unqualified right to abortion in the first trimester of her pregnancy. She also has a right to terminate a pregnancy in the second trimester, although the state may limit that right when the procedure poses a health risk to the mother that is greater than the risk of carrying the fetus to term. In making its decision, the Court ruled that a fetus is not a person under the terms of the Fourteenth Amendment to the U.S. Constitution. However, the Court also maintained that the state has an interest in protecting the life of a fetus after viability—that is, after the point at which the fetus is capable of living outside the womb. As a result, states were permitted to outlaw abortion in the third trimester of pregnancy except when the procedure is necessary to preserve the life of the mother. (Fetal Rights, 2008)

The state promotes the freedom of people and has no right to interfere with the woman's right to bodily integrity unless her interests are compromised by the decision she has made. The mother's interest to corporal integrity outweighs the right of the fetus not to be killed. On the other hand, the right to life is fundamental and should outweigh all the other rights (Meyers, 2010). The problem with this claim though is that fetuses are not recognized as persons by the state.

All this, together with our observation, *supra*, that, throughout the major portion of the 19th century, prevailing legal abortion practices were far freer than they are today, persuades us that the word "person," as used in the Fourteenth Amendment, does not include the unborn. (*Roe v. Wade*, 1973)

Fetuses may not be recognized as persons by law, but that does not mean that they are not harmed in the process. Women on the other hand, have won the right to privacy not to be coerced in taking their pregnancy to term if they do not want to. When we are talking about ordinary abortions without any risk for the mother, no fetal deficiencies and not coercion to the mother like rape, then the fetus's right to life should outweigh the right of the mother to bodily integrity under conditions since the right to life is the most fundamental right. However, the right to privacy overrides the right to life of non-confirmed human persons under the constitution (*Roe v. Wade*, 1973). In cases where there is risk for the life of the mother, either physical or mental, or the fetus is the result of a rape, the right of the mother prevailing against the right of the fetus to life is acceptable by most of both pro-life and pro-choice sides. In these situations the value of life has different weights for the mother and the fetus.

Inquiring the role of the state in abortion, we must first recall that state's immediate interest is to protect its citizens from all kinds of coercion, even if it comes from themselves. The state should operate without having any biases towards one side or the other. The state is also

responsible for the human beings and persons that they already exist, excluding fetuses until to a later stage where they will be able to feel pain approximately the third trimester (Fetal Rights, 2008). In that case they have developed interests of their own recognized by the state (Fetal Rights, 2008). Under that light, the state's immediate interest is to protect the mother and not the fetus, since we are talking prior the fetus reaching its viability. And this stance seems quite rational. There will be critics of abortion claiming that abortion is murder and they are killing an innocent life and for that reason, abortion should be impermissible (Thomson, 1971). But the fact that abortion is morally wrong does not mean that we should ban abortions and restrict a woman's right to use her body as she thinks best.

Judith Jarvis Thomson presents an interesting depiction of the right of corporeal integrity with a less polarized situation than the one of abortion, demonstrating why the right to bodily integrity is of a such significance that can outweigh the right to life (Thomson, 1971). Thomson is not interested in proving whether a fetus has a right to life or not, but rather even if the fetus has a right to life, it is wrong to deprive the mother of her bodily integrity (Thomson, 1971). The way to prove her statement is by employing the violinist argument (Meyers, 2010; Thomson, 1971). "Her argument is intended to show why this seemingly commonsense judgment is mistaken." (Meyers, 2010, p. 164). In "A Defense of Abortion", Thomson grants for the sake of argument that the fetus has a right to life, but defends the permissibility of abortion by appeal to a thought experiment (Boonin, 2002; Meyers, 2010; Thomson, 1971):

You wake up in the morning and find yourself back to back in bed with an unconscious violinist. A famous unconscious violinist. He has been found to have a fatal kidney ailment, and the Society of Music Lovers has canvassed all the available medical records and found that you alone have the right blood type to help. They have therefore kidnapped you, and last night the violinist's circulatory system was plugged into yours, so that your kidneys can be used to extract poisons from his blood as well as your own. The director of the hospital now tells you, "Look, we're sorry the Society of Music Lovers did this to you--we would never

have permitted it if we had known. But still, they did it, and the violinist now is plugged into you. To unplug you would be to kill him. But never mind, it's only for nine months. By then he will have recovered from his ailment, and can safely be unplugged from you." Is it morally incumbent on you to accede to this situation? No doubt it would be very nice of you if you did, a great kindness. But do you *have* to accede to it? What if it were not nine months, but nine years? Or longer still? What if the director of the hospital says, "Tough luck, I agree, but you've now got to stay in bed, with the violinist plugged into you, for the rest of your life. Because remember this. All persons have a right to life, and violinists are persons. Granted you have a right to decide what happens in and to your body, but a person's right to life outweighs your right to decide what happens in and to your body. So you cannot ever be unplugged from him." I imagine you would regard this as outrageous, which suggests that something really is wrong with that plausible-sounding argument I mentioned a moment ago. (Thomson, 1971)

