

Pro-Choice “Personhood”: An Abortive Concept

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I. INTRODUCTION

Invariably, when philosophers wish to challenge the notion that human beings in the womb have a right to life or need to be protected from harm, they invoke a distinction between “human” and “person”: the embryo or fetus might be a “human being,” but the being’s humanity is not the issue. The only relevant question to ask in regard to the fetus is whether or not it is a “person.” Only persons have rights; mere membership in the human race is not enough to secure a place at the table of the moral community. And an embryo or fetus does not meet the criteria of a person. As a consequence, a woman does nothing immoral if she secures an abortion to avoid some type of evil.

Many pro-life philosophers have already addressed this reasoning head-on; they have played according to pro-choice rules and won. Such philosophers have grappled with the criteria offered by pro-choice philosophers, arguing that these criteria are hopelessly arbitrary, immeasurable or indefinable, or that they place the bar of personhood so high that they open the door to infanticide. For example, Stephen D. Schwarz and R.K. Tacelli have argued in this way in their “Abortion and Some Philosophers: A Critical Examination,” as have Andrew C. Varga in his *The Main Issues of Bioethics* and Sidney Callahan in her “Abortion and the Sexual Agenda.”¹ For my part, I believe that the criticisms offered by philosophers like Schwarz, Tacelli, Varga, and Callahan are devastating and decisive, and my intention in the pages to follow is little more than to add my voice in the hopes of making the case against pro-choice personhood more audible. Thus, in terms of the nature and end of my project, I have little original to offer, but as Samuel Johnson noted about moral matters, “People need to be reminded more often than they need to be instructed.” To this end, I will try to remind the reader

that the attempt to pry personhood off of humanity fails on many counts. In particular, pro-choice personhood seems to be engineered uniquely to justify abortion, being of no use outside the abortion debate and little more than a synonym for “normal human adulthood.” In addition, this concept or set of criteria will be shown to be overly constricted and alarmingly free of any context, so much so that it jeopardizes the very notion of parental obligations.

It should be noted at the outset that the critique of personhood to follow is not a general indictment of the notion of person as it has been variously used throughout history. Rather, the target here is personhood *as it is utilized by pro-choice philosophers*, not as it has been used, for example, by Christian theologians in their attempts to understand the Trinity. Indeed, a full defense of the pro-life position would undoubtedly require a robust account of what it means to be a person, such as, for example, the one offered by Robert Spitzer, S.J., in his *Healing the Culture* or the one offered by Stephen Schwarz in his *The Moral Question of Abortion*.ⁱⁱ “Personhood” is a fallacious notion; to be a person does not mean that one has reached or achieved a certain level of development or perfection. To be a person is to be a kind of being, and fetuses *are* persons, as are all the human beings on this planet. But to demonstrate this proposition is a more noble and complex project than allowed for by the parameters of this essay. For starters, a full philosophical anthropology would require, at least, a philosophy of definition and the rudiments of a philosophy of nature. Though less noble, however, the present task is no less necessary, for as Ludwig Wittgenstein rightly noted, “The truth cannot force its way in when something else is occupying its space.”ⁱⁱⁱ So, if the present essay can at least free up some space for the truth, then it will not have been in vain.

II. MARY ANNE WARREN ON HUMAN VS. PERSON

The human *vs.* person distinction or a similar one has been adopted by many pro-choice philosophers, such as Mary Anne Warren, Peter Singer, Michael Tooley, Charles Gardner, Joel Feinberg, L. W. Sumner, and Joseph Fletcher. Mary Anne Warren offers a typical example of this line of reasoning in her “On the Moral and Legal Status of Abortion,” and in

order to provide a clear focus to this essay, I will concentrate on her argument, focusing on the moral question and leaving the legal one aside.

According to Warren, the term “human being” has two distinct but often confused senses, a “moral” and a “genetic” one. To be a human being in a moral sense is to be “a full-fledged member of the moral community, who is also a member of the human species.”^{iv} To be a human being in this sense is to be a being with “full and equal moral rights.”^v Later in her argument Warren substitutes the term “person” for “human being in a moral sense.” A human being in a genetic sense is merely “any individual entity that belongs to the human species.”^{vi} Warren argues that there are clearly human beings in the genetic sense who are not persons or human beings in the moral sense—such as the comatose adult, who is still alive but whose consciousness has been permanently erased, and the anencephalic child, who is born without any sensory or cognitive capacities.^{vii} Regardless of the fact that a biologist could identify these beings as genetically human by looking at their chromosomes, such beings do not have rights because they are not or are no longer persons: “[G]enetic humanity is neither necessary nor sufficient for personhood,” Warren states.^{viii} Thus, the real question that needs to be addressed in regard to abortion is: “Do fetuses meet the criteria of persons or are they merely human beings?”

