

# Practical Ethics

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that reason wrong on straightforward utilitarian grounds. So although there are situations in which it is not wrong to kill animals, these situations are special ones, and do not cover very many of the billions of premature deaths humans inflict, year after year, on animals.

In any case, at the level of practical moral principles, it would be better to reject altogether the killing of animals for food, unless one must do so to survive. Killing animals for food makes us think of them as objects that we can use as we please. Their lives then count for little when weighed against our mere wants. As long as we continue to use animals in this way, to change our attitudes to animals in the way that they should be changed will be an impossible task. How can we encourage people to respect animals, and have equal concern for their interests, if they continue to eat them for their mere enjoyment? To foster the right attitudes of consideration for animals, including non-self-conscious ones, it may be best to make it a simple principle to avoid killing them for food.

## TAKING LIFE: THE EMBRYO AND THE FETUS

### THE PROBLEM

**F**EW ethical issues are as bitterly fought over today as abortion, and, while the pendulum has swung back and forth, neither side has had much success in altering the opinions of its opponents. Until 1967, abortion was illegal in almost all the Western democracies except Sweden and Denmark. Then Britain changed its law to allow abortion on broad social grounds, and in the 1973 case of *Roe v Wade*, the United States Supreme Court held that women have a constitutional right to an abortion in the first six months of pregnancy. Western European nations, including Roman Catholic countries like Italy, Spain and France, all liberalised their abortion laws. Only the Republic of Ireland held out against the trend.

Opponents of abortion did not give up. In the United States, conservative Presidents have changed the composition of the Supreme Court, which in turn has nibbled around the margins of the *Roe v Wade* decision, allowing states to restrict, in various ways, access to abortion. Outside the United States, the issue of abortion re-surfaced in Eastern Europe after the collapse of communism. The communist states had allowed abortion, but as nationalist and religious forces gathered strength, there were strong moves in countries like Poland for the re-introduction of restrictive laws. Since West Germany had more restrictive laws than East Germany, the need to introduce a single law for a united Germany also caused an intense debate.

In 1978 the birth of Louise Brown raised a new issue about

the status of early human life. For Louise Brown was the first human to have been born from an embryo that had been fertilised outside a human body. The success of Robert Edwards and Patrick Steptoe in demonstrating the possibility of in vitro fertilization, or IVF, was based on several years of experimentation on early human embryos – none of which had survived. IVF is now a routine procedure for certain types of infertility, and has given rise to thousands of healthy babies. To reach this point, however, many more embryos had to be destroyed in experiments, and further improvement of IVF techniques will require continued experimentation. Perhaps more significant still, for the long-term, are the possibilities for other forms of experimentation opened up by the existence of a viable embryo outside the human body. Embryos can now be frozen and stored for many years before being thawed and implanted in a woman. Normal children develop from these embryos, but the technique means that there are large numbers of embryos now preserved in special freezers around the world. (At the time of writing there were about 11,000 frozen embryos in Australia alone.) Because the IVF procedure often produces more embryos than can safely be transferred to the uterus of the woman from whom the egg came, many of these frozen embryos will never be wanted, and presumably will either be destroyed, be donated for research, or given to other infertile couples.

Other new technologies loom just a little way ahead. Embryos can be screened for genetic abnormalities, and then discarded if such abnormalities are found. Edwards has predicted that it will become scientifically feasible to grow embryos in vitro to the point at which, about 17 days after fertilisation, they develop blood stem cells, which could be used to treat various now-lethal blood diseases. Others, speculating about the further future, have asked if one day we will have banks of embryos or fetuses to provide organs for those who need them.

Abortion and destructive embryo experimentation pose dif-

ficult ethical issues because the development of the human being is a gradual process. If we take the fertilised egg immediately after conception, it is hard to get upset about its death. The fertilised egg is a single cell. After several days, it is still only a tiny cluster of cells without a single anatomical feature of the being it will later become. The cells that will eventually become the embryo proper are at this stage indistinguishable from the cells that will become the placenta and amniotic sac. Up to about 14 days after fertilisation, we cannot even tell if the embryo is going to be one or two individuals, because splitting can take place, leading to the formation of identical twins. At 14 days, the first anatomical feature, the so-called primitive streak, appears in the position in which the backbone will later develop. At this point the embryo could not possibly be conscious or feel pain. At the other extreme is the adult human being. To kill a human adult is murder, and, except in some special circumstances like those to be discussed in the next chapter, is unhesitatingly and universally condemned. Yet there is no obvious sharp line that divides the fertilised egg from the adult. Hence the problem.

Most of this chapter will be concerned with the problem of abortion, but the discussion of the status of the fetus will have obvious implications for two related issues: embryo experimentation, and the use of fetal tissue for medical purposes. I begin the discussion of abortion stating the position of those opposed to abortion, which I shall refer to as the conservative position. I shall then examine some of the standard liberal responses, and show why they are inadequate. Finally I shall use our earlier discussion of the value of life to approach the issue from a broader perspective. In contrast to the common opinion that the moral question about abortion is a dilemma with no solution, I shall show that, at least within the bounds of non-religious ethics, there is a clear-cut answer and those who take a different view are simply mistaken.

THE CONSERVATIVE POSITION

The central argument against abortion, put as a formal argument, would go something like this:

First premise: It is wrong to kill an innocent human being.

Second premise: A human fetus is an innocent human being.

Conclusion: Therefore it is wrong to kill a human fetus.

The usual liberal response is to deny the second premise of this argument. So it is on whether the fetus is a human being that the issue is joined, and the dispute about abortion is often taken to be a dispute about when a human life begins.

On this issue the conservative position is difficult to shake. The conservative points to the continuum between the fertilised egg and child, and challenges the liberal to point to any stage in this gradual process that marks a morally significant dividing line. Unless there is such a line, the conservative says, we must either upgrade the status of the earliest embryo to that of the child, or downgrade the status of the child to that of the embryo; but no one wants to allow children to be dispatched on the request of their parents, and so the only tenable position is to grant the fetus the protection we now grant the child.