Thomson claims that you can unplug yourself from the violinist even though this will cause his death (Meyers, 2010, p. 168; Thomson, 1971, p. 55). The right to life, Thomson says, does not include the right to use another person's body, and so by unplugging the violinist you do not violate his right to life but merely deprive him of something—the use of your body—to which he has no right. "[I]f you do allow him to go on using your kidneys, this is a kindness on your part, and not something he can claim from you as his due." (Thomson, 1971, p. 55). Thomson compares the idea of kidnapping a person to be used as a “machine” for the violinist to the issue of rape in abortion (Meyers, 2010, p. 165; Thomson, 1971, pp. 49–50). But this is not an equal comparison. In case of rape, the woman did not induce it; we are talking about coercion against the woman (Meyers, 2010).

The woman has made agreement only with her sexual partner not with any third parties (Meyers, 2010, p. 165). If the mother is forced into not having an abortion, the harm which is done to her is more serious than the harm done to the fetus (Meyers, 2010, p. 161).

Analysis

The phrase “woman’s rights” is often linked with feminism or it is treated with prejudice but it is so much more than that. The staggering changes for women in family life, in religion, in government, in employment, in education in the form of rights started more than one hundred and fifty years ago and still continues even in today’s societies. However these changes did not just happen spontaneously or come effortlessly. These rights were put in place after lots of lobbying, public speaking and nonviolent protests. These rights are there to protect the woman from coercion, discrimination and promote equal opportunities with men. The right of women to dispose their body as wished without any coercion – state or family – is also included in these rights. The right to privacy helped women not to lose their jobs if they were pregnant, they were more unrestrained to act without the fear of their families after Roe Vs Wade recognized to women the right to privacy (Fetal Rights, 2008) The right to privacy also protects women from marital rape but it was not recognized in all states until 1993 (Bergen, 1999).

After looking into the woman’s rights, the phrase “It’s my body and I can do whatever I want to with it”, looks rational and consistent, at least partially (Meyers, 2010, p. 160). Women should be able to have the freedom to take decisions about their own body and do to let anyone force them to do otherwise. The problem resides with the other part of “my body” argument. The phrase “I can do whatever I want it with it” seems irrational. As Meyers emphasizes, we can use our body the way we want to but without hurting others and compromise their corporeal integrity (Meyers, 2010, p. 160).

Coming to the issue of abortion, the woman can treat her body the way she wants to, but when she is pregnant, there is an ambivalence with the part the fetus resides. Her body is hers, but the fetus has its own corporeal integrity as well. It is a distinct human organism. An argument that

seems fit at that point is that the woman's freedom stops where the fetus's begins. The problem however is that they are so interconnected creating a clash of her rights and its rights (Meyers, 2010, pp. 168–169). From one side there is the mother compelled to keep the fetus for nine months without her consent, or the pregnancy is terminated and the fetus – future person – ceases to exist (Meyers, 2010). With a first look, the right to life outweighs the right to body. According to law though, the fetus's right to life (which is not a recognized person) can be overridden by the right to privacy of the mother (*Roe v. Wade*, 1973).

The role of the state in this conflict of interests is to protect people against coercion of any kind. The fetus is not recognized as a person until a later stage of its development (Fetal Rights, 2008) so the answer look fairly easy; the right of corporeal integrity overrides the right to life. What is important here is to understand that the state tries to protect the interests of the society, in our case the mother, and not necessarily the interests of an entity that not recognizes as person not to be killed. We could say that the state uses the version of Bentham's utilitarianism:

By the principle of utility is meant that principle which approves or disapproves of every action whatsoever, according to the tendency it appears to have to augment or diminish the happiness of the party whose interest is in question: or, what is the same thing in other words, to promote or to oppose that happiness.
(Bentham, 1789)

The state wants to promote the prosperity of the community rather than the interest of a number of entities – in our case the fetus – outnumbered by the community. In that sense, from the mother's and the state's view if a pregnancy is forced, then the mother – citizen is coerced which is not consistent with the “principle of utility”. What is important here is to clarify that the term “coercion” has strong semantics behind it. It is a very intense version of oppression. So, when the state protects the mother against any kind of coercion, it has the meaning of avoidance an