In order to answer this question, Warren has to address a prior question, viz., “What are the criteria for personhood?” To arrive at such criteria, Warren asserts, one must do more than simply take an “anthropocentric” look at normal adult human beings. Rather, one must survey a broader range of beings:

In searching for these criteria, it is useful to look beyond the set of people with whom we are acquainted, all of whom are human. Imagine, then, a space traveler who lands on a new planet, and encounters organisms unlike any she has ever seen or heard of. If she wants to behave morally toward these organisms, she has somehow to determine whether they are people and thus have full moral rights, or whether they are things that she need not feel guilty about treating, for instance, as a source of food.^{ix}

Warren suggests that her galactic traveler would adopt at least the following criteria for personhood: sentience, emotionality, reason or the ability to solve problems, the capacity to communicate, self-awareness, and moral agency. According to Warren, Mr. Spock and Data, two characters on the television program *Star Trek*, would meet enough of these criteria to qualify as persons. But sadly, yet not unpredictably, fetuses, at least at the early stages of their development, do not meet any of these criteria. In short, they are merely human beings, not persons, and are therefore not entitled to be treated as members of the moral community. As a consequence, women may secure an abortion and end the life of a merely “potential person” if completing the pregnancy would lead to “intolerable mental, physical, and economic cost to themselves and their families.”^x

Anticipating criticisms of this line of argumentation, such as those offered by the pro-life philosophers mentioned above, Warren acknowledges that her argument is open to the objection from infanticide, for she concedes that “neither fetuses nor newborn infants are clearly persons.”^{xi}

A newborn baby does not meet the criteria of personhood that she sets forth, and Michael Tooley and Peter Singer aside, most people do not want to endorse the practice of infanticide. To avoid this unappealing conclusion, she has to steer her argument into the murky waters of utilitarianism. To this end, Warren argues that, even though newborns are not persons and do not have any rights, they are “so close to being persons that to kill them requires a strong moral justification.”^{xii} Many people are eager to adopt an infant, and so to kill this infant would be immoral since it is “a potential source of pleasure to some family.”^{xiii}

III. A RESPONSE

A. ARE THERE ANY HUMANS WHO ARE NOT PERSONS?

The first thing to note about the terms “human” and “person” is that, in everyday conversation, no one ever uses them in the way that Warren or any like-minded philosopher does. No expectant mother ever wonders whether her baby is merely a human being or actually a person, and surely, no mother who has delivered ever expresses sadness over the fact that her newborn daughter is not yet a person, even though she is

inarguably a human being. And I would hazard to guess that few, if any, women who are wrestling with the question of whether or not to abort derive any consolation from the fact that the life inside them is merely a human being, not a person. In ordinary language, the terms “human being” and “person” are synonyms. Indeed, unless one is referring to the lexicon of the theologian or the science fiction writer, every use of the word “person” in the English language could be replaced with the word “human being” without the slightest change in meaning. But even to make exceptions for theologians and science fiction writers is to concede too much. As will be shown, theologians who speak of God and angels as “persons” do not use the term in the way that pro-choice philosophers do, and in regard to science fiction, people do use the words “person” and “human” interchangeably. For example, Drew Barrymore’s character “Gertie” in the film *E.T.: The Extra-Terrestrial* referred to the title character as “the man from the moon,” and it would have made as much sense to refer to him as “the person from the moon.” Likewise, it is common for characters in such novels or movies to comment on how “human” such and such an alien is, although Warren would prefer to use the term “person” in these contexts.

Of course, the mere fact that a distinction is novel or unusual does not necessarily mean that it is invalid, and indeed one of the jobs of philosophy is to highlight distinctions that are often overlooked in ordinary life. So, if it is true that, *aside from the question of abortion*, human beings (or, rather, persons) regularly distinguish between humans and persons and that this distinction carries moral weight, then the pro-choice case will have much to be said for it. In other words, if we do deny protection to human beings who are not persons outside of the abortion debate, then we might very well be justified in denying rights to the unborn, who are not yet persons. But if this distinction, as used by pro-choice thinkers, does not appear anywhere except in defenses of abortion, one should question whether or not it was engineered for any other reason than to justify abortion, in which case it would be highly suspect to say the least.

Warren, it will be remembered, argues that we certainly do distinguish between humans and persons in other areas of life and that

this distinction is morally significant. In particular, she argues that the comatose adult and the anencephalic child are merely human beings, not persons, and that this distinction makes a moral difference. These beings, Warren claims, are outside the moral community and thus do not have rights. (Other thinkers have added to this list of humans who are not persons. For example, Louis P. Pojman adds severely retarded children and severely senile adults.^{xiv}) So, is Warren correct? Do we commonly deny personhood to such human beings, and more importantly, on the basis of this denial do we claim that these human beings should not be protected from harm?

Let us first address the case of the man or woman who is permanently comatose. Leaving aside the troublesome question of how we *know* that a given human being will *never* come out of a coma, the first thing to note about this case is that the central issue is not whether or not the patient is a “person.” The fundamental difficulty in cases of permanently comatose patients is how one is to define “death” or how one is to define “extraordinary care,” for it is possible to keep many parts of a human being functioning with machines long after brain activity has ceased. Of course, comatose adults do not meet Warren’s criteria of personhood, but to argue that physicians do or should withdraw extraordinary care because the patient is no longer a person is fraudulent. Physicians do not say, “I’m sorry, sir. We no longer see any reason to continue with life support for your wife because she is no longer a person.” They say, “I’m sorry, sir. We no longer see any reason to continue with life support for your wife because she no longer has any brain activity and her condition is permanent; she is already dead.” No one in a cemetery meets Warren’s criteria of personhood either, but that is not why we buried them. And it should be noted that no one is advocating that physicians, the state, or the next of kin should be permitted to burn, crush, poison, or dismember the patient, as is done in an abortion. The only practical issue in regard to these patients is whether or not to continue extraordinary care, and this question does not depend on the personhood of the patient. If the loss of personhood were the issue, then the victim would relinquish his or her right to be protected from harm the moment he or she slipped into a coma; it is the permanent

and hopeless condition of the comatose victim, not his or her personhood, that defines this case.

