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HOW NOT TO ARGUE ABOUT ABORTION

So intense is the moral controversy over abortion that partisans—both abortion liberals and abortion conservatives—are tempted, for rhetorical effect, to rely upon ill-considered arguments. But to do so, whatever one's moral position, is counterproductive; confidence in intellect and integrity is shaken, even true conclusions may be undermined. The price of using bad arguments is high.

The terms "liberal" and "conservative" have special meanings in this realm: conservatives here—those who view the fetus as a person from conception, condemn the killing of the fetus as profoundly wrong, and who call themselves "pro-life"—are often quite liberal in other matters; liberals here—those who hold that whatever one's view of abortion only the pregnant woman has the moral authority to decide upon an abortion for herself, and who call themselves "pro-choice"—are often quite conservative in other matters. Adopting this common usage, my aim is to expose bad arguments on both sides.

1. Liberal Fallacy

I begin on the liberal side. One argument very commonly presented by liberals goes like this:

We liberals believe it is permissible for a woman to terminate her pregnancy because the pregnancy is hers alone, and therefore moral decisions pertaining to it are rightly hers to make. Our conservative opponents believe abortion not permissible, basing their conclusion upon moral beliefs about the fetus that we think mistaken. Neither side can prove the other wrong. To restore social harmony all parties should agree to forgo coercion—as is done in religious disputes—and to respect the rights of others to be guided by their own principles. No one need condone what he thinks evil; all are free to express moral judgments openly and forcefully, of course. But we must not persecute those whose practices we think immoral. Liberals must respect

the rights of those who believe that abortion is morally wrong to refrain from terminating pregnancies. Conservatives must likewise respect the rights of those who believe that decisions about pregnancy are only for the pregnant woman to make. Let each party act in accord with its own honest moral convictions, no one forced to abide by the moral code of another. Why is our willingness to be tolerant not matched on the other side?

This argument assumes that if no agreement can be reached upon the moral principles that govern a pregnant woman, the matter must be left to the decision of the woman herself, since it is her conduct alone that is at issue. Thus the religious analogy: About the gods we cannot agree—so you pray in your way, and allow me to pray in mine. Let moral agents mind their own business.

Conservatives can never accept this, of course. For them, the tolerance practiced in religion (or in other spheres) cannot be practiced with respect to abortion because in this sphere, unlike those, it is the well-being of a separate moral being, the unborn child, that is at issue. Say they in effect:

You may worship false gods and go to Hell, and that is your business. You two may fornicate or join in other sinful practices, and that is, jointly, your private business. But when your conduct threatens the life of another person that conduct ceases to be your business alone; you are not to be permitted, under the flag of private morality, to kill an innocent person.

Slaveowners, responding to abolitionists, used precisely the argument of the abortion liberals: "Since we cannot agree upon the morality of the conduct at issue, let us agree not to coerce one another. We respect your right to act in accordance with your beliefs; you must respect our right to act in accordance with ours. Let the owning of slaves be practiced only by those who believe it to be morally right. Live and let live."

Outrageous. But why? Because slavery cannot be justified by the honest convictions of moral monsters. They are free to believe what they choose, but they must not be permitted to act upon heinous beliefs when that action injures innocent others. The lives of the human beings whom they would enslave stand independently opposed to them—and in defense of those lives all decent people are obliged to intervene. Owning slaves cannot be allowed on the ground that the slave owner's private moral code must be respected. No more

The liberal replies:

Your analogy with slave-holding is grossly unfair: slavery is an abomination. of course—but that is because those enslaved were *persons* of unquestioned humanity, possessing moral rights like all other persons. You seek to forbid my practice of abortion because you believe that the fetus is here analogous to the slave. You think they are both persons, with rights to life—but that is precisely what we deny!

The conservative rejoins:

We understand that you deny it, and we respect your right to defend that mistake. But your argument is circular and worthless when you urge tolerance of certain acts, on the assumption that that denial is sound. This assumption is the very point at issue between us.