Is it true that there is no morally significant dividing line between fertilised egg and child? Those commonly suggested are: birth, viability, quickening, and the onset of consciousness. Let us consider these in turn.

### Birth

Birth is the most visible possible dividing line, and the one that would suit liberals best. It coincides to some extent with our sympathies – we are less disturbed at the destruction of a fetus we have never seen than at the death of a being we can all see, hear and cuddle. But is this enough to make birth the line that

decides whether a being may or may not be killed? The conservative can plausibly reply that the fetus/baby is the same entity, whether inside or outside the womb, with the same human features (whether we can see them or not) and the same degree of awareness and capacity for feeling pain. A prematurely born infant may well be *less* developed in these respects than a fetus nearing the end of its normal term. It seems peculiar to hold that we may not kill the premature infant, but may kill the more developed fetus. The location of a being – inside or outside the womb – should not make that much difference to the wrongness of killing it.

### Viability

If birth does not mark a crucial moral distinction, should we push the line back to the time at which the fetus could survive outside the womb? This overcomes one objection to taking birth as the decisive point, for it treats the viable fetus on a par with the infant, born prematurely, at the same stage of development. Viability is where the United States Supreme Court drew the line in *Roe v. Wade*. The Court held that the state has a legitimate interest in protecting potential life, and this interest becomes 'compelling' at viability 'because the fetus then presumably has the capability of meaningful life outside the mother's womb'. Therefore statutes prohibiting abortion after viability would not, the Court said, be unconstitutional. But the judges who wrote the majority decision gave no indication why the mere capacity to exist outside the womb should make such a difference to the state's interest in protecting potential life. After all, if we talk, as the Court does, of *potential* human life, then the nonviable fetus is as much a potential adult human as the viable fetus. (I shall return to this issue of potentiality shortly; but it is a different issue from the conservative argument we are now discussing, which claims that the fetus is a human being, and not just a potential human being.)

There is another important objection to making viability the cut-off point. The point at which the fetus can survive outside the mother's body varies according to the state of medical technology. Thirty years ago it was generally accepted that a baby born more than two months premature could not survive. Now a six-month fetus – three months premature – can often be pulled through, thanks to sophisticated medical techniques, and fetuses born after as little as five and a half months of gestation have survived. This threatens to undermine the Supreme Court's neat division of pregnancy into trimesters, with the boundary of viability lying between the second and third trimesters.

In the light of these medical developments, do we say that a six-month-old fetus should not be aborted now, but could have been aborted without wrongdoing thirty years ago? The same comparison can also be made, not between the present and the past, but between different places. A six-month-old fetus might have a fair chance of survival if born in a city where the latest medical techniques are used, but no chance at all if born in a remote village in Chad or New Guinea. Suppose that for some reason a woman, six months pregnant, was to fly from New York to a New Guinea village and that, once she had arrived in the village, there was no way she could return quickly to a city with modern medical facilities. Are we to say that it would have been wrong for her to have an abortion before she left New York, but now that she is in the village she may go ahead? The trip does not change the nature of the fetus, so why should it remove its claim to life?

The liberal might reply that the fact that the fetus is totally dependent on the mother for its survival means that it has no right to life independent of her wishes. In other cases, however, we do not hold that total dependence on another person means that that person may decide whether one lives or dies. A newborn baby is totally dependent on its mother, if it happens to

be born in an isolated area in which there is no other lactating woman, nor the means for bottle feeding. An elderly woman may be totally dependent on her son looking after her, and a hiker who breaks her leg five days' walk from the nearest road may die if her companion does not bring help. We do not think that in these situations the mother may take the life of her baby, the son of his aged mother, or the hiker of her injured companion. So it is not plausible to suggest that the dependence of the nonviable fetus on its mother gives her the right to kill it; and if dependence does not justify making viability the dividing line, it is hard to see what does.

### Quickening

If neither birth nor viability marks a morally significant distinction, there is less still to be said for a third candidate, quickening. Quickening is the time when the mother first feels the fetus move, and in traditional Catholic theology, this was thought to be the moment at which the fetus gained its soul. If we accepted that view, we might think quickening important, since the soul is, on the Christian view, what marks humans off from animals. But the idea that the soul enters the fetus at quickening is an outmoded piece of superstition, discarded now even by Catholic theologians. Putting aside these religious doctrines makes quickening insignificant. It is no more than the time when the fetus is first felt to move of its own accord; the fetus is alive before this moment, and ultrasound studies have shown that fetuses do in fact start moving as early as six weeks after fertilization, long before they can be felt to move. In any case, the capacity for physical motion – or the lack of it – has nothing to do with the seriousness of one's claim for continued life. We do not see the lack of such a capacity as negating the claims of paralysed people to go on living.

### Consciousness

Movement might be thought to be indirectly of moral significance, in so far as it is an indication of some form of awareness – and as we have already seen, consciousness, and the capacity to feel pleasure or pain, are of real moral significance. Despite this, neither side in the abortion debate has made much mention of the development of consciousness in the fetus. Those opposed to abortion may show films about the ‘silent scream’ of the fetus when aborted, but the intention behind such films is merely to stir the emotions of the uncommitted. Opponents of abortion really want to uphold the right to life of the human being from conception, irrespective of whether it is conscious or not. For those in favour of abortion, to appeal to the absence of a capacity for consciousness has seemed a risky strategy. On the basis of the studies showing that movement takes place as early as six weeks after fertilization, coupled with other studies that have found some brain activity as early as the seventh week, it has been suggested that the fetus could be capable of feeling pain at this early stage of pregnancy. That possibility has made liberals very wary of appealing to the onset of consciousness as a point at which the fetus has a right to life. We shall return to the issue of consciousness in the fetus later in this chapter, because it is relevant to the issue of embryo and fetal experimentation. We will also then consider an earlier marker that could be relevant to embryo experimentation, but not to the abortion debate. As far as abortion is concerned, the discussion up to now has shown that the liberal search for a morally crucial dividing line between the newborn baby and the fetus has failed to yield any event or stage of development that can bear the weight of separating those with a right to life from those who lack such a right, in a way that clearly shows fetuses to be in the latter category at the stage of development when most abortions take place. The conservative is on solid ground in insisting

that the development from the embryo to the infant is a gradual process.