And the same observations can be made about the anencephalic child. Anencephalic children rarely survive until birth, and if they do, they only live for a brief time, sometimes only a matter of minutes or hours. In practice, physicians impose DNR (“do not resuscitate”) orders on anencephalic cases; when these children’s systems fail, as they inevitably do, the doctors merely let them die. If not continually resuscitated, these infants cannot survive for even a few months, and there is no possibility that they will ever be sentient or rational.^{xv} Like comatose adults, anencephalic children do not meet Warren’s criteria of personhood, but once again, this fact plays no part in the practical treatment of these individuals. These children are not resuscitated because their condition is irreversible and hopeless; they are born dying and may never have a conscious moment in their lives. Once again, the question of personhood is not relevant. If there were any hope at all that the condition of these infants would, in fact, stabilize and that they would grow a cerebrum and cerebellum in the days, weeks, or months after their birth, there is little doubt that hospitals would go to great lengths and spare no expense to keep these infants alive. Indeed, hospitals regularly do this in the case of premature infants, who clearly do not meet Warren’s criteria of personhood and who are far less developed than the infant who goes to term.

As the preceding paragraphs have shown, then, the two cases that Warren lists (the permanently comatose human being and the anencephalic child) do not help to further her argument. In neither case is the question of the being’s personhood the deciding or even a relevant factor in the practical decisions made by physicians. It is also clear that there are numerous other human beings, such as the severely retarded and the severely senile, who do not meet Warren’s criteria, and yet this fact has no bearing on how these human beings are to be treated. *Indeed, there is not a single case of a human being outside the womb who is free to be killed because he or she is not a “person” in Warren’s sense of the word; mere membership in the human race is a sufficient condition to be protected from harm.* Given this fact, there can be little doubt that the

distinction between human and person has been engineered for no other reason than to justify abortion. Warren has not observed a generally valid moral distinction and then applied it to the problem case of the unborn child and abortion; she has determined that abortion should be morally permissible and then has created a distinction to justify that practice. To proceed in this fashion is the philosophical equivalent of gerrymandering.

B. PERSONHOOD IS NORMAL HUMAN ADULTHOOD

The next reasonable question to ask is where Warren's criteria of personhood come from. Warren's answer, it will be remembered, is that she arrives at them through a sort of dialectical discovery. She not only surveys the human beings whom she knows, but in her imagination she travels into space in order to survey organisms "unlike any she has ever seen or heard of" in order to avoid being anthropocentric. After lining up all of these cases of persons, she then tries to isolate the traits that are specific to persons, not merely to human beings.

Without attributing any intellectual dishonesty to Warren, one needs to recognize that this whole alleged process of induction is a complete charade. Human beings are not merely examples of persons; they are exemplars. As a point of epistemology, we do not discover what it means to be a person by "observing" Spock, Data, or any other imaginary beings; we judge those beings to be persons to the degree to which they resemble human beings. Human beings are the only beings that we have experience of who fully meet Warren's criteria of personhood, and even if we did have experience of other creatures like Spock or Data, we would judge their personhood against the standard set by human beings. In this respect, we have no choice but to be anthropocentric. As Wittgenstein observed in his *Philosophical Investigations*, "[O]nly of a human being and what resembles (behaves like) a human being can one say: it has sensations; it sees; it is blind; it is deaf; it is conscious or unconscious."^{xvi} And one could certainly add to Wittgenstein's list the rest of Warren's criteria: "it has emotions; it has moral agency; it communicates, etc." To use Aristotelian or Thomistic language in this regard, one would say that to call truly alien or entirely fictional creatures

“persons” would be an “analogical extension” of the term. The only reason that Spock and Data might be judged to be persons is because they are sufficiently similar to normal adult human beings, who are the only embodiments of personhood of which we have experience, and we would judge these aliens to be less like persons to the extent that they deviated from the traits or characteristics of normal adult human adults. If Warren the space traveler had encountered organisms “unlike any she ha[d] ever seen or heard of,” she would never have any grounds for calling them persons, for a person is merely someone who sufficiently resembles a normal adult human being. Spock, who (it must be remembered) is really just a man wearing rubber ear extensions and makeup, is described by Warren as having no emotion, although a more accurate description would be that he is Stoic, not devoid of emotion entirely. (He must have some kind of appetite if he is to be moved to any kind of action.) But if he were entirely devoid of emotion, we would rightly judge him to be less of a person, for he is lacking something that a normal adult human being rightly possesses. Warren’s purpose for invoking extraterrestrials is clearly to relativize the importance of being human, to insinuate that human beings are merely one type of person in a sea of persons, but in this regard she fails. What appears to be a dialectical discovery of the traits of all persons is actually just a description of normal adult human beings.

