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Relevant Philosophical Distinctions.

In this paper I do not defend a definite position or come to any conclusions. Instead, I try to clarify six distinctions that might be helpful in ethical or legal arguments about induced abortion.

First, we must not assume that the expressions "living human individual" and "person" are identical in meaning. Whether or not every living human individual is a person, the expressions differ in meaning. Biology makes use of words such as "living", "human", and "individual". Thus the complex expression "living human individual" pertains to empirical science. One can verify empirically whether or not something is a living human individual.

But the word "person" does not appear in biology. This word often is used in such a way that the criteria of its use are not purely empirical ones. Of course, psychology may have empirical uses of the word "person". But in ethical and legal contexts the word "person" is used in ways that imply some ultimate framework, some metaphysical or theological worldview. For this reason, while scientific evidence can be relevant in determining for ethical and legal purposes whether or not something is a person, the evidence of science never can be decisive. Consequently, theologians and philosophers are confused if they look to the scientists to find out when the human embryo becomes a person.

Biologically, a living product of human conception developing as a whole toward the exercise of various functions in a characteristically human way is a living human individual. (This definition excludes cells in culture and parts of an organism maintained artificially). However, the fact that the fertilized ovum is a living human individual does not settle whether it is a person.

If someone objects to abortion on the ground that it is the killing of a person, his argument is not complete when he has shown that the living product of human conception is an individual distinct from its parents. If someone wishes to defend abortion by denying that some person's right to life is violated, he need not deny that a living human individual is killed. The pro-abortionist can argue that the individuals killed are not persons; he might also claim that not all unborn persons have a right to life.

Second, in some sense of the word "person" an embryonic human individual is a person only potentially, not actually. If one defines "person" in terms of actual self-determination, even a healthy new-born baby is not a person, for self-determination hardly seems to begin at birth. If one defines "person" by the ability to feel pleasure and pain, then the fertilized ovum is not a person though the fetus becomes a person well before birth.

Those who adopt definitions of the word "person" by

which an embryonic human individual is only potentially a person ought to distinguish such potentiality from pure possibility. At conception there begins to be something which, if all goes well, eventually develops by a continuous process into what - by any definition - will be called "a person". The potentiality in question therefore is a reality, not a mere possibility.

The importance of the reality of this potentiality varies depending upon the metaphysics with which one views it. Some metaphysical views reduce present potentiality to future actuality - for example, for this embryo to be a potential person merely means that at some time in the future, if all goes well, that into which this embryo has developed will act in certain specified ways. Other metaphysical views explain the future in terms of present potentiality - for example, for this embryo to be developing toward future actual personhood is nothing but its present functioning as a real, though potential, person.

If someone objects to abortion on the ground that a potential person is killed, he must argue that the potentiality in question is more than mere reference to the future; otherwise, he will be unable to distinguish between contraception and abortion. If someone defends abortion by arguing that the embryonic human individual is only a potential person, he might argue that only the actual is real. The pro-abortionist also might argue that only actual persons - not all real persons - have fundamental rights.

Third, some philosophical and religious theories of man and human goodness have determinate or closed concepts of "man" and of "the good life for man". Other theories have open (non-determinate) concepts.

A closed concept is used like a checklist; it is a complete set of already settled criteria. These criteria are affirmative. Any negative elements in the closed concept are subordinated to affirmative ones. Those who use such determinate or closed concepts have a standard for judging whether a given unborn individual is likely to lead a "truly human life" or whether it is going to be "well born". If the standard is not fulfilled, abortion may seem indicated. The argument is analogous to that of an inspector who examines products at the end of an assembly line. Items that do not meet specifications are rejected and turned to scrap.

Those who view man and human life with non-determinate concepts, which are always open to dialectical development, cannot claim to know adequately what man is or what the good human life is, but only what man is not, and what certainly does not belong to the good human life. Thus open concepts lead to an ethics which gives first place to some absolute negative norms, not because the negative is prized for itself, but because negative norms alone can express the good for which man hopes without limiting it to the goods he already comprehends. It follows that those who use open concepts never claim to know whether a given unborn individual is likely to lead a "truly human life" or whether he is going to be "well born". Consequently, those who use open concepts hesitate to approve abortion and are likely to wholly reject the so-called eugenic and socio-economic indications.

Fourth, some metaphysical and theological theories

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maintain that the person as such is indestructible. According to such theories, life is changed but not taken away by death. In fact, it may be believed that life is greatly improved by an early death. Such a view has implications for every form of homicide, not only for abortion.

Those who hold that a person is not destroyed by death cannot maintain the moral evil of abortion or any other form of homicide on the ground that persons are destroyed by such acts. Rather, the argument might be that homicide deprives a person of the value of sharing in life in the world, and perhaps also that homicide corrupts and disturbs what the Creator and Lord of life has formed and destined for an unending life.