The conservative complaint is just. One begs the question—the classical name of the fallacy is petitio principii—when he assumes in the premises of his argument the truth of the conclusion he seeks to establish. Liberals who urge mutual toleration of different moral codes assume in their urging that the act in question, performing an abortion, is of moral concern only to the pregnant woman. That is the claim whose truth the conservative denies. And no argument against the conservative position can have merit if it assumes precisely what it aims to show.

The liberal position may of course be correct even though this common defense of it is fallacious. Recognizing deficiency in argument may help liberals to see how they must argue to advance their case. The heart of the dispute over abortion, illuminated by this logical quarrel, lies in conflicting beliefs about the moral status of the fetus. The common unwillingness of liberals to be forthright about this matter infuriates their opponents, conveys the impression (sometimes justified) that they are not listening to thoughtful conservative complaints, and thus exacerbates the conflict between the parties.

What is the fetus? What rights (if any) does a fetus possess? What obligations (if any) are owed to it? In determining the morality of abortion, these are questions the liberal, along with all others, cannot avoid.

2. Conservative Pseudo-Science

On the conservative side the focus is correct, and the logic impeccable. But the foundation upon which the reasoning is built is often defended badly. Conservatives commonly reason thus:

The pre-born child, whose life is terminated by an abortion, is a human person. It is morally wrong to kill any person deliberately, except perhaps in circumstances of the most dire necessity. Abortions (save in those rare cases in which the life of the mother is gravely threatened by the pregnancy) are therefore killings without justification and are thoroughly evil.

The reasoning here is good in form; it is not circular, nor is it otherwise fallacious. The truth of its first and major premise (that the fetus is a human person) is critical, of course; it is often asserted on religious grounds, but it remains disputable. So conservatives often present a *defense* of their first premise based upon the genetic history of the fetus; the argument goes essentially like this:

The mother's egg contains 23 chromosomes; the father's sperm another 23. The 46 chromosomes in the single cell of the newly-fertilized egg constitute the complete genetic makeup of a unique human being. When sperm and egg combine the DNA (desoxyribonucleic acid) of a new human being is formed, uniquely and for life. Hence the human being into which that embryo later develops is already there, is the embryo itself. The embryo must be a human being because a human being it becomes, and nothing is added to it—and out of nothing nothing comes.

This argument is seriously defective: it ought to be rejected by thoughtful conservatives, in their own interest. It is bad because it rests upon a *misunderstanding* of scientific report: and it is bad because its *use* of science in moral argument is confused.

First, misunderstanding. From the genetic uniqueness of the fertilized egg cell it does not follow, nor is it true, that that cell, the zygote, and the individual later exhibiting its genetic pattern, are identical. The genes give and limit potential, but the human being is very much more than a tangle of nucleic acids bearing genetic codes. It is not the case that nothing of vital importance is added to the zygote as it subsequently develops: a very great deal is added after fertilization. From the fertilized egg cell arises a clump of undifferentiated cells; that clump changes fundamentally within the womb. These changes are not determined by the DNA alone. Cells interact

fortuitously, apparently responding to their positions within the clump of cells. Individual cells develop differently, literally becoming different types of cells, depending upon their position in the clump.² And the development of groups of cells is critically affected by chemical substances in their immediate environment, substances external to the DNA.

Limits upon what the zygote may become are buried in the DNA: human zygotes never yield spaniels. But the conservative genetic account supposes the fertilized egg cell to be a very small ball of extraordinary wisdom, somehow unwinding to produce human brain or muscle in accord with an organic plan already predetermined. The tiny zygote is imagined somehow to contain an internal genetic diagram of the person to be, roughly analogous to an electrical wiring plan, or architectural blueprint, a detailed design not yet expressed but nevertheless complete and wholly incorporated within. This is a mistaken account.

In a less enlightened age, before the fertilization of the human egg by human sperm was understood, it was widely believed that the mother's womb was no more than the place of growing, and that the little human was shot into that place-very tiny but already perfectly formed, a minuscule homunculus-from the male penis. All the baby's parts being there in miniature at the outset, the uterus was supposed (in this archaic view) to be simply where the tiny baby grows to be large, like a fetus. Preposterous, of course. And yet, in the thinking of many contemporary conservatives, the same underlying blunder lies buried: a very tiny person (of one cell) will simply grow into a much larger person (of hundreds of billions of cells) but it will remain unchanged in essence. The new homunculism differs from the old in allowing that mother as well as father make a contribution to the tiny being, and the modern will allow that the minute parts are there only in design and not in actual shape. But common to both is the fantasy that once the homunculus is in place, the rest is essentially no more than an unfolding.