That human beings are the standard by which we judge the personhood of other beings, real or fictional, can clearly be seen in the way we attribute personal characteristics to animals. Dogs, for example, certainly have an emotional life, and emotionality is one of the criteria of personhood listed by Warren. Dogs can be angry, happy, sad, and even eager, and I am sure that dog lovers, ever eager to humanize their pets, would be more than happy to add to this list of emotions. When a person attributes an emotion or emotional capacity to a dog, he does not begin with a general notion of what, for example, anger is and then apply it to the dog. He does not say, “I have gathered together all the animals in my experience that have an emotional life, and I have determined the general features of anger or the capacity to be angry. And this dog meets enough of these criteria to legitimately be called ‘angry.’” What he does do is

compare the dog to a human being—who is, epistemologically speaking, the paradigm case of emotionality—and then determine whether the concept of anger can be extended to this animal. When a dog growls, curls up its nose, barks, and when the hair on its hindquarters stands up in an appropriate context, we feel comfortable describing the dog as “angry” because the dog’s behavior sufficiently resembles that of an angry human being. But even here we must acknowledge that we are extending the concept of “anger” beyond its original home, and as a result, we cannot be completely clear about what it means to call a dog “angry.” Anger is an emotional response to a perceived injustice, and so, properly understood, anger is not possible in a non-rational animal like a dog that cannot perceive an injustice. Indeed, what we call “anger” in a dog has much more to do with the sheer instinct to survive than it does with any perception of injustice. But because angry dogs, as angry people, are liable to hurt us, and perhaps because angry dogs are loud, like angry people are often loud, we feel comfortable extending the concept to a dog in a given context. However, as we travel down the chain of being, away from the human being, we realize that our attributions of emotion, such as anger to bees, become less and less appropriate. Human concepts can only be stretched so far before they break.

In a similar vein, theologians, who make the distinction between human beings and persons when speaking of angels or of the Trinitarian nature of the Christian God, admit that they are being anthropocentric and are not really able to pry off personhood from humanity. In their own words, they acknowledge that they are doing little more than saying, “Angels and God are much greater than human beings in ways that we cannot really grasp. But the best way we can do to describe angels or God Himself is to liken them to human beings, for human beings are the highest thing in all of nature.” In other words, we call angels and God “persons” because we wish to attribute to them all of the perfections of a normal adult human being without any of the limitations, such as being material or being trapped in time. St. Thomas Aquinas, for example, observes:

Person signifies what is most perfect in all nature—that is, a subsistent individual of a rational nature. Hence, since everything that is perfect must be attributed to God, forasmuch as His essence contains every perfection, this name *person* is fittingly applied to God; not, however, as it is applied to creatures, but in a more excellent way....^{xvii}

But according to Thomas, this “more excellent way” is not ultimately intelligible to human beings because “our intellect knows God from creatures” and only “as far as creatures represent Him.”^{xviii} Or, as Etienne Gilson succinctly puts the matter, “[A]ll the names transferred from creatures to God only apply to Him in a sense which eludes us.”^{xix} So, theologians do not attribute personhood to God because they have a general notion of personhood that they have gathered from surveying human beings and extraterrestrials; they attribute personhood to God because human beings are the “most perfect [beings] in all nature,” and they do not want to deny God any perfection. To attribute personhood to God is to say, “We are ill-equipped to speak of God, and the best we can do is call him a ‘person,’ because God is at least as excellent as a human being—who is the highest being we know—but is not an animal, does not have a gender, does not grow over time, etc.”

Further evidence for this conclusion can clearly be seen in the criteria that are offered by Warren or any other pro-choice philosopher. As noted above, many pro-life philosophers have criticized criteria of this sort for being arbitrary; e.g., Schwarz and Tacelli note that criteria such as those proposed by Warren and Tooley seem “desperately contrived.”^{xx}

And from one perspective, they *are* desperately contrived; they are engineered to screen out human beings in the womb while letting through human beings at every other stage of life. But for present purposes, what is worth noting is not their arbitrary character but, rather, their remarkable consistency or uniformity. If we look at Warren’s criteria—sentience, emotionality, reason, the capacity to communicate, self-awareness, and moral agency—or at the criteria proposed by any other pro-choice philosopher, we find that, lo and behold, the normal adult human being meets *all* of them completely. What a stroke of good fortune! If human beings were merely one type of person in a vast sea of persons, one would not expect them to meet fully every one of these

criteria. Just as Spock is alleged to have no emotional life—which is probably not the case—one would expect there to be other personal qualities on the list which human beings lack. On some level, Warren senses this problem, and so she tries to address it in the following manner:

An entity need not have *all* these attributes to be a person. And perhaps none of them is absolutely necessary. For instance, the absence of emotion would not disqualify a being that was personlike in all other ways. Think, for instance, of Mr. Spock (who is half human and half alien), and Data (who is an android). Both are depicted as lacking the capacity to feel emotion; yet both are sentient, reasoning, communicative, self-aware moral agents, and unquestionably persons. Some people are unemotional; some cannot communicate well; some lack self-awareness; and some are not moral agents. It should not surprise us that many people do not meet all of the criteria of personhood.^{xxi}

In effect, Warren is saying: “These criteria have been gathered from many persons across the galaxy, so you should not expect human beings to meet all of them anymore than you should expect Vulcans to meet all of them.” Here, one can see that Warren has shifted the sense of many of these criteria in order to make it appear as though human beings are no different than Vulcans when it comes to meeting these criteria. For example, “emotionality,” which she earlier defined as “the capacity to feel happy, sad, angry, loving, etc.” has changed to “emotional,” which means something entirely different. Many men are not “emotional”—they are reserved or Stoic—but they have as much “emotionality” as John Henry Newman, who could break into tears at a moment’s notice. Likewise, “the capacity to communicate” has changed to “can communicate *well*,” which means something entirely different. Many men cannot communicate well—they stutter or do not know the rules of grammar—but they have as much capacity to communicate as Demosthenes, whose eloquence was legendary. Here Warren is trying to create the impression that she is describing a broad range of criteria that no one species of persons could hope to meet. *But all of these criteria are proper to the human species—a normal adult human being meets all of these criteria with ease—and this is hardly what would be expected if something like Warren’s inductive or dialectical process were actually at*

work here.