irreparable damage; either physical or mental. The state also takes into consideration the fact that the fetus cannot feel pain until a certain time has passed until it develops a sufficient nervous system. An abortion critic could claim that there is not just physical pain, but emotional pain as well (Dworkin, 1993). That is true; emotions have more classifications than pain and pleasure. However, a fetus is not able to feel anything of the above until a certain point because of its insufficient development. By all means if we ask a person if that they would prefer that never have been born the answer would most likely be “no” (Meyers, 2010). So the abortion critic talks about the prospective answer of the fetus in the question of been born or not. However the concern of the state is to protect the ones that they have already been born; its citizens. But as I claimed earlier the state is and should remain impartial to the issue of abortion based on the facts. If there is no compelling reason – severe health issues for either the mother or the baby, rape – the state should not let the pregnancy to be terminated. In the third chapter I talked about the Kindred Species Argument as introduced by Boonin (Boonin, 2002). I believe that the state is using this mindset in order to protect its citizens. Paraphrasing the Kindred Species Argument we could say that the state should respect its citizens not simply because they have certain legitimate claims against it, but because it is they are part of the society of the state. In that sense the mother is one of their own and the fetus is the “stranger” since they are not recognized as persons. The state has the duty and the obligation to protect its citizens from any kind of coercion, even if it comes from themselves. If abortion is the result of health issues, fetal deficiencies or rape then it is not condemned and criticized by most of the abortion critics. If none of the above reasons are present though, most abortion critics will condemn the woman because the fetus has a right to life and there is no reason for it not to be born. In many cases they do not recognize the “burden” the fetus creates for the mother.

However, what is important here is to illustrate the significance to one's body, even if the other has a confirmed right to life. Judith Jarvis Thomson makes an interesting analogy to the abortion issue trying to show that it is not that simple to decide which one outweighs the other, by presenting the violinist argument (Thomson, 1971). According to Thomson, nobody is forcing you to stay connected to the violinist, even though you know that this action will lead to his death (Thomson, 1971). The right to life, Thomson says, does not include the right to use another person's body, and so by unplugging yourself from the violinist you do not violate his right to life, but merely deprive him of something—the use of your body—to which he has no right (Thomson, 1971). "[I]f you do allow him to go on using your kidneys, this is a kindness on your part, and not something he can claim from you as his due" (Thomson, 1971, p. 55). Thomson is right. The right to life is separate from using another person's body. However, when Thomson says that by unplugging yourself from him you do not violate his right to life but you deprive him of something – the use of your body –, is actually violating his right to life. Disconnecting yourself from the violinist will cause the kidneys' failure that will lead to his death (Meyers, 2010; Thomson, 1971).

By putting Thomson's analogy to abortion, it resembles more of a rape case rather than a mere abortion case (Meyers, 2010, p. 165; Thomson, 1971). In rape, the woman's right outweighs the right of the fetus because we have coercion against the mother and risk for physical and mental harm (Meyers, 2010, p. 167; Thomson, 1971). The physical and mental harm addressed earlier consist of but not limited to acting as they are not themselves without recognizing that they are doing so, hallucinations, depression, self-inflicted injuries and suicidal behavior. So in cases of rape, the state does not intervene, if the woman wants to have an abortion; it is morally permissible. However, there is a number of extremists who do label abortion permissible in any situation. When the pregnancy is not the result of rape, situation tends to become tenser. Consenting to coitus, the

woman has consented to sexual intercourse to her partner, not the fetus (Meyers, 2010, p. 165). Also the fetus using the woman's womb or that she will carry it to term, is not an explicit promise. However it is "implicit" (Meyers, 2010, p. 165). When women perform sexual intercourse there is always the danger of failed contraception. Contraceptive methods are not one hundred percent effective so there is the margin of possible accidents (Meyers, 2010, p. 166). And this is known to both consenting parties. Depriving the fetus of her body in that case is the same of depriving the fetus of its life. Since it was known to both parties that there is always the case of failed contraception, they should be more thoughtful and take an additional measure of contraception. If it is a risk they are willing to take then they should as well deal with the consequences and not discharge the fetus as it is nothing important if there are not serious health issues. This kind of recklessness should be avoided when the result is to harm an entity, or better put, the future of an entity without any pressing health issues. Returning to Thomson's argument, is not about the fetal right to life but rather the right to use your own body without being coerced. Thomson puts the margin of nine months and nine years. But when we are talking about a potential person we do not only refer to the gestation but to the years after for it to grow up since it would irresponsible to give birth to a baby and then neglect it. However Thomson uses these time frames to describe a situation that will result to the death of the mother and there is no disagreement that the mother needs to protect herself first. According to Chris Meyers, we have moral responsibility to help others live or to try to provide the means for doing so but "we cannot compel others to meet these obligations, especially if it requires significant risk or sacrifice on their part"; like asking women to give birth to their children compromising their health (Meyers, 2010, p. 171).