### SOME LIBERAL ARGUMENTS

Some liberals do not challenge the conservative claim that the fetus is an innocent human being, but argue that abortion is nonetheless permissible. I shall consider three arguments for this view.

#### The Consequences of Restrictive Laws

The first argument is that laws prohibiting abortion do not stop abortions, but merely drive them underground. Women who want to have abortions are often desperate. They will go to backyard abortionists or try folk remedies. Abortion performed by a qualified medical practitioner is as safe as any medical operation, but attempts to procure abortions by unqualified people often result in serious medical complications and sometimes death. Thus the effect of prohibiting abortion is not so much to reduce the number of abortions performed as to increase the difficulties and dangers for women with unwanted pregnancies.

This argument has been influential in gaining support for more liberal abortion laws. It was accepted by the Canadian Royal Commission on the Status of Women, which concluded that: ‘A law that has more bad effects than good ones is a bad law . . . As long as it exists in its present form thousands of women will break it.’

The main point to note about this argument is that it is an argument against laws prohibiting abortion, and not an argument against the view that abortion is wrong. This is an important distinction, often overlooked in the abortion debate. The present argument well illustrates the distinction, because one could quite consistently accept it and advocate that the law should allow abortion on request, while at the same time de-

ciding oneself – if one were pregnant – or counselling another who was pregnant, that it would be wrong to have an abortion. It is a mistake to assume that the law should always enforce morality. It may be that, as alleged in the case of abortion, attempts to enforce right conduct lead to consequences no one wants, and no decrease in wrong-doing; or it may be that, as is proposed by the next argument we shall consider, there is an area of private ethics with which the law ought not to interfere.

So this first argument is an argument about abortion law, not about the ethics of abortion. Even within those limits, however, it is open to challenge, for it fails to meet the conservative claim that abortion is the deliberate killing of an innocent human being, and in the same ethical category as murder. Those who take this view of abortion will not rest content with the assertion that restrictive abortion laws do no more than drive women to backyard abortionists. They will insist that this situation can be changed, and the law properly enforced. They may also suggest measures to make pregnancy easier to accept for those women who become pregnant against their wishes. This is a perfectly reasonable response, given the initial ethical judgment against abortion, and for this reason the first argument does not succeed in avoiding the ethical issue.

#### Not the Law's Business?

The second argument is again an argument about abortion laws rather than the ethics of abortion. It uses the view that, as the report of a British government committee inquiring into laws about homosexuality and prostitution put it: 'There must remain a realm of private morality and immorality that is, in brief and crude terms, not the law's business.' This view is widely accepted among liberal thinkers, and can be traced back to John Stuart Mill's *On Liberty*. The 'one very simple principle' of this work is, in Mill's words:

That the only purpose for which power can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others . . . He cannot rightfully be compelled to do or forbear because it will be better for him to do so, because it will make him happier, because in the opinions of others, to do so would be wise or even right.

Mill's view is often and properly quoted in support of the repeal of laws that create 'victimless crimes' – like laws prohibiting homosexual relations between consenting adults, the use of marijuana and other drugs, prostitution, gambling and so on. Abortion is often included in this list, for example by the criminologist Edwin Schur in his book *Crimes Without Victims*. Those who consider abortion a victimless crime say that, while everyone is entitled to hold and act on his or her own view about the morality of abortion, no section of the community should try to force others to adhere to its own particular view. In a pluralist society, we should tolerate others with different moral views and leave the decision to have an abortion up to the woman concerned.

The fallacy involved in numbering abortion among the victimless crimes should be obvious. The dispute about abortion is, largely, a dispute about whether or not abortion does have a 'victim'. Opponents of abortion maintain that the victim of abortion is the fetus. Those not opposed to abortion may deny that the fetus counts as a victim in any serious way. They might, for instance, say that a being cannot be a victim unless it has interests that are violated, and the fetus has no interests. But however this dispute may go, one cannot simply ignore it on the grounds that people should not attempt to force others to follow their own moral views. My view that what Hitler did to the Jews is wrong is a moral view, and if there were any prospect of a revival of Nazism I would certainly do my best to force others not to act contrary to this view. Mill's principle is defensible only if it is restricted, as Mill restricted it, to acts that do not harm others. To use the principle as a means of avoiding

the difficulties of resolving the ethical dispute over abortion is to take it for granted that abortion does not harm an 'other' – which is precisely the point that needs to be proven before we can legitimately apply the principle to the case of abortion.

#### A Feminist Argument

The last of the three arguments that seek to justify abortion without denying that the fetus is an innocent human being is that a woman has a right to choose what happens to her own body. This argument became prominent with the rise of the women's liberation movement and has been elaborated by American philosophers sympathetic to feminism. An influential argument has been presented by Judith Jarvis Thomson by means of an ingenious analogy. Imagine, she says, that you wake up one morning and find yourself in a hospital bed, somehow connected to an unconscious man in an adjacent bed. You are told that this man is a famous violinist with kidney disease. The only way he can survive is for his circulatory system to be plugged into the system of someone else with the same blood type, and you are the only person whose blood is suitable. So a society of music lovers kidnapped you, had the connecting operation performed, and there you are. Since you are now in a reputable hospital you could, if you choose, order a doctor to disconnect you from the violinist; but the violinist will then certainly die. On the other hand, if you remain connected for only (only?) nine months, the violinist will have recovered and you can be unplugged without endangering him.

Thomson believes that if you found yourself in this unexpected predicament you would not be morally required to allow the violinist to use your kidneys for nine months. It might be generous or kind of you to do so, but to say this is, Thomson claims, quite different from saying that you would be doing wrong if you did not do it.

Note that Thomson's conclusion does not depend on denying that the violinist is an innocent human being, with the same right to life as any other innocent human being. On the contrary, Thomson affirms that the violinist does have a right to life – but to have a right to life does not, she says, entail a right to the use of another's body, even if without that use one will die.