Admittedly, the argument presented in this section does not, by itself, do away with Warren's argument about personhood. Indeed, Warren or any other like-minded philosopher can still retort that, even if, epistemologically speaking, the concept of personhood must be arrived at anthropocentrically, the fetus still does not meet the criteria of personhood put forward and, as a result, does not have rights. And of course, Warren would be correct in this respect. Yet, once the true epistemological roots of this distinction are realized, some of the power of the pro-choice argument is undoubtedly drained. Warren in particular and pro-choice thinkers in general need to give the impression that the criteria that they are applying are generally valid moral principles, not specially constructed ones that only apply to (and justify) the morality of abortion. As noted in Section A above, the pro-choice distinction between human and person does not provide any guidance in regard to any other area of moral inquiry; there is not a single case of a human being outside the womb who is free to be killed because he or she is not a "person" in Warren's sense of the word. And Warren's cosmic explorations are intended to reinforce this same impression of objectivity, only on an even grander scale. In effect, she is arguing that personhood is a generally valid moral principle not only because it applies to individual humans but also because it applies to all beings in every imaginable galaxy. What the foregoing section, then, is intended to demonstrate is that Warren's notion of personhood is not what it pretends to be. Pro-choice personhood is not a generally valid moral principle, culled from the observation of human beings in particular and of numerous species of aliens; instead, it is an artificially constructed and unduly truncated notion that merely describes normal human adulthood.^{xxii}

C. PERSONHOOD AND PARENTHOOD

One of the symptoms that Warren's criteria are artificially constructed and unduly truncated is that, if society were to take them seriously, the institution of the family and parenthood would be profoundly undermined. (Indeed, there is little doubt that, as a matter of fact, this has been

the very outcome of *Roe v. Wade*, *Casey v. Planned Parenthood* and all of the other cases that reinforce *Roe*.) In particular, if Warren were correct and only persons in her sense were full-fledged members of the human community, then it would become difficult if not impossible to identify the grounds of parental obligation

No one worth listening to would deny that parents have special obligations to their offspring and that, even further, it is the mark of *good* parents to be willing to undergo nearly any hardship to provide for and protect their children. The emotional, financial, and physical sacrifices that good parents make for their children are so common that there is no need to list them, and the parents who do not make such sacrifices or, even worse, abuse or kill their own children are rightly recognized as among the worst of criminals. But in healthy parent-child relationships, the question of what the *grounds* are for the special obligation of parents to their children never arises, for the intensity of love that parents normally feel for their children moves them to perform their duties with pleasure, or at least with a minimum of groaning. (Admittedly, the duty to feed one's children is more cheerfully fulfilled at 6 p.m. than at 3 a.m.)

But in the case of depraved human beings, such as dead-beat dads who try to deny their responsibilities to their offspring or mothers who abandon their newborn children, the question does arise: "What exactly does ground a parent's obligation to his or her offspring?"

There is no other reasonable answer to this question than that the parents previously engaged in an act of sexual intercourse that produced this human being. Men and women have a choice as to whether or not they wish to engage in acts that are inherently procreative, and if they choose to do so, they are obligated to take responsibility for the consequences of their actions. *The very act that facilitates the beginning of new life is what grounds the parents' obligation to this new life.*^{xxiii} The pro-choice position, which either implicitly or explicitly denies this connection between sexual intercourse and parental obligation, has no way of making sense of the most important institution in any society: the human family. To suppose that parental duties arise from some type of social contract is both ridiculous and perverse. Children—born or unborn—are not capable of entering into a contract, and even if they

could, the depth, the extent, and the intensity of the parental obligation can hardly be captured in the notion of a contract; contracts are for strangers who do not trust one another. Nor are parents obligated to their children because they choose to be obligated to them. This point is made by Sidney Callahan in her “Abortion and the Sexual Agenda”:

[I]f explicit intentions and consciously accepted contracts are necessary for moral obligations, why should men be held responsible for what *they* do not voluntarily choose to happen? By pro-choice reasoning, a man who does not want to have a child, or whose contraceptive fails, can be exempted from the responsibilities of fatherhood and child support.^{xxiv}

Yet, as is commonly acknowledged, dead-beat dads who do not want to provide for their children are obligated to do so, and even if they do provide financially, they are morally reprehensible for abandoning their children emotionally and spiritually. Their obligation to their children clearly arises from the mere fact that they engaged in the sexual intercourse that produced these children.^{xxv} The same holds in the case of the mother; the baby is hers, and she is obligated to this child because she engaged in an act that brought her child into being. And if this is the case, then human beings certainly do and, indeed, must have obligations to human beings prior to the onset of personhood, as Warren defines it.