This notion—that there is a very little but completely designed human being hidden in that fertilized egg, or zygote—is not supported by genetic science. As the first cell divides and its daughter cells divide, what takes place is largely a development that cannot be wholly explained by the genetic codes in the nucleic acids. Each one of the cells (called blastomeres) in the earliest stage of development possesses the same genetic information, and each one could become an embryo. Yet the simple multiplication of these early cells

by cleavage comes to a stop, and a very different process, that of cell differentiation, begins. In this process, cells identical in their DNA endowment diverge in structure and in function. Some genes in some cells are activated, "turned on," in other cells other genes are activated—but the DNA in the liver cell is no different from the DNA in the skin cell. Hence there must be additional information provided—and that additional information essential for this process of differentiation cannot come from within; some critical interaction between the molecules of the zygote, and molecules outside the zygote, must occur.

Some, but not all, of the sources of this externally provided information are known. The formation of the membranes and layers of the embryo are largely derived from the relative positions of cells (as noted above), and therefore from information not provided by the genes. But the full impact of cell position upon development cannot be specified in advance.³

As the clump of cells enlarges, development of the embryo involves differentiation (in which the several cells acquire specialized functions) and pattern formation, and morphogenesis (in which the embryo is shaped). Morphogens, molecules of special chemical substances that function as signal-givers to the developing cells, seep past the undifferentiated cells, helping to determine cell migration and development. The amounts and placements of these morphogens - believed now to be bits of retinoic acid - vary for reasons not known, yielding different organs, organs of different shapes, entirely distinct cell specializations. If too much retinoic acid is applied to the limb buds of a chick fetus or a mouse fetus, for example, the animal develops monstrous or defective organs - twin wings facing one another, or twin paws on a single limb. The various cells in every embryo encounter different amounts of the critical morphogens at different times; events like these (and probably others that we know not of) greatly influence what those cells become.4

Strong evidence, clinical and experimental, supports the conclusion that a human being, as we normally use that expression, is not present in the embryo. Two human embryos, twins in the uterus, sometimes later combine into a single healthy embryo. This would be utterly impossible if a human being had been pre-figured in those strings of nucleic acids found in the newly fertilized cell. The zygote has distinctively human DNA, to be sure—but that individual zygote, even when perfect, is not a pre-formed human being, and,

furthermore, does not even contain all of the information necessary for the development of a human being.

The very uncertain future of the fertilized egg has been demonstrated dramatically in mice, with the following experiment: the fertilized egg of two white-furred mice is allowed to divide four times, until becoming a 16-cell cluster. A similar, 16-cell embryo of two black-furred mice parents is then put with it, the two embryos thus forming a clump of 32 cells. This clump will become a single embryo, eventually developing into a single, healthy mouse with fur that is black and white! That mouse has four parents, and the various cells of its body (those not growing in the fur) may derive their DNA from any one of the four.⁵

Of course the human embryo is a "being" in the sense that every existent thing is a being, and it is "human" in the sense that it is the product of human growth. Using the words in that way, a clipped finger nail is also a "human being"—but from this we draw no moral conclusions about its right to life. All the diverse cells of the body, all its somatic cells, have the very same DNA. A fragment of skin, alive, has DNA absolutely identical to that of the earlier zygote—but the skin fragment, like the zygote, is surely not a human being. Science does not warrant the claim that the embryo is a "human being" as that term is normally used. Conservatives who defend their fundamental premise with reasoning that is a parody of the science it purports to apply, will in the end be hoist with their own petard.

Second, confusion. For conservatives, abortion is a moral horror because it is the killing of a human person. But "person" is a moral category, not one of science. Genetic science (as noted above) does not warrant the claim that the embryo is a "human being"—but nothing remotely within the power of science to discover could help us to determine whether an embryo is a human person possessing rights. What characteristics are essential for the presence of a human person is a deep philosophical question, one whose answer cannot take the form of an empirical report. Therefore, any conservative effort to establish the presence in the embryo of a human person on scientific grounds badly misconceives the role that science can play in moral argument.