The parallel with pregnancy, especially pregnancy due to rape should be obvious. A woman pregnant through rape finds herself, through no choice of her own, linked to a fetus in much the same way as the person is linked to the violinist. True, a pregnant woman does not normally have to spend nine months in bed, but opponents of abortion would not regard this as a sufficient justification for abortion. Giving up a newborn baby for adoption might be more difficult, psychologically, than parting from the violinist at the end of his illness; but this in itself does not seem a sufficient reason for killing the fetus. Accepting for the sake of the argument that the fetus does count as a fully-fledged human being, having an abortion when the fetus is not viable has the same moral significance as unplugging oneself from the violinist. So if we agree with Thomson that it would not be wrong to unplug oneself from the violinist, we must also accept that, whatever the status of the fetus, abortion is not wrong – at least not when the pregnancy results from rape.

Thomson's argument can probably be extended beyond cases of rape. Suppose that you found yourself connected to the violinist, not because you were kidnapped by music lovers, but because you had intended to enter the hospital to visit a sick friend, and when you got into the elevator, you carelessly pressed the wrong button, and ended up in a section of the hospital normally visited only by those who have volunteered to be connected to patients who would not otherwise survive. A team of doctors, waiting for the next volunteer, assumed you were it, jabbed you with an anaesthetic, and connected you. If Thomson's argument was sound in the kidnap case it is probably sound here too, since nine months unwillingly sup-



porting another is a high price to pay for ignorance or carelessness. In this way the argument might apply beyond rape cases to the much larger number of women who become pregnant through ignorance, carelessness, or contraceptive failure.

But is the argument sound? The short answer is this: It is sound if the particular theory of rights that lies behind it is sound; and it is unsound if that theory of rights is unsound.

The theory of rights in question can be illustrated by another of Thomson's fanciful examples: suppose I am desperately ill and the only thing that can save my life is the touch of my favourite film star's cool hand on my fevered brow. Well, Thomson says, even though I have a right to life, this does not mean that I have a right to force the film star to come to me, or that he is under any moral obligation to fly over and save me – although it would be frightfully nice of him to do so. Thus Thomson does not accept that we are always obliged to take the best course of action, all things considered, or to do what has the best consequences. She accepts, instead, a system of rights and obligations that allows us to justify our actions independently of their consequences.

I shall say more about this conception of rights in Chapter 8. At this stage it is enough to notice that a utilitarian would reject this theory of rights, and would reject Thomson's judgment in the case of the violinist. The utilitarian would hold that, however outraged I may be at having been kidnapped, if the consequences of disconnecting myself from the violinist are, on balance, and taking into account the interests of everyone affected, worse than the consequences of remaining connected, I ought to remain connected. This does not necessarily mean that utilitarians would regard a woman who disconnected herself as wicked or deserving of blame. They might recognize that she has been placed in an extraordinarily difficult situation, one in which to do what is right involves a considerable sacrifice. They might even grant that most people in this situation would follow

self-interest rather than do the right thing. Nevertheless, they would hold that to disconnect oneself is wrong.

In rejecting Thomson's theory of rights, and with it her judgment in the case of the violinist, the utilitarian would also be rejecting her argument for abortion. Thomson claimed that her argument justified abortion even if we allowed the life of the fetus to count as heavily as the life of a normal person. The utilitarian would say that it would be wrong to refuse to sustain a person's life for nine months, if that was the only way the person could survive. Therefore if the life of the fetus is given the same weight as the life of a normal person, the utilitarian would say that it would be wrong to refuse to carry the fetus until it can survive outside the womb.

This concludes our discussion of the usual liberal replies to the conservative argument against abortion. We have seen that liberals have failed to establish a morally significant dividing line between the newborn baby and the fetus, and their arguments – with the possible exception of Thomson's argument if her theory of rights can be defended – also fail to justify abortion in ways that do not challenge the conservative claim that the fetus is an innocent human being. Nevertheless, it would be premature for conservatives to assume that their case against abortion is sound. It is now time to bring into this debate some more general conclusions about the value of life.

#### THE VALUE OF FETAL LIFE

Let us go back to the beginning. The central argument against abortion from which we started was:

First premise: It is wrong to kill an innocent human being.

Second premise: A human fetus is an innocent human being.

Conclusion: Therefore it is wrong to kill a human fetus.

The first set of replies we considered accepted the first premise of this argument but objected to the second. The second set of

replies rejected neither premise, but objected to drawing the conclusion from these premises (or objected to the further conclusion that abortion should be prohibited by law). None of the replies questioned the first premise of the argument. Given the widespread acceptance of the doctrine of the sanctity of human life, this is not surprising; but the discussion of this doctrine in the preceding chapters shows that this premise is less secure than many people think.

The weakness of the first premise of the conservative argument is that it relies on our acceptance of the special status of *human* life. We have seen that 'human' is a term that straddles two distinct notions: being a member of the species *Homo sapiens*, and being a person. Once the term is dissected in this way, the weakness of the conservative's first premise becomes apparent. If 'human' is taken as equivalent to 'person', the second premise of the argument, which asserts that the fetus is a human being, is clearly false; for one cannot plausibly argue that a fetus is either rational or self-conscious. If, on the other hand, 'human' is taken to mean no more than 'member of the species *Homo sapiens*', then the conservative defence of the life of the fetus is based on a characteristic lacking moral significance and so the first premise is false. The point should by now be familiar: whether a being is or is not a member of our species is, in itself no more relevant to the wrongness of killing it than whether it is or is not a member of our race. The belief that mere membership of our species, irrespective of other characteristics, makes a great difference to the wrongness of killing a being is a legacy of religious doctrines that even those opposed to abortion hesitate to bring into the debate.