Those who hold that a person is utterly destroyed by death can hardly maintain that death is an evil for the one who dies, because absolute not-being is not an evil. Dying, but not death itself, may be held to be an evil. Thus those who hold that the person can be utterly destroyed must seek in life itself their grounds for claiming that persons, or at least some persons, have a right not to be killed.

Therefore, a possible implication of the position that the person is utterly destroyed by death is that unborn individuals, whether persons or not, have no right not to be killed, or that the right to life of the unborn is less than the rights of others to goods such as personal freedom, comfort, or a better standard of living.

Fifth, we should distinguish between mytho-poetic thinking and analytic thinking. Both types of thinking are important; the former leads to insights otherwise unavailable, while the latter allows us to reach definite, rationally defensible conclusions.

In mytho-poetic thinking, nothing is discrete; everything flows into everything else. When something comes to be, it is at first only slightly what it will be; reality is gained by degrees. For such thinking there is nothing odd in imagining that some persons are more persons than others - for instance, that whites are more persons than Negroes, or that those already born are more persons than the unborn.

Mytho-poetic thinking has an important role in life. It greatly influences customs and affects forms of expression such as the liturgy. For this reason it is not surprising that the treatment of embryos aborted early in gestation is not the same, legally and liturgically, as the treatment of infants who die after live birth. Moreover, the pattern of mytho-poetic thinking follows desire and feeling rather than logic. That is why a woman who loses a desired pregnancy in the earliest weeks will mourn the loss of a child, while a mother whose unwanted child dies long after birth will consider herself relieved of a troublesome "growth".

Biological and legal thinking are analytic rather than mytho-poetic. In analytic thinking it is absurd to suggest that humanity comes by degrees. Anything can be more or less in various ways, but not more or less what it is. What something is - its being such a sort of thing - is not subject to more or less. Therefore, nothing becomes what it is gradually.

If one wishes to argue against abortion, then it is necessary to use an analytic mode of thinking and to avoid the mytho-poetic mode of discourse, which is not argumentati-

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ve. If one wishes to defend and promote abortion, then analytic thinking must be avoided and mytho-poetic thinking must be used to confuse the issues and to arouse favorable feelings.

Sixth, laws against abortion in western nations were rooted in a Judaeo-Christian moral consensus that now exists in few nations. The American Declaration of Independence (1776) reflected a genuine consensus when it stated that "all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness". However, that consensus does not exist any more. Few Americans take seriously the notion that rights come from God.

Like most western nations therefore, America can be called a "pluralistic society". In pluralistic societies law expresses practical agreements lacking a single foundation. Often such an agreement embodies very substantial compromises by many parties of what would be their particular ideals. If pluralistic societies are to function, it is necessary, however, that the many parties maintain and develop their particular ideals; otherwise, totalitarianism is inevitable.

Moreover, at the limit, law in a pluralistic society must express the conditions that are necessary for the life and health of the community as a pluralistic society. Not everything is subject to compromise.

Some citizens of a pluralistic society may oppose abortion on moral grounds, but at the same time think it good to accept a legal modus vivendi permitting abortion for those who do not consider it wrong. Those who take this view evidently do not think that the issues involved in abortion touch upon the very conditions necessary for the survival and health of pluralistic society itself.

Some citizens of a pluralistic society may argue for the legalization of abortion, basing themselves on metaphysical views according to which the unborn are not persons, or are persons who do not have rights, or have rights that are less equal than others, or on religious views according to which "freedom of conscience" is an absolute value. To adopt any such partisan principle as the ground for legislation would violate the requirements of pluralistic society. In effect, that partisan view (even if a majority one) would become the official position of the society as a whole.

Finally, some citizens of a pluralistic society may argue that the legalization of abortion must be opposed precisely because its permission by law is contrary to the conditions that are necessary for a pluralistic society. If no partisan criterion is introduced, it seems difficult to find any excuse for compromising anyone's right not to be killed unless his life conflicts with someone else's life. It is those who argue that the unborn may be killed who proceed from particular, partisan metaphysical and religious views.

Moreover, in cases where there is some doubt whether a living individual is to be regarded by the law of a pluralistic society as a person, the reasonable presumption seems to be in the affirmative. History is full of examples to show that the denial of humanity and human rights follows from a decision to act inconsistently with the assumption in favor of rights. As injustice is a cause of racism, for example, more than its consequence, so the denial of personhood and even humanity to the unborn are rationalizations consequent upon rather than reasonable grounds for the decision to treat the unborn as if they lacked equal rights.

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