Indeed, the very act of abortion involves an implicit acknowledgment of this natural obligation and an attempt to flee from it. If a mother did not acknowledge, at least on some level, that she was obligated to this child, she would probably not be seeking the abortion in the first place. If she delivers the child, she knows that she will be emotionally attached to the baby and, more importantly, she knows that she will be obligated to provide for this baby. (Indeed, even the decision to give up a child for adoption should be understood as a choice that has the best interests of the child in mind.) Psychologically speaking, an abortion is an attempt to nullify all of the natural obligations that have arisen due to the conception of a child; the mother, as it were, is trying to repress these natural obligations before they become too obvious to deny.

Now, if the foregoing account is even generally true, then the pro-choice philosopher who wields the human *vs.* person distinction has a

dilemma on his or her hands. Why, on this account, do parents have any obligation to their children? According to Warren, they of course do not have any obligations to their unborn children because they are not persons or full-fledged members of the moral community. But on such an account, why do parents have any obligation to their children even after their birth? Newborns, as Warren notes, are not persons, and even if they were persons, why would the parents have any moral obligation to take care of them? Of course, on the pro-choice account, when the human children become persons, the mother can no longer kill them, but again, one must ask why the parents have a duty to their children after birth. Presumably, the pro-choice “argument” here—which is more of the nature of an assertion—is that a mother assumes responsibility for (or at least relinquishes her right to kill) her children if she chooses to give birth to them or, perhaps, if she chooses to take the baby home from the hospital. Not surprisingly, Warren does not address the issue of parenthood obligations, but Judith Jarvis Thomson gives a typical example of this type of “argument” in her “A Defense of Abortion”:

If a set of parents do not try to prevent pregnancy, do not obtain an abortion, but rather take it home with them, then they have assumed responsibility for it, have given it rights, and they cannot *now* withdraw support from it at the cost of its life because they now find it difficult to go on providing for it.^{xxvi}

At this point in the pro-choice argument, however, things fall apart so quickly and dramatically that it is difficult to believe that anyone can maintain this position with a straight face.

First, if the decision to take the child home from the hospital is the moment when parental obligation begins, then we are left with the unpalatable conclusion that no child who is born has any right to be cared for by his or her biological parents. This is manifestly absurd; no one actually takes this position seriously, not hospitals, not parents, not adoption agencies—indeed, no one except advocates for abortion. Were this position to be taken seriously, the propagation of the human race would be in jeopardy. Even adoption, properly understood, is a responsible act of caretaking by a mother (and, perhaps, father) who believes that she cannot properly care for her offspring. To use the

phrasing of W.D. Ross, we could say that parents at least have a “*prima facie* duty” to their offspring, i.e., a duty that must be carried out unless there is some supervening duty, like the well-being of the offspring, which prevents it from being carried out.

Second, if the “choice” to give birth—which is an absurd notion, somewhat akin to the notion of the “choice” to age^{xxvii}—is what bestows an obligation on a parent, then the father, who cannot give birth, could never be morally obligated to his children. Why is he obligated? Is he obligated because he chose to have sex with the mother nine months prior to the birth? If so, has this obligation been on hold for nine months, or has he been obligated all along to pay for hospital bills and any other expense that the woman, while pregnant, incurs? And if he is obligated because of his choice to have sex, why is not the mother also obligated by her choice to have sex? And if the choice to have sex is not the moment when a woman’s natural obligations to her child begin, *why* is birth? Why is the fact that the child has changed his or her location—from inside to outside the womb—morally relevant to the issue of parental obligation? Is it anything but sheer madness to argue that, while carrying her child, a mother has no responsibility to him or her, but once the child is born, the mother becomes bound by one of the strongest moral obligations that can exist between human beings?

In short, the pro-choice position on this issue must be reduced to the following: A mother’s decision, and her decision alone, at any time during the pregnancy is what determines whether or not she has any obligations to her developing offspring. (But even then, what if she changes her mind during pregnancy? Suppose a woman first chooses not to abort her baby but then, six months into the pregnancy, wishes to abort. Does her first choice obligate her to take care of the child and, therefore, prevent her from carrying out her wishes? And if not, why can’t she change her mind again four years later and declare that she no longer wishes to be obligated to her child, who is now in preschool?) And so, in the final analysis, when asked why a mother and father have an obligation to their newborn, the pro-choice philosopher can only respond, “Because the mother chose not to kill it.” In short, this position is the basest form of ethical voluntarism, and it provides no reasonable

grounds for the most important institution in human life.

In this section, I have not offered a fully developed argument, for among other things, I have addressed only the typical pregnancy. That is, no attempt has been made to address the extremely rare instances in which a woman conceives after having been raped or a woman's life is in serious danger due to pregnancy. Of course, focusing upon the typical case is precisely how one should determine moral norms or principles, but regardless, my purpose here is not to lay out a fully developed line of argumentation. It has been to show that, if we deny personhood to the human life developing in the womb—i.e., if we demand that it meet the criteria of normal human adulthood—then the very notion of parental obligation is in peril. Here, as before, pro-choice personhood suffers from being unduly constricted. To be a person is to be, by nature, a social being, one who finds himself immersed in a web of intricate relations and obligations, many of which are not explicitly chosen. Indeed, the very process of human generation and development reveals the essentially social nature of the only persons we know, and any account of what it means to be a person must take into account how a person develops.