But from all that is known about fetal development we may confidently conclude that, whatever the essential features of personhood are held to be, credulity must be strained to suppose those features

present in the embryo. During the first weeks of its development, before any brain has developed and before there is even the first firing of a synapse between two nerve cells, the clump that may become a human fetus has no capacity for any experience or any awareness of any kind. That much is known. There being no possibility of experience in it during this period of its growth, it is difficult even to understand what is being asserted when the conservative claims that the embryo is a person. For that claim there is and can be no scientific support. Indeed, for that claim there is and can be no empirical content.

In sum: The conservative argument hangs upon the truth of its fundamental premise that from its conception the fetus is a person. Reliance upon biological science to establish the truth of that premise fails, and must fail.

If science does not support the conservative view of the fetus as person, or even speak to that matter, the needed conservative premise may yet be defended with arguments of a non-scientific kind. This would amount to a partial withdrawal, true—but withdrawal to an argumentative fortress from which conservatives cannot be driven. Arguments incorporating some non-natural claims may not persuade any who do not already accept their conclusions—but intellectual integrity is more important than rhetorical effectiveness. If the personhood of the fetus is the heart of the argument, and if that personhood has no natural foundation, conservatives must be forthright about the authority beyond nature upon which they rely.

Bad arguments on both sides illuminate what good arguments require: The moral status of the fetus is the key to the controversy over abortion. The liberal argument fails when it assumes what needs to be proved about this moral status; the conservative argument fails when it seeks to establish conclusions about this moral status with bad science and inappropriate uses of science.

For all those between the liberal and the conservative extremes the widespread conviction that abortion is wrong must somehow be reconciled with the widespread conviction that it is in some circumstances desperately needed and justifiable. Some on both sides would be willing to compromise, to make concessions in return for concessions that would lead to more general harmony. But many of those who seek a middle way do so, not in a spirit of compromise, but because they genuinely believe that the middle way is the morally right way. Call those who seek a path between the conservative

and liberal extremes "moderates." There are moderates of conservative leaning, who detest abortions but believe that it is right to make room for a few; and there are moderates of liberal leaning, who defend the mother's right to choose, but who believe that some such choices are not right. To formulate some middle path is not difficult, but to give a consistent and rational defense of any moderate position proves to be very difficult indeed.⁶

3. Conservative Moderation: The Burden of Consistency

Conservative moderates retain the conviction that killing the fetus is a great moral wrong—but they believe that some exceptional circumstances may justify it. Thus conservative moderates often hold that abortion is permissible not only when the mother's life is endangered by the pregnancy, but also when the pregnancy is the outcome of incest, or of rape. Pregnancy thus caused, say they in effect, is so cruelly unfair to the mother that to compel her to bring the fetus to term in such circumstances is unconscionable. In a small set of uncommon cases—but only in these—the abortion, evil in itself, may be the least of the evils open to us.

The argument is as bad as it is common. If abortion is morally wrong because it is the killing of an innocent human person, it remains wrong and unjustifiable no matter how that innocent person came to be. If the fetus is an innocent person it cannot be justly killed because of any misconduct by either of its parents, including the rapacity of its father.

Sensitive conservatives have always understood that the obligation to bring pregnancy to term may impose a very great burden upon the mother, especially if she is unmarried and impoverished. But some burdens cannot be escaped. The longed-for middle way is precluded, for conservatives, by their own most fundamental conviction: that the fetus is a human person. That is the rock upon which the entire conservative position is built, and if that premise be true no weighing of the burdens of the mother, no compassion for her, could possibly justify killing it. The fetus either is a human person or it is not. The conservative holds that it is, and (for him) that must end the matter if no other life is at stake; even very great burdens do not justify the killing of persons who innocently cause them. The only defensible exception (and even this is disputable) would be that of a killing that is necessary to save the life of the mother.