Abortion and the methods used to remove the fetus from the uterus are not "morally OK" but it "would be wrong" to coerce on a woman to give birth to a child if she does not want to

(Meyers, 2010, p. 167). And this is also embraced by the state, even if they do not recognize fetuses as persons. People should not be coerced into anything. As Thomson said "[I]f you do allow him to go on using your kidneys, this is a kindness on your part, and not something he can claim from you as his due" (Thomson, 1971, p. 55) So, if there is no health issue or rape why should not the woman show this kindness for the future person? A high percentage of abortions is due to the lack of financial resources to raise a child. This is quite understandable. Nonetheless, there is also the option of adoption. The United States have an advanced system of adoption agencies that will take care of the mother and the potential child by finding parents to adopt it before it is even born and in that way they can also support the mother if she lacks the resources until the childbirth. It is up to the mother to decide if she wants to have an abortion or not, but from the fetus side, it was the entity created by the fusion of the sperm and the egg and from the moment of conception has the instinct of survival. Why should it be discharged and in fact in not such a humane way since it needs to be dismantled in order to be removed? (George & Tollefsen, 2008; Meyers, 2010) And again, this is only if there is no risk for the mother's life or any severe deficiencies of the fetus that will cause more pain than pleasure in the future, if it is able to be born alive.

The argument that the right to woman's body is not outweighed by the fetus's right to life because that right is only "a right not to be killed", does not entitle the fetus to be provided with the means to survive (Meyers, 2010, p. 171). In Thomson's interpretation it is "a right not to be killed unjustly" (Thomson, 1971). There is an inconsistency here though. If the fetus's right is violated, the mother has coerced on it and the right to life can outweigh the right to one's body since it is a fundamental right. If we do not provide the means to the fetus – a body – it will not be able to survive and by association this practice was followed in order to kill it. In this instance not letting the fetus use the woman's body will result to its death. So the deprivation of the woman's

body will result in killing it since everybody knows that a fetus cannot survive outside the womb by itself. According to Thomson, the right to life the fetus might have does not oblige the mother to carry it to term; these two notions are distinct (Thomson, 1971) But even if we suppose that abortion itself does not kill the fetus, the method used to remove it is based on decimating the embryo and extract it piece by piece. So it does not die by itself but rather killed in the process of extraction (Meyers, 2010, p. 173). “It does not die on its own. Nevertheless, it is killed in the act of removing it. It is not killed *after* it is removed.” (Meyers, 2010, p. 172) Some would try to defend abortion and its method by claiming that the fetus does not have a sufficiently developed nervous system and for that reason cannot feel any pain. And that is very true; it is scientifically established that fetuses are incapable of feeling any pain or any sensation for that matter that we are aware of at that stage (Dworkin, 1993; Meyers, 2010). However, not feeling any pain does not make the procedure less merciless. It could be compared to the violation of corpses (Meyers, 2010, p. 168); people are dead and do not feel any pain when they are violated. These actions though are inhumane and disrespectful. So, why should it be wrong to violate a corpse and not inhumane dismantling a human being? Some people may claim that this is the only way to perform an abortion but this justification does not make it less barbaric. On the other hand, would not be inhumane to coerce on a mother to take her pregnancy to term even if she does not want to? This action would be equally – if not more – inhumane and disrespectful towards the mother since the mother is capable of feeling pain, distress and generally the whole spectrum of feeling in contrast to the fetus. The definition of coercion applies equally to that presumption as well. If there is no risk of health issues, been the result of rape, excessive psychological pressure, self-non-recognition, hallucinations, depression, self-inflicted injuries and suicidal behavior, then I believe that the mother is not coerced and the state should intervene in restricting abortions.

State Interference, Court Decisions And The Balancing Test

In this section, I am focusing on the balancing test to compare and contrast the right to body concerning the mother and the right to life concerning the fetus. The balancing test is a method used in legal courts where different situations are put on scale to decide which one outweighs the other or others after analyzing multiple factors. I will show how this test was used by the Supreme Court in *Roe v. Wade* and *Planned Parenthood of Southeastern Pennsylvania v. Casey* and how I have applied it to these cases leading to different conclusions. The different conclusions are the result of different interpretations, priorities and avoidance of the biggest harm.

Roe v. Wade, 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973). Despite the controversy between abortion critics and abortion defenders, the issue of abortion is emotionally charged and polarized by itself. And regardless of the State's interest to protect the mother, the Supreme Court cannot stand blind before the fact that there are interests at stake from both sides. Justice Blackmun, delivering the opinion of *Roe v. Wade* conceded the complexity of that particular case and the conflicts it creates even between experts. Wanting the court to have an unbiased approach towards abortion, isolated from the emotion but driven by rationality, they had to study how and why abortions were created and serve what kind of cause (*Roe v. Wade*, 1973, pp. 116–117). The problem then – a problem that still remains – is that criminalizing abortion equals to the elimination of personal liberty Jane Roe used in the 14th Amendment's Due Process Clause; appellant would discover this right in the concept of personal "liberty" embodied in the Fourteenth Amendment's Due Process Clause; or in personal, marital, familial, and sexual privacy said to be protected by the Bill of Rights or its penumbras (*Roe v. Wade*,