Recognising this simple point transforms the abortion issue. We can now look at the fetus for what it is – the actual characteristics it possesses – and can value its life on the same scale as the lives of beings with similar characteristics who are not members of our species. It now becomes apparent that the 'Pro Life' or 'Right to Life' movement is misnamed. Far from having

concern for all life, or a scale of concern impartially based on the nature of the life in question, those who protest against abortion but dine regularly on the bodies of chickens, pigs and calves, show only a biased concern for the lives of members of our own species. For on any fair comparison of morally relevant characteristics, like rationality, self-consciousness, awareness, autonomy, pleasure and pain, and so on, the calf, the pig and the much derided chicken come out well ahead of the fetus at any stage of pregnancy – while if we make the comparison with a fetus of less than three months, a fish would show more signs of consciousness.

My suggestion, then, is that we accord the life of a fetus no greater value than the life of a nonhuman animal at a similar level of rationality, self-consciousness, awareness, capacity to feel, etc. Since no fetus is a person, no fetus has the same claim to life as a person. We have yet to consider at what point the fetus is likely to become capable of feeling pain. For now it will be enough to say that until that capacity exists, an abortion terminates an existence that is of no "intrinsic" value at all. Afterwards, when the fetus may be conscious, though not self-conscious, abortion should not be taken lightly (if a woman ever does take abortion lightly). But a woman's serious interests would normally override the rudimentary interests even of a conscious fetus. Indeed, even an abortion late in pregnancy for the most trivial reasons is hard to condemn unless we also condemn the slaughter of far more developed forms of life for the taste of their flesh.

The comparison between the fetus and other animals leads us to one more point. Where the balance of conflicting interests does make it necessary to kill a sentient creature, it is important that the killing be done as painlessly as possible. In the case of nonhuman animals the importance of humane killing is widely accepted; oddly, in the case of abortion little attention is paid to it. This is not because abortion is known to kill the fetus swiftly and humanely. Late abortions – which are the very ones

in which the fetus may be able to suffer – are sometimes performed by injecting a salt solution into the amniotic sac that surrounds the fetus. It has been claimed that the effect of this is to cause the fetus to have convulsions and die between one and three hours later. Afterwards the dead fetus is expelled from the womb. If there are grounds for thinking that a method of abortion causes the fetus to suffer, that method should be avoided.

#### THE FETUS AS POTENTIAL LIFE

One likely objection to the argument I have offered in the preceding section is that it takes into account only the actual characteristics of the fetus, and not its potential characteristics. On the basis of its actual characteristics, some opponents of abortion will admit, the fetus compares unfavourably with many non-human animals; it is when we consider its potential to become a mature human being that membership of the species *Homo sapiens* becomes important, and the fetus far surpasses any chicken, pig or calf.

Up to this point I have not raised the question of the potential of the fetus because I thought it best to concentrate on the central argument against abortion; but it is true that a different argument, based on the potential of the fetus, can be mounted. Now is the time to look at this other argument. We can state it as follows:

First premise: It is wrong to kill a potential human being.

Second premise: A human fetus is a potential human being.

Conclusion: Therefore it is wrong to kill a human fetus.

The second premise of this argument is stronger than the second premise of the preceding argument. Whereas it is problematic whether a fetus actually *is* a human being – it depends on what we mean by the term – it cannot be denied that the

fetus is a potential human being. This is true whether by 'human being' we mean 'member of the species *Homo sapiens*' or a rational and self-conscious being, a person. The strong second premise of the new argument is, however, purchased at the cost of a weaker first premise, for the wrongness of killing a potential human being – even a potential person – is more open to challenge than the wrongness of killing an actual human being.

It is of course true that the potential rationality, self-consciousness and so on of a fetal *Homo sapiens* surpasses that of a cow or pig; but it does not follow that the fetus has a stronger claim to life. There is no rule that says that a potential X has the same value as an X, or has all the rights of an X. There are many examples that show just the contrary. To pull out a sprouting acorn is not the same as cutting down a venerable oak. To drop a live chicken into a pot of boiling water would be much worse than doing the same to an egg. Prince Charles is a potential King of England, but he does not now have the rights of a king.

In the absence of any general inference from 'A is a potential X' to 'A has the rights of an X', we should not accept that a potential person should have the rights of a person, unless we can be given some specific reason why this should hold in this particular case. But what could that reason be? This question becomes especially pertinent if we recall the grounds on which, in the previous chapter, it was suggested that the life of a person merits greater protection than the life of a being who is not a person. These reasons – from the indirect classical utilitarian concern with not arousing in others the fear that they may be the next killed, the weight given by the preference utilitarian to a person's desires, Tooley's link between a right to life and the capacity to see oneself as a continuing mental subject, and the principle of respect for autonomy – are all based on the fact that persons see themselves as distinct entities with a past and future. They do not apply to those who are not now and never

have been capable of seeing themselves in this way. If these are the grounds for not killing persons, the mere potential for becoming a person does not count against killing.

It might be said that this reply misunderstands the relevance of the potential of the human fetus, and that this potential is important, not because it creates in the fetus a right or claim to life, but because anyone who kills a human fetus deprives the world of a future rational and self-conscious being. If rational and self-conscious beings are intrinsically valuable, to kill a human fetus is to deprive the world of something intrinsically valuable, and so wrong. The chief problem with this as an argument against abortion – apart from the difficulty of establishing that rational and self-conscious beings are of intrinsic value – is that it does not stand up as a reason for objecting to all abortions, or even to abortions carried out merely because the pregnancy is inconveniently timed. Moreover the argument leads us to condemn practices other than abortion that most anti-abortionists accept.

The claim that rational and self-conscious beings are intrinsically valuable is not a reason for objecting to all abortions because not all abortions deprive the world of a rational and self-conscious being. Suppose a woman has been planning to join a mountain-climbing expedition in June, and in January she learns that she is two months pregnant. She has no children at present, and firmly intends to have a child within a year or two. The pregnancy is unwanted only because it is inconveniently timed. Opponents of abortion would presumably think an abortion in these circumstances particularly outrageous, for neither the life nor the health of the mother is at stake – only the enjoyment she gets from climbing mountains. Yet if abortion is wrong only because it deprives the world of a future person, this abortion is not wrong; it does no more than delay the entry of a person into the world.

