

An Issue of Discrimination - A New Look at the Abortion Controversy

A Creative Project (ID 499)

by

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## PREFACE

The abortion controversy has generated immense criticism. Instead of reviewing the arguments pro and con, this creative project produces an original argument for resolving the conflict.

This paper presupposes that the reader is fully versed in the standard literature on abortion in recent philosophy journals. See the bibliography for the necessary background. In addition, it is assumed that the reader is acquainted with basic ethical theory, in particular rule utilitarianism. If needed, see Ch. 2 - 5 of Ethics, Theory & Practice, Ed. by M. Velasques and C. Rostankowski (especially Ch. 3).

## AN ISSUE OF DISCRIMINATION

The typical approach to the abortion issue has been to dispute the relative weight of various rights; for example, the right of a woman to control her own body vs. the embryo's<sup>1</sup> right to life. The method utilized has been to consider each right or argument on an individual basis, and to develop counterarguments. The problem with this technique is that it is ineffective in representing the intrinsic complexity. The abortion issue is inextricably connected to sets of values and rights, any one of which is necessary but insufficient in itself. We must consider the entire set if we are to come to an understanding of this debate.

The next question that arises is this: Can such a comprehensive task be accomplished? Can we really include every member of the set in consideration? Perhaps one way to deal with this is to delineate broad categories which could then as necessary be subdivided to address more specific values and rights. The categories I am selecting are those "inalienable rights" that the framers of our Bill of Rights set forth. I maintain that these rights have become the bedrock of our value system: Life, liberty, and the pursuit of happiness (or opportunity). I believe that we can deal with most abortion cases on the level of these broad categories, without the need for further specification.

These rights are interconnected, of equal value, and mutually restrictive. When

<sup>1</sup>The term "embryo" will be used to refer to the developing human life in both the embryonic and fetal stages.

we affirm liberty we do not do so at the expense of life, i.e. we do not have the freedom to kill ourselves and others. By life we mean all innocent human life, as evidenced by the protection we legally extend to infants and individuals with severe mental handicaps. Both of these cases do not fit the lists of definitive characteristics of "persons" that have been put forth. In pursuing happiness, which I have designated as opportunity, we are not to do so to the exclusion of either life or liberty, of ourselves or others. Though a given individual may not value any of the "basic rights", we as a society are committed to protecting those rights. This is the case even when the individual is incapable of wanting or understanding those rights. For the former instance, an example would be our designation of slavery as illegal: Even if someone wanted to sell himself, we do not permit it. In the latter case, we insure the basic rights for newborns, though they can not understand any of them.

My premise is that if we are to be consistent with our value system, we ought to include the embryo as an innocent human life whose basic rights we should legally insure. Although its biological dependency on the mother puts it in a unique position, we must not make the mistake of some pro-abortionists. The embryo is unquestionably a distinct human entity, with its own DNA. It is not "part of the mother," like an arm or leg, but rather is intimately connected to her. Furthermore, this entity is a human life, not merely human cells or tissue. Human tissue does not grow to learn, aspire, create or invent. It is a human life about which we are talking.

In response to those that would describe my reasoning as simplistic, I am accounting for what we, as U.S. citizens, acknowledge as fundamental beliefs

in our Bill of Rights. They represent our ideal, and I would maintain, our goal, but not everyone necessarily agrees. I suggest that an explanation for the current acceptance of abortion results from a serious discrimination in the value placed on the embryo's "basic rights triad". In the next section I will demonstrate how the "basic rights triad" hitherto designated "BRT", could be utilized, both in ideal and distorted form, to arrive at various conclusions on two particular cases.

#### SCENERIO #1

The embryo's existence is a severe financial setback to the mother.

OPTIONS: Not Abort--The mother would lose opportunity and some freedom, but retain life. The embryo would retain life, liberty and opportunity.

Abort--The mother retains life, liberty and opportunity; the embryo loses all three.

CONCLUSIONS: Ideal BRT--Viewing each basic right as equally important but no more so than another basic right, utilitarianism would dictate that the abortion not take place.

Distorted BRT-- The embryo's rights triad is viewed as worth less than that of the mother; let us arbitrarily say valued at one third of the mother's rights triad.

Utilitarianism would direct that abortion be chosen since the mother's freedom and opportunity are worth more than the life, liberty and opportunity of the embryo.

#### SCENERIO #2

If a particular pregnancy continues it will cause the death of both the mother and the embryo.

OPTIONS: Not Abort--Both the mother and the embryo lose life, liberty and opportunity.

Abort--The embryo would lose life, liberty and opportunity, but the mother would retain all three.

CONCLUSIONS: Ideal BRT--According to utilitarianism, we would abort the embryo rather than lose both the embryo and the mother.

Distorted BRT--There is no need to consider the distorted BRT in this case; the conclusion would be the same.

Although extremely oversimplified, these case scenarios illustrate how a discrimination toward the embryo gives an "easy out" in the case of an inconvenient pregnancy, whereas we need not discriminate in order to save the mother's life from a pregnancy that would be fatal. But, some would question, why should we accord equal rights to both the embryo and the mother? Specifically, what is it that gives the embryo these rights?

The basis for these rights would not reside in a capacity of the embryo to reason or understand the value of these rights--at this stage it clearly can not do so. However, like the equally uncomprehending newborn, it possesses something that we as a society recognize as invaluable and protect: Human life. This acknowledgement is not by any means universal. In our own culture we find proponents of infanticide. The argument goes basically as such: Based on a given criterion or set of criteria such as self awareness or Warren's personhood traits, at least the embryo and sometimes the infant is excluded from the set of beings whose existence should be protected. Of course, such criteria can be interpreted to the detriment of individuals whose right to existence was not intended to be denied, such as the comatose, severely handicapped, and future generations. This lack of sufficient specificity ought to clue us in to the fact that the criteria are faulty. Furthermore, we can not assume that the first rate judgement needed to interpret the criteria will always be present: If nothing else, the holocaust experience ought to have taught us about that danger. I claim that there is a very good reason for protecting human life, and not just the lives of designated persons: Human fallibility, of which history provides

so many examples. It is always a mistake to legally discriminate among human beings, whether it be against blacks and women or against the embryo. By safeguarding the lives of human beings, we insure that infants, the very elderly and handicapped people are not redefined as non-persons not having the right to life, liberty and opportunity. In conclusion, our humanity is the basis for these rights. It is our limitations as well as our potential that absolutely necessitates this.

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