4. Liberal Moderation: The Demand for Relevance

Liberal moderates believe that the fetus is not a person, at least not always or not fully; therefore they can defend a middle course without abandoning fundamental convictions. To do so coherently they must either a) give a plausible account of the intermediate moral nature of the fetus, or b) give an account of some change in the moral status of the fetus during its development that renders a different set of moral rules applicable to it after that change.

In formulating a moderate solution it is common among liberals to segment the period of pregnancy. A temporal point during gestation is identified before which some specifiable reasons justify termination of the fetus, or before which only the mother is entitled to decide which reasons justify termination, but after which the protection of the fetus is morally appropriate or required. The foremost liberal solution of this kind, that based upon the viability of the fetus, goes essentially like this:

During the late-middle of the nine-month period of gestation there comes a time after which, with very intense care, the fetus can be kept alive even if the umbilical connection to its mother has been severed. From that point on the fetus is called "viable"—and thereafter the moral rules pertaining to it change. Before the fetus is viable the mother has the authority to decide upon its disposition; after viability the fetus acquires a moral status that renders its termination a great evil. Therefore, once the fetus is viable, abortion is permissible only for the most extraordinary reasons, usually reasons pertaining to the danger in which the mother lies.

Such a middle path, carefully formulated in the landmark case of Roe v. Wade [410 U.S. 113, (1973)], has long been the keystone of American law in this arena. In this case the U.S. Supreme Court held that subsequent to viability it is permissible (but not obligatory) under the U.S. Constitution for a state to regulate, and even to proscribe, abortion "in promoting its interest in the potentiality of human life." Before viability, said the Court, two earlier phases of the pregnancy may be distinguished. For the first of these (approximately the first third of the pregnancy, during which abortion is safer for the mother than childbirth), the choice of termination is solely a matter for mother and physician to make. For the second phase before viability (approximately the second third of the pregnancy, during which abortion may pose substantial risk to the mother) the state may lawfully regulate the abortion procedure, but

may do so only in ways "that are reasonably related to maternal health." Thus, the regulation of abortion for the sake of the fetus is permissible, under this Supreme Court decision, only after viability.

Viability, for very many liberals, has thus become a moral watershed, but the reasoning that underlies its use in segmentation is often muddled. To defend it liberals need to explain what it is about being "viable" that gives to the life of the fetus a moral status it did not have before it was viable. After it is viable we can do certain things for the fetus that we could not do before that time. But what follows from this? Why has our ability to sustain it outside of the mother's womb altered its moral status? The moral relevance of viability remains to be explained.

One common reply is that only after viability is the fetus independent, and this newly-acquired independence is what gives to the fetus its enhanced moral status. This surely cannot serve. The independence of a moral agent may have some bearing on the duties owed to it—but the fetus does not become independent at the time of viability, any more than the baby becomes independent at birth. Without great care and attention both will surely die, and that is true also for normal infants after normal birth. No developing human in its earliest days is independent, or can live without care for more than a matter of hours. Viability does not change that. Since viability does not mark the independence of the fetus, independence cannot be the quality that gives viability moral relevance.

But after it is viable (the liberal might respond) the fetus may receive life support from a source other than its mother. True; that is what viability means. This leaves the central question unanswered: why does its capacity to receive such external support make a moral difference to it? Why is its separability from its mother a morally relevant consideration?

The thoughtful liberal may answer:

A change in our abilities can sometimes alter our duties, and that is the case here. Before viability we could protect the fetus, but only by forbidding abortion, unjustly restricting the mother's control over what could not be separated from her. After viability we can protect the fetus without that degree of restriction upon her, since the fetus is now separable from her. This change alters our obligations to the fetus.

But if this is so, it cannot be so because the rights of the fetus have been enhanced. Whether it is viable or not the fetus can be protected

by law. Viability effects no change in society's capacity to do (or seek to do) that. Protection of the fetus may be more feasible after viability, or it may oppress the mother less after viability because mother and baby are separable—but a change in the impact of societal protection upon the mother's freedom of action has no bearing upon any rights the fetus itself may possess. Can changes in our capacities change its rights? If it is of such a nature that it is entitled to protection when separable, it is of such a nature as to deserve that protection when not separable. Viability may be very important for the mother, but if it is to account for a change in the duties owed to the fetus, some other explanation must be offered.