On the other hand this argument against abortion does lead us to condemn practices that reduce the future human popu-

lation: contraception, whether by 'artificial' means or by 'natural' means such as abstinence on days when the woman is likely to be fertile; and also celibacy. This argument has, in fact, all the difficulties of the 'total' form of utilitarianism, discussed in the previous two chapters, and it does not provide any reason for thinking abortion worse than any other means of population control. If the world is already overpopulated, the argument provides no reason at all against abortion.

Is there any other significance in the fact that the fetus is a potential person? If there is I have no idea what it could be. In writings against abortion we often find reference to the fact that each human fetus is unique. Paul Ramsey, a former Professor of Religion at Princeton University, has said that modern genetics, by teaching us that the first fusion of sperm and ovum creates a 'never-to-be-repeated' informational speck, seems to lead us to the conclusion that 'all destruction of fetal life should be classified as murder'. But why should this fact lead us to this conclusion? A canine fetus is also, no doubt, genetically unique. Does this mean that it is as wrong to abort a dog as a human? When identical twins are conceived, the genetic information is repeated. Would Ramsey therefore think it permissible to abort one of a pair of identical twins? The children that my wife and I would produce if we did not use contraceptives would be genetically unique. Does the fact that it is still indeterminate precisely what genetically unique character those children would have make the use of contraceptives less evil than abortion? Why should it? And if it does could the looming prospect of successful cloning – a technique in which the cells of one individual are used to reproduce a fetus that is a genetic carbon copy of the original – diminish the seriousness of abortion? Suppose the woman who wants to go mountain climbing were able to have her abortion, take a cell from the aborted fetus and then reimplant that cell in her womb so that an exact genetic replica of the aborted fetus would develop – the only difference being that the pregnancy would now come to term six months

later, and thus she could still join the expedition. Would that make the abortion acceptable? I doubt that many opponents of abortion would think so.

#### THE STATUS OF THE EMBRYO IN THE LABORATORY

It is now time to turn to the debate about experimenting on early human embryos, kept alive in a special fluid, outside the human body. This is a relatively new debate, because the possibility of keeping an embryo alive outside the body is new; but in many respects it goes over the same ground as the abortion debate. Although one central argument for abortion – the claim that a woman has the right to control her own body – is not directly applicable in the newer context, the argument against embryo experimentation relies on one of the two claims we have already examined: either that the embryo is entitled to protection because it is a human being, or that the embryo is entitled to protection because it is a potential human being.

One might therefore think that the case against embryo experimentation is stronger than the case for abortion. For one argument in favour of abortion does not apply, while the major arguments against abortion do. In fact, however, the two arguments against abortion do not apply as straightforwardly as one might imagine to the embryo in the laboratory.

First, is the embryo already a human being? We have already seen that claims for a right to life should not be based on species membership, so the fact that the embryo is of the species *Homo sapiens* does not show that the embryo is a human being in any morally relevant sense. And if the fetus is not a person, it is even more apparent that the embryo cannot be one. But there is a further interesting point to be made against the claim that the early embryo is a human being: human beings are individuals, and the early embryo is not even an individual. At any time up to about 14 days after fertilisation – and that is longer than human embryos have so far been kept alive outside the

body – the embryo can split into two or more genetically identical embryos. This happens naturally and leads to the formation of identical twins. When we have an embryo prior to this point, we cannot be sure if what we are looking at is the precursor of one or two individuals.

This poses a problem for those who stress the continuity of our existence from conception to adulthood. Suppose we have an embryo in a dish on a laboratory bench. If we think of this embryo as the first stage of an individual human being, we might call it Mary. But now suppose the embryo divides into two identical embryos. Is one of them still Mary, and the other Jane? If so, which one is Mary? There is nothing to distinguish the two, no way of saying that the one we call Jane split off from the one we call Mary, rather than vice versa. So should we say that Mary is no longer with us, and instead we have Jane and Helen? But what happened to Mary? Did she die? Should we grieve for her? There is something absurd about these speculations. The absurdity stems from thinking of the embryo as an individual at a time at which it is only a cluster of cells. So, until the possibility of twinning is past, it is even more difficult to maintain that the embryo is a human being, in any morally significant sense, than it is to maintain that the fetus is a human being in a morally significant sense. This provides some basis for the laws and guidelines in Britain and various other countries that allow experimentation on the embryo up to 14 days after fertilisation. But for reasons already given, and others that we are about to discuss, this is still an unnecessarily restrictive limit.

What of the argument from potential? Can the familiar claims about the potential of the embryo in the uterus be applied to the embryo in a dish in the laboratory? Before Robert Edwards began the research that led to the IVF procedure, no-one had observed a viable human embryo prior to the stage at which it implants in the wall of the uterus. In the normal process of reproduction inside the body, the embryo, or 'pre-embryo' as it is now sometimes called, remains unattached for the first

seven to fourteen days. As long as such embryos existed only inside the woman's body, there was no way of observing them during that period. The very existence of the embryo could not be established until after implantation. Under these circumstances, once the existence of an embryo was known, that embryo had a good chance of becoming a person, unless its development was deliberately interrupted. The probability of such an embryo becoming a person was therefore very much greater than the probability of an egg in a fertile woman uniting with sperm from that woman's partner and leading to a child.

There was also, in those pre-IVF days, a further important distinction between the embryo and the egg and sperm. Whereas the embryo inside the female body has some definite chance (we shall consider later how great a chance) of developing into a child *unless* a deliberate human act interrupts its growth, the egg and sperm can only develop into a child if there *is* a deliberate human act. So in the one case, all that is needed for the embryo to have a prospect of realising its potential is for those involved to refrain from stopping it; in the other case, they have to carry out a positive act. The development of the embryo inside the female body can therefore be seen as a mere unfolding of a potential that is inherent in it. (Admittedly, this is an oversimplification, for it takes no account of the positive acts involved in childbirth; but it is close enough.) The development of the separated egg and sperm is more difficult to regard in this way, because no further development will take place unless the couple have sexual intercourse or use artificial insemination.