D. PERSONHOOD AND COMMUNITY

At this point in the analysis, it should be clear to those who have at least some familiarity with the history of philosophy that the pro-choice notion of “personhood” is rooted in modern or Enlightenment philosophies. In particular, the notion is rooted in modern social contract theories about the origins of society, theories that depict the normal adult human being as the paradigm case of a rights-bearer or at least as a candidate for a rights-bearer. In the theories of such philosophers as Thomas Hobbes and John Locke, grown men find that life in “the state of nature” is simply too disagreeable and dangerous, and so they join together in a social contract to create a government that will guarantee their protection from the intrusions of their fellow man. Mary Anne Warren's account of persons and rights clearly falls in line with this modern or Enlightenment view of the origins of society. She writes:

Moral agency matters to moral status, because it is moral agents who invent moral rights, and who can be obliged to respect them. Human beings have become moral agents from social necessity. Most social animals exist well enough, with no evident notion of a moral right. But human beings need moral rights, because we are not only highly social, but also sufficiently clever and self-interested to be capable of undermining our societies through violence and duplicity.^{xxviii}

For Warren, who here echoes Hobbes to a certain extent, moral rights are “invented” in order to keep certain individuals from “undermining our societies through violence and duplicity”; the invention of rights is a pragmatic move to keep the wolves at bay.

Now, the problem with applying this view of moral rights to the abortion issue is not so much that it begins with a pessimistic anthropology or that it claims rights to be a mere human invention; the problem with this view is that it *begins* its analysis with radically individualistic men who appear on the scene as adults without any natural obligations to anyone, including the parents who gave them life and reared them. Indeed, the proponents of these theories are quite explicit about the ahistorical character of these men in the state of nature. For example, in his *Discourse on the Origin of Inequality*, social contract philosopher Jean-Jacques Rousseau outlines his project for discovering man in his “natural state” in the following way:

For it is no light undertaking to separate what is original from what is artificial in the present nature of man, and to have a proper understanding of a state which no longer exists, which perhaps never existed, which probably never will exist, and yet about which it is necessary to have accurate notions in order to judge properly our own present state.^{xxix}

Put simply, these men—and they are always men, never women—are virtually ahistorical in nature; they apparently never were unborn children, never were infants, and never went through adolescence, and so they have become adults with little, if any, sense of gratitude or obligation to their parents or future generations. Harvard Law Professor Mary Anne Glendon further elaborates on the ahistorical character of these radically individualistic natural men:

It may be noted that the philosophers who elaborated the individualistic basic understandings of human nature that still inform modern legal systems dwelt little on family life or on what women might have been doing in the state of nature. Furthermore, their generic images of “man” as a radically free and independent individual necessarily implied the rejection of many traditional views about what was “natural” in the relations between the sexes and between parents and children.... Once having paid their respects to the mating impulse, however, the authors of the great works on natural right gave short shrift to the subject of family relations in “nature.”^{xxx}

Instead of beginning their investigations more organically, by observing the way in which people naturally develop (the way in which people naturally come together to form families, families naturally come together to form villages, villages naturally come together to form towns, etc.), these social contract philosophers began with grown men in isolation and then were forced to construct theories as to what brought these loners together into communities.

Needless to say, such an approach to rights or to moral theory in general, which completely neglects natural obligations and human development, is lethal for unborn children. If the paradigmatic rights-bearers or parties to the social contract are Warren’s “persons” or Hobbes, Locke or Rousseau’s “natural men,” then the unborn must be odd and alien intruders whose status in society has to be called into question. Guided by such an approach, such philosophers ask such questions as: “Are these infants sufficiently like the parties of the social contract to give them junior or honorary membership in society? Or, on account of their current lack of capabilities, are they to be grouped with animals, who can be used as natural resources or disposed of as these persons see fit?” Yet, they put little emphasis on questions like “How did these radically individualistic and autonomous adults who are the parties in this social contract come to be?” or “What are the necessary conditions for the possibility of having a social contract in the first place?” or “What do adults owe to the society that reared them, and how can they return the favor to future generations?” Instead, they simply ask, “To whom are we to grant rights and to whom are we going to deny them?” That question, like the social contract itself or the criteria of

personhood offered by philosophers like Warren, does not pay sufficient attention to history or natural development.

Approaches such as Warren's hold up autonomous and fully developed human beings as the standard by which the moral status of all other creatures is to be judged, without acknowledging that these autonomous and fully developed human beings would not even be here had they been judged by this standard earlier in their lives.^{xxxii} To wield this human *vs.* person distinction, one must suffer from acute amnesia, for only someone who has forgotten his own natural development, his debts of gratitude to the past, and his sense of responsibility to future generations could believe that only persons in this restricted sense are entitled to protection. Human beings develop over time and depend upon other human beings to survive and flourish at all stages of their development, most especially during their intra-uterine life and infancy, and any moral philosophy that fails to accommodate these basic facts about human nature is not worth keeping.