There is, moreover, an independent reason to believe that viability does not mark a morally significant change in the fetus. The age (from conception) at which a fetus becomes viable has been declining at about one week per decade for some decades. Now (in 1990) the age of viability is about 24 weeks. A fetus viable today may well not have been viable (if in that precise biological condition) ten years ago. If viability depends upon the state of technology (which it does), and moral status depends upon viability (as alleged), then the moral status of the fetus would appear to change with technological advance.

This would be difficult to explain. If a fetus in a given biological condition has a right to protection, and it can be protected in some way, it surely must have had that right before technological advance made that protection easier. If the obligation to protect the fetus flows from its rights, it must be based upon what the fetus is, and not from what we can do.

The liberal may reply:

If technology gives us new powers, it may give others new rights. Patients, for example, may become entitled by right, as a result of technology, to treatments that did not even exist a decade before. In this way technological advance may expand moral rights for the fetus also, and this explains how it can be that fetuses may acquire rights at younger and younger gestational ages.

This reasoning is faulty. Entitlements brought on by new technology are the entitlements of existing moral agents to the benefits of machines (or therapies, etc.) that are available now but were not available earlier. A person gravely ill may be entitled now to the benefit of some new machine that he would have been equally entitled to ten years ago had that machine existed. But it did not exist

then, although it does now, and in that sense mere technology may expand the rightful claims of persons like him. This is true of *persons*, whose moral status before the new machine became available is not in doubt.

But even if technology can enlarge the right of existing claimants, it cannot alter the nature of a claimant. Regarding fetuses, for whom technology lowers the age of viability, the case is very different from that of pre-existing patients. The decrease in the age of viability flowing from technical advance appears here (for the liberal) to call into existence now moral agents who, had there been only a fetus in that same condition a decade before, would not have existed then. This cannot be. Technology cannot create persons in whom rights inhere.

But if a lowering of the age of viability cannot create new moral agents, then a viable fetus of a given age that has rights now would, at the same age, have had rights then, before the techniques for achieving viability had developed. And in that case the non-viable fetus of a decade ago must also have been a moral agent deserving the same protection. There are no morally relevant features of the 24-week-old 1990 fetus that the 24-week-old 1970 fetus lacked; their moral claims on us (if they have any) are identical, even if the former be viable while the latter was not. How then could it be possible that terminating the 1970 fetus was right then and that terminating the equivalent 1990 fetus is wrong now?8

A last line of defense for the role of viability may be presented by the liberal moderate as follows:

Viability is a morally significant point in the pregnancy, but not because it changes the rights of the fetus: of course separability cannot have that consequence. What gives moral significance to viability does not lie in changes in the fetus, but in the changed relation of the fetus to the mother. The fetus is not a person. But it is a being that deserves moral consideration, it is morally considerable, worthy of respect and concern. Now the degree of its considerability is such that, not being a person and having no human rights, it cannot prevail over the mother in the event of conflict: that is why the mother's concerns often do render abortion fully justified. But viability brings separability: after viability the rights of the mother can be protected while at the same time our due consideration of the special moral status of the fetus justifies us in protecting it as well. In other words, what is important about viability is not that it changes the fetus's inherent moral claims but that it marks a change in the balance of

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competing moral claims that were already in force. Sheer technology can affect that balance. The morally considerable fetus may now be protectable while the rights of the mother are considered and protected as well. This is the crux of the matter. If we can protect both we are obliged to do so, because both the rights of the mother and the special consideration that is due to the fetus (even though it is not a person) make legitimate claims upon us; after viability both sets of claims can be met.

This argument may prove tenable, but it is highly problematic at best. It can succeed only if the liberal is able to give some account of the moral nature of the fetus as less than a person but still morally considerable, such that viability will have precisely that middling result. The moral account of the fetus given, however, must provide an *independent* explanation of the fetus's quasi-human moral stature. Liberals cannot simply say that the fetus is morally considerable to such a degree that, after viability, it deserves protection. That is what was to be shown—and here again the liberal must avoid the temptation to beg the question. If viability is to be defended as the fulcrum of liberal argument, some plausible account of the fetus's moral nature must be shown to give to viability its critical importance. What that account might be heaven only knows.