Now consider what has happened as a result of the success of IVF. The procedure involves removing one or more eggs from a woman's ovary, placing them in the appropriate fluid in a glass dish, and then adding sperm to the dish. In the more proficient laboratories, this leads to fertilisation in about 80% of the eggs thus treated. The embryo can then be kept in the dish for two to three days, while it grows and divides into two, four, and then eight cells. At about this stage the embryo is

usually transferred to a woman's uterus. Although the transfer itself is a simple procedure, it is after the transfer that things are most likely to go wrong: for reasons that are not fully understood, with even the most successful IVF teams, the probability of a given embryo that has been transferred to the uterus actually implanting there, and leading to a continuing pregnancy, is always less than 20%, and generally no more than 10%. In summary, then, before the advent of IVF, in every instance in which we knew of the existence of a normal human embryo, it would have been true to say of that embryo that, unless it was deliberately interfered with, it would most likely develop into a person. The process of IVF, however, leads to the creation of embryos that cannot develop into a person unless there is some deliberate human act (the transfer to the uterus) and that even then, in the best of circumstances, will most likely not develop into a person.

The upshot of all this is that IVF has reduced the difference between what can be said about the embryo, and what can be said about the egg and sperm, when still separate, but considered as a pair. Before IVF, any normal human embryo known to us had a far greater chance of becoming a child than any egg plus sperm prior to fertilisation taking place. But with IVF, there is a much more modest difference in the probability of a child resulting from a 2-cell embryo in a glass dish, and the probability of a child resulting from an egg and some sperm in a glass dish. To be specific, if we assume that the laboratory's fertilisation rate is 80% and its rate of pregnancy per embryo transferred is 10%, then the probability of a child resulting from a given embryo is 10%, and the probability of a child resulting from an egg that has been placed in a fluid to which sperm has been added is 8%. So if the embryo is a potential person, why are not the egg-and-sperm, considered jointly, also a potential person? Yet no member of the pro-life movement wants to rescue eggs and sperm in order to save the lives of the people that they have the potential to become.

Consider the following, not *too* improbable scenario. In the IVF laboratory, a woman's egg has been obtained. It sits in one dish on the bench. The sperm from her partner sits in an adjacent dish, ready to be mixed into the solution containing the egg. Then some bad news arrives: the woman is bleeding from the uterus, and will not be in a suitable condition to receive an embryo for at least a month. There is therefore no point in going ahead with the procedure. A laboratory assistant is told to dispose of the egg and sperm. She does so by tipping them down the sink. So far, so good; but a few hours later, when the assistant returns to prepare the laboratory for the next procedure, she notices that the sink is blocked. The egg and its fluid are still there, in the bottom of the sink. She is about to clear the blockage, when she realizes that the sperm has been tipped into the sink too. Quite possibly, the egg has been fertilised! Now what is she to do? Those who draw a sharp distinction between the egg-and-sperm and the embryo must hold that, while the assistant was quite entitled to pour the egg and sperm down the sink, it would be wrong to clear the blockage now. This is difficult to accept. Potentiality seems not to be such an all-or-nothing concept; the difference between the egg-and-sperm and the embryo is one of degree, related to the probability of development into a person.

Traditional defenders of the right to life of the embryo have been reluctant to introduce degrees of potential into the debate, because once the notion is accepted, it seems undeniable that the early embryo is less of a potential person than the later embryo or the fetus. This could easily be understood as leading to the conclusion that the prohibition against destroying the early embryo is less stringent than the prohibition against destroying the later embryo or fetus. Nevertheless, some defenders of the argument from potential have invoked probability. Among these has been the Roman Catholic theologian John Noonan:

As life itself is a matter of probabilities, as most moral reasoning is an estimate of probabilities, so it seems in accord with the structure of reality and the nature of moral thought to found a moral judgment on the change in probabilities at conception . . . Would the argument be different if only one out of ten children conceived came to term? Of course this argument would be different. This argument is an appeal to probabilities that actually exist, not to any and all states of affairs which may be imagined . . . If a spermatozoon is destroyed, one destroys a being which had a chance of far less than 1 in 200 million of developing into a reasoning being, possessed of the genetic code, a heart and other organs, and capable of pain. If a fetus is destroyed, one destroys a being already possessed of the genetic code, organs and sensitivity to pain, and one which had an 80 per cent chance of developing further into a baby outside the womb who, in time, would reason.

The article from which this quotation is taken has been influential in the abortion debate, and has often been quoted and reprinted by those opposed to abortion, but the development of our understanding of the reproductive process has made Noonan's position untenable. The initial difficulty is that Noonan's figures for embryo survival even in the uterus are no longer regarded as accurate. At the time Noonan wrote, the estimate of pregnancy loss was based on clinical recognition of pregnancies at six to eight weeks after fertilisation. At this stage, the chance of losing the pregnancy through spontaneous abortion is about 15%. Recent technical advances allowing earlier recognition of pregnancy, however, provide startlingly different figures. If pregnancy is diagnosed before implantation (within 14 days of fertilisation) the probability of a birth resulting is 25 to 30%. Post-implantation this increases initially to 46 to 60%, and it is not until six weeks gestation that the chance of birth occurring increases to 85 to 90%.

Noonan claimed that his argument is 'an appeal to probabilities that actually exist, not to any and all states of affairs which may be imagined'. But once we substitute the real probabilities

of embryos, at various stages of their existence, becoming persons, Noonan's argument no longer supports the moment of fertilisation as the time at which the embryo gains a significantly different moral status. Indeed, if we were to require an 80% probability of further development into a baby – the figure Noonan himself mentions – we would have to wait until nearly six weeks after fertilisation before the embryo would have the significance Noonan wants to claim for it.