1973, p. 129). The Texas abortion laws were put in place before the 14th Amendment had been adopted in 1868 (*Roe v. Wade*, 1973, pp. 138–139). However, women would enjoy more freedom towards abortion practices in the 19th century than the mid-20th century (*Roe v. Wade*, 1973, p. 140). Stricter abortion laws were created in order to restrain people from illicit sexual conduct, to eliminate the risks of the abortion procedure itself that could turn out to be detrimental for the life of the mother and last but not least, the protection of fetal life (*Roe v. Wade*, 1973, pp. 148–150). However, there is no explicit reference to any right of privacy under the Constitution (*Roe v. Wade*, 1973, p. 152). The idea of “personal privacy” exists in the constitution implicitly in the 1st, 4th and 5th Amendment, “in the penumbras of the Bill of Rights”, in the 9th and the first section of the 14th Amendment (*Roe v. Wade*, 1973, p. 152). Based on the right of privacy, people are protected from state action including women and their decision to abort or not (*Roe v. Wade*, 1973, para. 153). The justification for applying the right to privacy to pregnant women is to ensure that the physical and mental health is not compromised, to eliminate the detriment coming from an unwanted child and the inability of the mother or of the family to support it (*Roe v. Wade*, 1973, p. 153). The “appellant and some *amici*” wanting to take abortion rights a step further, argued that “the woman’s right is absolute and that she is entitled to terminate her pregnancy at whatever time, in whatever way, and for whatever reason she alone chooses.” (*Roe v. Wade*, 1973, p. 153) At that point the court did not agree with that claim and while it recognizes the right of pregnant women to privacy, the state has many interests to protect, including but not limited to health, circumstances and the potential life (*Roe v. Wade*, 1973, p. 154). For that reason the Supreme Court established the three trimester threshold where prior to the completion of the first trimester, the abortion decision was between a woman and her physician, after the completion of the first trimester the State can control

abortion procedure where health issues are at stake and the stage following viability where the State can regulate and even forbid abortions based on mother's interests and protecting potential life (*Roe v. Wade*, 1973, pp. 147–165). What is note-worthy is that under the 14th Amendment, the unborn are not considered as persons (*Roe v. Wade*, 1973, p. 158).

Under this legal framework and with that justification, the woman's right to body should prevail over the fetus's right to life. Using a balancing test between the right to life and the right to body, we have to look into every possible scenario detached from biases. We also need to consider that the implementation of the trimester threshold poses restrictions to the balancing test between the mother and the fetus based on the development of the fetus and the proximity to its viability. The factors that need to be taken under consideration are: the liberty of persons, physical or mental pain for the mother, non-existence for the fetus and loss of life for the mother, hardships for the mother, appreciation of the fetus's life in the future for not being aborted, the possibility of reducing maternal hardships through adoption processes and the uncertainty that the right we have chosen is the least vital between the two. In the first scenario we have the mother where taking her pregnancy to term will endanger her life or the fetus has severe deficiencies that will cause it a life of misery if it is able to be born. In that first scenario the right to body outweighs the right to life and taken under a utilitarian light the pain that will be caused in case the woman performs an abortion is lesser than the pain that will be caused if she brings her pregnancy to term. In that first scenario the fetus is not close to viability and so the restrictions are more loose. Even if the fetus has more or less the same characteristics as a person but they are not immediately exercisable, restrictions are again applied but the right to corporeal integrity prevails because bringing that pregnancy to term will be devastating for both the mother and the fetus as opposed to the practice of abortion. On the other hand, if the pregnant woman does not

have any health issues and the fetus is healthy too, then the right to life should outweigh the right to bodily integrity. We need to acknowledge that not only health issues qualify for legal abortion. If the woman's distress is so much because she does not want to bring her pregnancy to term, the state should protect her from mental harm. When on the other hand the pregnant woman is healthy both physically and mentally without any compelling reason that this will change after giving birth, and the fetus is healthy without any abnormalities, the State should protect the potential life.

The need for balancing the rights of the mother and the fetus was prevalent in the Supreme Court's decision and argumentation. What is the proper line of action so we treat everyone equally and have the least overall bad consequences for the parties? From one side the Court had to consider and respect the liberty of persons and specifically mothers and not coerce on it and on the other hand they had to consider the potential life, the deprivation of its liberty as a consequence and which should be prevented as the most harmful between the two harms (*Roe v. Wade*, 1973).

The debate is ongoing and unfortunately there is uncertainty whether the fetus has a right to life or not and whether the personal freedom of the woman should be restrained or not based on the existence of a potential person. If we claim that the right to body outweighs the right to life and remove all restrictions from abortion and later it is shown that the right to life outweighs the right to bodily integrity, then we have sacrificed so many lives and human potential under an uncertainty; future generations someone could claim. On the other hand, if we claim that the right to life outweighs the right to bodily integrity and later it is proven differently, then we have coerced on women, create them distress for an allegation we were not even sure back then. Both rights are equally important. However, the harm being done in one side is bigger than the harm

on the other side and for that reason and the factor of uncertainty we should claim that the right to life outweighs the right to bodily integrity under conditions. An interesting comparison would be the slavery debate. Some considered slaves as non-humans and some others considered them as humans. It looks like the same uncertainty that fetuses are persons and they should be protected or the right to life outweighs the right to bodily integrity. How many lives have been taken because of the uncertainty of whether slaves were people or not?