If this path leads to stymie, the liberal must return to the moral changes in the fetus during its growth, and viability as the critical point must be abandoned. Some date in the development of the fetus must be identified after which its right to life might reasonably be protected, but before which the fetus has no rights against the mother. That there is such a date is surely possible - but its key role in the compromise must make sense morally. The change must be such that what was justifiable before the change becomes unjustifiable after it. Some characteristic or capacity of the fetus, a feature that arises during pregnancy and whose presence can be objectively ascertained, must be identified - something that gives to the fetus a moral status it did not earlier possess. If that development can be identified, and if its rise can be known with confidence to take place no earlier than a given gestational age, liberal moderates may plausibly argue that after it develops abortion is wrong or at least morally problematic, but that before it develops abortion is morally permissible.

What features might liberals plausibly identify to serve this purpose? Viability, as we have seen, cannot serve. Some have argued that the morally relevant change in early human growth is the

development of consciousness of self, and of self-conscious desires.9 But this, of course, would not yield a middle path.

Upon what other features might liberal moderates rely? They may focus upon the development of those capacities of the central nervous system that make experience possible, and are thus the necessary condition of all awareness. The earliest growth of the brain can be traced. Before even the possibility of any experience has arisen in the fetus (such moderates may contend) it can have no naturally grounded moral interests. And if this possibility of experience never can arise before a certain known stage of the pregnancy, we can know the period during which, on this intermediate liberal view, abortion can do the fetus no wrong. The premises upon which such argument relies would need to be established; evidence would be needed, and the position defended as neither arbitrary nor question-begging—and all that might not be easy. But such an enterprise would at least be morally coherent.

5. How to Argue About Abortion

To argue effectively in defense of their respective positions, the several controversialists must fully grasp and fairly state what their opponents contend, and must meet those claims with argument and evidence. That much is true for all.

For full-blooded liberals, the task is to confront the moral issue that has been typically evaded by insisting upon the mother's right to choose. She has a right to choose only if the fetus has the moral status that leaves open room for her choice. Whether the fetus has that status (as we saw) is the very point at issue, and it must not be begged. So liberals, in arguing about abortion, must face up to the difficult moral core of the controversy; they must come to grips with the question of what the fetus is, and what its moral-status is, and why.

For full-blooded conservatives the task is very great: their central claim, that the fetus is a person, must be defended. Their resort to science cannot possibly succeed, (as we saw): pseudo-scientific defenses of the personhood of the embryo from conception, based upon misconstrued genetic reports, must be eschewed. What renders abortion morally wrong (on the conservative view) cannot be any feature of the fetus determinable by science. Resort to some convictions having a non-empirical foundation is therefore inescapable for

conservatives; that inevitability should be recognized, and the non-empirical foundation claimed should be forthrightly identified.

The conservative premise, that the fetus is a human person from conception, precludes any middle path that would involve killing it when the unfairness of the pregnancy is very great. The deliberate sacrifice of the life of one innocent person for the sake of another—however agonizing the mother's burdens—cannot be justified. Conservatives must therefore come to see that a middle path is not open to them.

Liberals who seek to defend a middle path may be rationally hopeful, but their task also remains great. They must either: a) give an independent account of the moral considerability of the fetus such that, after viability, its life deserves protection, while before viability its life may be sacrificed to the interests of the mother; or b) identify and defend some morally relevant change in the fetus during pregnancy (a change which, unlike viability, is not merely in us or in our capacities) that renders some or most abortions justifiable before that change, and some or most abortions less justifiable or unjustifiable after that change.

Thinking about how argument goes wrong helps us to see how to make it go right.

NOTES

¹Here is an archetypical presentation of the argument, in recent testimony before the Judiciary Committee of the Connecticut legislature, by Paul A. Byrne, M. D.: Half the DNA [of a new human life] is provided by the ovum, the other half by the sperm, to form new DNA. The new DNA, the new set of chromosomes, is different from the DNA or the chromosomes of the father, different from the DNA or the chromosomes of the mother. The DNA is the genetic material present and duplicated in each and every cell of the body; it has the biochemical identity of a particular human being subsequently duplicated in the nucleus of every cell of that particular individual At all stages of development from conception to adulthood, biochemical identity is present in the nucleus of each and every cell. At all stages of development there is structure that is wholly and only human Thus, from conception, the new human being has a particular identity, oneness, structure These are the basic elements of the human structure essential to human life, and their presence clearly establishes the existence of human life [I]t is my expert medical opinion that it is a fact that human life begins at conception. (ALL About Issues, American Life League, April, 1990.)