And the good news is that we do not need to keep the human *vs.* person distinction, as wielded by pro-choice philosophers, or the impoverished view of moral philosophy upon which it is grounded. Sound moral philosophy is an investigation of human flourishing, and to this end, it must take into account the concrete conditions of human beginnings as part of its foundation or context. The process of human development and, in particular, the radical dependency of children must be among our starting-points; human development and dependency cannot be regarded as anomalies in our moral theory that can be addressed in an appendix or a footnote. A sound moral philosophy must identify, promote, and safeguard the necessary conditions for human flourishing, yet the criteria of pro-choice personhood completely disregard these necessary conditions. Indeed, the fundamental problem with these criteria of personhood is not that they are too narrow but that they appear entirely free of any context. Philosophers like Warren take a snapshot of the unborn child, apply their criteria, and render their judgment, without taking into consideration the act that brought the child into being, the obligations of those who brought the child into being, the process of human development, or the necessary conditions for human

flourishing in general. The function of the human vs. person distinction is not to shed light on the moral life but, rather, to provide a justification to a certain group of human beings to do violence to another. History has seen this abuse before; the Roman Empire used the same distinction to deny full legal rights to slaves. We can only hope that the modern version of this distinction ultimately has the same fate as its historical predecessor.^{xxxii}

NOTES

i. See Stephen D. Schwarz and R.K. Tacelli, "Abortion and Some Philosophers: A Critical Examination," *Public Affairs Quarterly* 3 (1989) 81-98; Andrew C. Varga, *The Main Issues in Bioethics* (Mahwah: Paulist Press, 1984), pp. 57-73; and Sidney Callahan, "Abortion and the Sexual Agenda," *Commonweal* (April 25, 1986): 232-38.

ii. See Robert J. Spitzer, S.J., with Robin A. Bernhoft, M.D., and Camille E. DeBlasi, M.A., *Healing the Culture: A Commonsense Philosophy of Happiness, Freedom, and the Life Issues* (San Francisco: Ignatius Press, 2000) and Stephen D. Schwarz, *The Moral Question of Abortion* (Chicago: Loyola Univ. Press, 1990).

iii. Ludwig Wittgenstein, "Remarks on Frazer's *Golden Bough*" in *Philosophical Occasions: 1912-1951*, ed. James Klagge and Alfred Nordmann (Indianapolis: Hackett, 1993), p. 119.

iv. Mary Anne Warren, "On the Moral and Legal Status of Abortion" in *Contemporary Moral Problems*, ed. James E. White (Belmont: Wadsworth, 2000), p. 156.

v. Ibid.

vi. Ibid., p. 157.

vii. Ibid., p. 159.

viii. Ibid.

ix. Ibid., p. 157.

x. Ibid., p. 159.

xi. Ibid., p. 162.

xii. Ibid.

xiii. Ibid.

xiv. Louis P. Pojman, *Life and Death: Grappling with the Moral Dilemmas of Our Time* (Belmont: Wadsworth, 2000), p. 114.

xv. Frank Mahon, M.D., interview by author, notes, Hershey, Pennsylvania (May 18, 2003).

xvi. Ludwig Wittgenstein, *Philosophical Investigations*, tr. G.E.M. Anscombe (New York: Macmillan, 1958), §281.

xvii. St. Thomas Aquinas, *Summa Theologica*, tr. Fathers of the English Dominican Province (Allen, Tx.: Christian Classics, 1948), I, q. 29, a. 3.

xviii. Ibid., I, q. 13, a. 2.

xix. Etienne Gilson, *The Christian Philosophy of St. Thomas Aquinas*, tr. L.K. Shook, C.S.B. (Notre Dame: Univ. of Notre Dame Press, 1956), p. 104.

xx. Schwarz and Tacelli, p. 9.

xxi. Warren, p. 158.

xxii. Indeed, as Stephen Schwarz has observed, the problem with Warren's criteria of personhood is not that they are, in themselves, invalid; the problem is that they are not broad enough. See chapter seven of his *The Moral Question of Abortion* for his observations in this regard. That Warren's criteria are not sufficiently broad becomes immediately evident when she must resort to contrived utilitarian arguments to prevent the killing of newborns.

xxiii. Admittedly, the issue of conception due to rape complicates matters in regard to parental obligation, but what is intended in this section is not to put forward a full blown account of the grounds of parental obligation but, rather, to show the way in which pro-choice personhood does away with parental obligation. However, in this respect, it should be remembered that, as the saying goes, hard cases make bad laws; moral principles should never be constructed around the most problematic cases.

xxiv. Callahan, p. 236.

xxv. Francis J. Beckwith sets forth a similar line of argumentation in a more

complete and detailed fashion in the seventh chapter of his *Politically Correct Death: Answering the Arguments for Abortion Rights* (Grand Rapids: Baker, 1993).

xxvi. Judith Jarvis Thomson, "A Defense of Abortion" in *Moral Problems* (New York: Harper & Row, 1979), p. 149.

xxvii. This line is a modification of one used by Sidney Callahan. See her "Abortion and the Sexual Agenda," p. 235.

xxviii. *Ibid.*, p. 159.

xxix. Jean-Jacques Rousseau, *The Basic Political Writings*, tr. Donald A. Cress (Indianapolis: Hackett, 1987), p. 34.

xxx. Mary Anne Glendon, *Rights Talk: The Impoverishment of Political Discourse* (New York: The Free Press, 1991), p. 69.

xxxi. This point is made more eloquently by Francis J. Beckwith in his "Shifting the Focus in the Abortion Debate" in *Life and Learning V: Proceedings of the Fifth University Faculty for Life Conference* (Washington, D.C.: University Faculty for Life, 1996), pp. 339-40.

xxxii. I would like to thank Paul McNellis, S.J., Ronald K. Tacelli, S.J., and Kathryn Mahon Peach for their helpful comments on this paper.