Planned Parenthood of Southeastern Pennsylvania v. Casey 505 U.S. 833 (1992). In the *Planned Parenthood of Southeastern Pennsylvania v. Casey* case the Supreme Court reaffirmed *Roe v. Wade* by recognizing the woman's right to have an abortion if she seeks for it, the State intervention is limited prior to viability and the State can have legitimate interests to protect the mother and the potential child after viability. But affirming *Roe v. Wade* was not the only thing the Supreme Court had done in this court case. The woman must be aware of the abortion procedure, consequences and risks, provide the doctors with the consent of seeking an abortion, wait at least 24 hours after her consent to have an abortion, if she is a minor she needs the consent of at least one parent or a judge (*Planned Parenthood of Southeastern Pennsylvania v. Casey*, n.d., p. 845). While introducing these restrictions to make sure that the mother has been adequately informed of the situation, the Court abandoned *Roe's* trimester threshold by just distinguishing prior to viability and after viability. The undue burden however, extends after the viability as well (*Planned Parenthood of Southeastern Pennsylvania v. Casey*, n.d., p. 837). Justices in *Casey* acknowledged that viability may occur at 23 or 24 weeks, or sometimes even earlier, in light of medical advances (*Planned Parenthood of Southeastern Pennsylvania v. Casey*, n.d., p. 860). However these restrictions are invalid if the life of the mother is at risk or there is a medical emergency. Medical emergency is defined as:

[t]hat condition which, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function. (*Planned Parenthood of Southeastern Pennsylvania v. Casey*, n.d., p. 879)

What is significant in this abortion case is that we have the introduction of the term “undue burden test” introduced by the Justice O’Connor (*Planned Parenthood of Southeastern Pennsylvania v. Casey*, n.d.). “An undue burden exists, and therefore a provision of law is invalid, if its purpose or effect is to place substantial obstacles in the path of a woman seeking an abortion before the fetus attains viability.” (*Planned Parenthood of Southeastern Pennsylvania v. Casey*, n.d., p. 837)

Having claimed above the basic rulings in *Planned Parenthood of Southeastern Pennsylvania v. Casey* applying a balancing test will be more challenging than in the *Roe v. Wade* case. More specifically what is challenging is the term “undue burden” and how it can be interpreted as to not being abused to either ends. The term undue burden can be closely connected with physical and mental harm, and medical emergency as well. As in the section about *Roe v. Wade* there are the same factors that we need to look into in order to set the parameters for this case balancing test. The factors that need to be taken under consideration are: the liberty of persons, physical or mental pain for the mother, non-existence for the fetus and loss of life for the mother, hardships for the mother, appreciation of the fetus’s life in the future for not being aborted, the possibility of reducing maternal hardships through adoption processes and the uncertainty that the right we have chosen is the least vital between the two. If a woman suffers going through a pregnancy, compromising her physical and mental health then abortion should

be permissible both prior and after viability, having the right to bodily integrity outweighing the right to life. However, not all cases constitute an undue burden. According to Justice O'Connor, prior to viability the State does not have a strong case in protecting both the mother and the fetus. So the right to bodily integrity outweighs the right to life considering also that the fetus does not have an adequately developed nervous system and it cannot feel any pain. However, even under those circumstances – if there is no compelling reason – there will be some harm to either sides based on the action; either the mother will endure something that she does not want to or the fetus will lose its life. Additionally, viability should not be such crucial condition since the fetus comes with the same genetic information that will possess in the future. It is not a matter of essence but rather stage the entity is at. Based on the uncertainty of which of the rights is more important we should consider the biggest harm done between the two. The biggest harm should be prevented. The harm done to the fetus is bigger than the harm done to the mother. So, given that there is no compelling reason for the mother to abort and no fetal deficiencies and the uncertainty of the right choice, the right to life should prevail. If the woman does not experience undue burden by bringing her pregnancy to term, I believe she should give the chance to the fetus to have a life and if for whatever reason she cannot support it she should give it up for adoption.