"See L. Wolpert and W. D. Stein, "Positional Information and Pattern Formation," in *Pattern Formation: A Primer in Developmental Biology*, ed. G. M. Malacinski and S. V. Bryam (London: Macmillan, 1984), pp. 3-21.

³A detailed account of the development of the fertilized human egg may be found in C. A. Bedate and R. C. Cefalo, "The Zygote: To Be or Not to Be a Person," The Journal of Medicine and Philosophy, Vol. 14, pp. 641–645, 1989. The authors of this account, a molecular biologist and a specialist in fetal medicine, conclude: "The development of a zygote depends at each moment on several factors: the progressive actualization of its own genetically coded information, the actualization of pieces of information that originate de novo during the embryonic process, and exogenous information independent of the control of the zygote [T]he zygote makes possible the existence of a human being but does not in and of itself possess sufficient information to form it . . . The zygote does possess sufficient information to produce exclusively human tissue but not to become an individual human being."

⁴For a detailed account of recent research into the critical role of morphogens in the development of the embryo, see P. M. Brickell and C. Tickle, "Morphogens in Chick Limb Development," BioEssays, Vol. 11, No. 5, November 1989; and J. Lee and C. Tickle, "Retinoic Acid and Pattern Formation in the Developing Chick Wing," Journal of Embryology and Experimental Morphology, 90, pp. 139-169.

⁵A more detailed account of the growth of the embryo, and experiments illuminating that growth, may be found in C. A. Gardner, "Is an Embryo a Person?", *The Nation*, November 13, 1989. This geneticist concludes: "[T]here does not seem to be any blueprint for embryonic development. Each step toward greater complexity depends instead upon the pattern of cells and molecules just reached in the preceding step. The information required to make an eye or a finger does not exist in the fertilized egg."

⁶See Martin Benjamin, Splitting the Difference: Compromise and Integrity in Ethics and Politics, (University Press of Kansas, 1990), pp. 139–174. Controversy over abortion is used by Benjamin (pp. 151–171) as an excellent example of the distinction between compromising and defending a morally right middle path.

"Some have argued that a fetus arising from rape, even if it is a person and has a "right to life," may be viewed as a threatening parasite, never welcomed or entitled to entry, and may therefore be rightly ejected from a woman's body, even if doing so results in its death, if its continued presence seriously conflicts with the rights of its maternal host. See Judith Jarvis Thomson, "A Defense of Abortion," *Philosophy and Public Affairs*, Vol. 1, No. 1, Fall, 1971, pp. 47–66. "[H]aving a right to life does not guarantee having either a right to be given the use of or a right to be allowed continued use of another person's body—even if one needs it for life itself." (p.56)

The changing date of fetal viability may have a paradoxical consequence if it is one day pushed to a very early gestational age. We may never achieve the capacity to do it, but if at some future date it were to become possible to nurture the fetus in an artificial uterine environment from its earliest days, what had been the keystone of liberal moderation may become a devastating conservative weapon. Leaning upon the reed of viability is dangerous for liberals. If Roe v. Wade is eventually overturned, the consequent need of liberals to re-think the grounds of a middle course may prove highly salutary for them.

⁹This position is thoughtfully defended by Michael Tooley in a well-known essay, "Abortion and Infanticide," in *Philosophy and Public Affairs*. Vol 2. No. 1. Fall, 1972. If self-consciousness arises only days or weeks after birth, as Tooley notes, this approach might lead to the consideration of infanticide as sometimes morally permissible. In any event, if the feature(s) essential for personhood do(es) not arise until birth or thereafter, it (or they) can be no ground for a moderate liberal position regarding the pre-natal period during which abortion should be prohibited, because there would be no such period.