Frozen Embryos

Now we will turn to a different stage of the fetal life. A twisted situation of rights is the one with frozen embryos. In “The Fetal Position” Chris Meyers alleges that many of the pro-life side recognize that the fetus has a right to life and this right outweighs a person’s right to bodily integrity (Meyers, 2010). In this case, the embryos are an unavoidable repercussion of IVF (In Vitro Fertilization). When the pregnancy is successful “there are usually several embryos leftover in the freezer.” (Meyers, 2010, p. 178) To the remaining embryos, there are three options to be followed. One is for them to deteriorate and be discharged, the second option is for them to be used in fetal research and stem cells research for medical treatment experimentation, which means dismantling them in the process (George & Tollefsen, 2008; Meyers, 2010, p. 172), and the third option is for them to be implanted to a woman (Meyers, 2010), not the biological mother, who wants to have children and does not mind if it is not her biological child if the biological parents agree; a form of “*preborn adoption*”. In fetal research embryos are dismembered in order to provide information on dealing with mainly nervous system diseases. Since the body cannot produce new nerve cells and stem cells that can evolve into any organ (George & Tollefsen, 2008; Meyers, 2010), it is going against to the argument of the right not to be killed recognized to the fetus. On the other hand it will help to prevent many diseases of the nervous system, helping many people in the long run. Diseases that can be overcome from embryonic research are Alzheimer’s disease, Parkinson’s, spinal-cord injuries, and others that involve the death of brain cells and other nerve tissue. It will serve a great cause by saving the lives of many people, babies included, instead of being thrown away in case their parents do not want them or do not permit other people to take them instead. President Obama (CNN, 2009) lifted restrictions on federal funding for stem cell research, reversing a policy that had put surplus embryos at the crossroads of science, ethics, and

religion for eight years. The retraction of these restrictions means that eventually more parents should be able to donate unused embryos for this research. However, the state law about embryonic research can vary from state to state (CNN, 2009).

Many couples find donating their embryos to research a very caring act thinking that since science helped them having children then they should return the favor by giving back the non-implanted embryos for research. Some others cannot stand the idea that they have a child or children in his world and they are not with them, so they donate them to science. There are other couples that understand the hardship of infertile couples and they decide to give permission for their embryos to be implanted to other women, but this procedure differs among clinics and it can be an easy situation followed by filling paperwork or it can be a complicated situation involving lawyers, to locate recipient family.

According to George and Tollefsen, utilitarianism and consequentialism have brainwashed people towards the support for fetal experimentation (George & Tollefsen, 2008) If the results are successful, they promise the future advantages, treatments and transplants they will be able to produce without having people dying trying to find a compatible organ donor. Utilitarianism and consequentialism are the ethical theories that address the ethics of “scientific research” but in a rather “flawed” way (George & Tollefsen, 2008, p. 94). George and Tollefsen are partly right. Embryos are not able to feel pain but they have interests even though they cannot perceive them at this stage (George & Tollefsen, 2008, p. 94). However, they are not discarded without a serious reason, as there are some cases on abortion. They are used to find treatments for incurable diseases, malignant tumors and generally cures for ailments of the nervous system. This experimentation, if it is successful, will save the lives of many people of all ages, races and social stratification. Utilitarianism and consequentialism address the entire perspective on the situation

of fetal experimentation and base their decision on the best outcome of the society in general. These fetuses are the result of IVF treatments. Staying too long without being implanted to the uterus causes them to perish and be discarded without any benefit coming from their death (Meyers, 2010). By using them for research, many human lives can be saved due to the information and stem cells they contribute to humanity. Another important factor is that at that stages they are “younger” than fetuses, excluding any possibility of be able to feel or react to any action performed on them.

Conclusion

Women have struggled to gain the rights they have today. By depriving them the right to abort we deprive them part of their freedom. They need to be protected against coercion of any kind. Women have the right to their bodies and to control it the way they want to (Meyers, 2010, pp. 43–44). The fetus is part of their body only in the sense that comes from them and not an organ they possess to treat it as such. It can have a life of its own and it is a separate entity from the mother. In the realm of rights, the woman has corporeal rights and the fetus has the right not to be killed. Depriving the fetus from the woman’s body by association leads to the loss of its life. Its rights are also violated because in order to perform the abortion they need to dismantle it in the process; it cannot be extracted intact (Meyers, 2010, p. 172). However, even if abortion is not “morally OK”, depriving the woman of the right to have an abortion would be “morally wrong” (Meyers, 2010, p. 167). It is not a matter if the fetus has the right to life but rather the right of the woman not to be coerced and compromise herself based on Judith Jarvis Thomson (Thomson, 1971). Even if the fetus has a right to life does not mean that the mother owns that right to it. The state also recognizes the right of the mother outweighing the right to life of the fetus. The state has the obligation to

protect its members from any kind of coercion. This is why the Supreme Court had applied the balancing test to distinguish between the weight and consequences of those two conflicting rights. Even though I have applied the same test with my own considerations, I was lead to different legal conclusions. The factors I took under consideration are: the liberty of persons, physical or mental pain for the mother, non-existence for the fetus and loss of life for the mother, hardships for he mother, appreciation of the fetus's life in the future for not being aborted, the possibility of reducing maternal hardships through adoption processes and the uncertainty that the right we have chosen is the least vital between the two. I believe that there should be some limitations as to what the conditions are for a woman to have an abortion. If an unwanted pregnancy taken to term qualifies for coercion or health risk then the state gives the right to its women not to be coerced including the right to abort or not. The state tries to protect its own against "strangers", since it does not recognize the fetus as a person until some later point. Nonetheless, if there are no severe implications like the ones mentioned above then abortion should be prevented. Even in the case of insufficient financial resources, there are adoption options and funds for such cases. Certainly both rights are compelling but we cannot protect both simultaneously. Between the two, the harm being done on the fetus by aborting it is greater than the harm being done to the mother by prohibiting abortion.

Coming to the issue of frozen embryos and fetal experimentation, these embryos were created to service a cause. If the number of frozen embryos are more than enough for the mother, they should not be discharged as useless. There are many infertile couples that would love to these fetuses, even if bureaucracy is not on their side. However, when it comes to fetal experimentation I do not think that it is reprehensible. Since we produce stem cells only when we are fetuses and these cell can evolve to any organ, vital or not, fetal experimentation could help finding the cure for many

diseases or even create transplant organs for people in need (Meyers, 2010). In that sense we are not wasting lives but we contribute to development, alleviation of pain and prosperity of people. Even in the utilitarian theory it would create more pleasure and less grievance the fetal experimentation resulting in the saving and prosperity of five people or so from one embryo. The strengths of this chapter is the rule of law. Peoples' freedoms must be protected from all kinds of coercion. The weaknesses of these arguments though is that under the constitution, fetuses are not recognized as persons, not until some late part of gestation at least, and for that reason they are not granted with moral consideration (Fetal Rights, 2008). The actual problem is that there is no consideration for fetuses whatsoever. Under which law, if any, are their rights situated? If not persons or potential persons, what institution should be their advocate?

CHAPTER 5: SUMMARY AND REFERENCES

Summary

I believe that the regardless of how complex the issue of abortion can be, and how it has divided generations of people so far, it gives us more another reason to think that this decision should not be taken lightly. Analyzing the main arguments from both the pro-life and pro-choice perspective, there is not a concrete answer on the status of the fetus. However, most on both sides agree that the human fetus comes from the Homo sapiens family which means that it comes from the same species as an adult does; just a different stage of it. Based on continuation, if the fetus is given the appropriate circumstances, like a womb to be implanted to, then it will grow to be an adult as well. It will grow up enough to develop complex mental and intellectual traits as well as full moral consideration for his or her existence. Its DNA acquired from the moment of conception will not change at any stage of its life (Meyers, 2010). The DNA at four weeks of gestation is the same DNA at the age of eighty years old for instance. On the other hand, analyzing women's rights, the right not to be coerced and as an extension the right to their corporeal integrity – right to abort – and the protection from the state without denying the fetus the right to life but simply showing that the mother has not obligation towards it at least in the early fetal stages, we see a very strong argumentation from both sides. There is an uncertainty as to which right outweighs the other. Having put the balancing test into place and comparing both situations in violation to corporeal integrity, fetal development and the proximity to its viability, I think that the right to life should come first because the harm done to the fetus is bigger than the harm done to the mother excluding health issues. If there are no health issues for either sides and not compelling interests at stake we are in front two ends; the possible hardships of the mother and the forgone positive life experiences that will not occur. Putting these ends on a scale and for all these reasons and their analysis prior

to that, I conclude that abortion should be legally impermissible with the exceptions to situations including when the mother's life – both physical and mental – is at stake, when it is too burdensome for the life of the mother, where severe deficiencies will prevent the fetus of living a tormented life or prevent its living at all and in cases of rape and incest. In other cases where pregnancies are normal and the only problem is financial or career or anything lesser in the coercion implications' scale, then I believe that abortion should be legally impermissible. Some could claim that since the fetus has not developed an adequate nervous system which will enable it to feel pain there is no cost and thus no harm. Nonetheless, it deprives him or her from their future that given the circumstances they will never be able to experience. But even if these arguments analyzed so far are not enough for the pro-choice side to be convinced and since none of the two sides has any clear answer to the question, we should err on the safe side saving the party that would have to sacrifice more. Additionally if there is the issue of limited resources or career or any non-health-related issues in either the mother or the fetus, there is also the option of adoption. In that case both the mother is released from a substantial burden and the fetus maintains its life. Adoption patterns can even enable the adoption parents to be close to the mother from whom will acquire the fetus even before labor, assisting her with what is needed and when the child is born, they can take it with them immediately. From a woman's point of view I understand that it is not easy for her to give her child up for adoption, knowing that one part of herself is somewhere out there. Nonetheless, it is better than elimination and in the contemporary society biological mothers can keep in touch with their children been adopted from a new family. This is another reason for why abortion is wrong. Even if the biological mother has her reasons for been unable to raise a child, there are many infertile couple who are more than happy to do it for them and without even cutting the bonds between the biological mother and the adopted child.

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