At one point in his argument Noonan refers to the number of sperm involved in a male ejaculation, and says that there is only one chance in 200,000,000 of a sperm becoming part of a living being. This focus on the sperm rather than the egg is a curious instance of male bias, but even if we let that pass, new technology provides still one more difficulty for the argument. There now exists a means of overcoming male infertility caused by a low sperm count. The egg is removed as in the normal in vitro procedure; but instead of adding a drop of seminal fluid to the dish with the egg, a single sperm is picked up with a fine needle and micro-injected under the outer layer of the egg. So if we compare the probability of the embryo becoming a person with the probability of the egg, together with the single sperm that has been picked up by the needle and is about to be micro-injected into the egg, becoming a person, we will be unable to find any sharp distinction between the two. Does that mean that it would be wrong to stop the procedure, once the sperm has been picked up? Noonan's argument from probabilities would seem to commit him either to this implausible claim, or to accepting that we may destroy human embryos. This procedure also undermines Ramsey's claim about the importance of the unique genetic blueprint – that "'never-to-be-repeated' informational speck' having been determined in the case of the embryo but not in the case of the egg and sperm. For that too is here determined before fertilisation.

In this section I have tried to show how the special circum-

stances of the embryo in the laboratory affect the application of the arguments discussed elsewhere in this chapter about the status of the embryo or fetus. I have not attempted to cover all aspects of in vitro fertilisation and embryo experimentation. To do that it would be necessary to investigate several other issues, including the appropriateness of allocating scarce medical resources to this area at a time when the world has a serious problem of overpopulation, and the speculation that the new techniques will be misused to produce children 'made-to order', either at the behest of parents or, worse still, of some mad dictator. To cover these important but disparate matters would take us too far from the main themes of this book. Brief mention must, however, be made of one other aspect of embryo experimentation: the role of the couple from whose gametes the embryo has developed.

Feminists have played a valuable role in pointing out how vulnerable a couple may be to pressure from the medical team to donate an embryo for research purposes. They may be desperate for a child. The IVF team represent their last hope of achieving this goal. They know that there are many other couples seeking treatment. All this means that they are likely to be prepared to go to great lengths in order to please the medical team. When they are asked to donate eggs or embryos, can they really make a free choice? Only, I think, if it is quite clear that their answer will not affect their IVF treatment in any way. Wherever experimentation on embryos is carried out, there is a need to develop safeguards and forms of oversight to ensure that this is always the case.

#### MAKING USE OF THE FETUS

The prospects of using human fetuses for medical purposes has created a further controversial issue related to abortion. Research carried out specifically on fetuses has led to the hope of



finding cures for many serious illnesses by the transplantation of tissue or cells from the fetus. Compared with adult tissue, fetal tissue appears to grow better after transplantation, and to be less likely to be rejected by the patient. The example that has received the most publicity to date is Parkinson's disease, but the use of fetal tissue has also been suggested in the treatment of Alzheimer's Disease, Huntington's Disease, and diabetes; and fetal transplants have been used to save the life of another fetus, in a case in which a 30 week old fetus, in utero, suffering from a fatal immune system disorder was given fetal cells from aborted fetuses.

Do fetuses have rights or interests that may be violated or harmed by using them for these purposes? I have already argued that the fetus has no right to, nor strictly speaking even an interest in, life. But we have seen that, in the case of animals, to say that a being has no right to life does not mean that the being has no rights or interests at all. If the fetus is capable of feeling pain, then, like animals, the fetus has an interest in not suffering pain, and that interest should be given equal consideration with the similar interests of any other being. It is easy to imagine that keeping a fetus alive after an abortion in order to preserve the tissue of the fetus in the best possible condition could cause pain and suffering to a fetus capable of feeling pain. So we must now return to a more detailed investigation of a topic touched upon earlier in this chapter: When does the fetus become conscious?

Fortunately it is now possible to give a reasonably definite answer to this question. The part of the brain associated with sensations of pain, and more generally with consciousness, is the cerebral cortex. Until 18 weeks of gestation, the cerebral cortex is not sufficiently developed for synaptic connections to take place within it – in other words, the signals that give rise to pain in an adult are not being received. Between 18 and 25 weeks, the brain of the fetus reaches a stage at which there is some nerve transmission in those parts associated with con-

sciousness. Even then, however, the fetus appears to be in a persistent state of sleep, and therefore may not be able to perceive pain. The fetus begins to 'wake up' at a gestational age of around 30 weeks. This is, of course, well beyond the stage of viability, and a 'fetus' that was alive and outside the womb at this stage would be a premature baby, and not a fetus at all.

In order to give the fetus the benefit of the doubt, it would be reasonable to take the earliest possible time at which the fetus might be able to feel anything as the boundary after which the fetus should be protected. Thus we should disregard the uncertain evidence about wakefulness, and take as a more definite line, the time at which the brain is physically capable of receiving signals necessary for awareness. This suggests a boundary at 18 weeks of gestation. Prior to that time, there is no good basis for believing that the fetus needs protection from harmful research, because the fetus cannot be harmed. After that time, the fetus does need protection from harm, on the same basis as sentient, but not self-conscious, nonhuman animals need it.

There is, however, one qualification that must be added to this statement. While the fetus prior to 18 weeks may, strictly speaking, be unable to be harmed, if the fetus is allowed to develop into a child, the future child could be very seriously harmed by an experiment that caused the child to be born in a disabled state. Therefore research that allows the fetus to survive beyond 18 weeks does not come under the permissive rule suggested in the previous paragraph.

In discussions of the use of fetal tissue there is often mention of the risk of 'complicity' in the immoral act of abortion. Those wishing to defend the use of fetal tissue therefore go to great lengths in order to show that the use of fetal tissue can be kept entirely separate from the decision to carry out the abortion, and so does not serve to 'legitimise' abortions. For the same reason, many countries now have, or are developing, laws or guidelines for the use of fetal tissue from induced abortions,

and many of these laws or guidelines are drawn up on the basis of the assumption, implicit or explicit, that it is important to separate the decision for the abortion from the use of the fetal tissue, lest the use of fetal tissue serve to increase the incidence of abortions. There may be, for example, a requirement that the donation has to be an entirely anonymous one. This prevents a woman having an abortion in order to donate tissue that might save the life of a relative, perhaps one of her existing children. It is possible that the motivation for such requirements is to protect the woman from pressure to have an abortion. Whether that is a valid ground for requiring anonymity is something I shall consider shortly. Here I wish only to point out that if it is the premise that abortion is immoral that supplies the motive for seeking to prevent any 'complicity' between the use of the fetal tissue and the carrying out of the abortion, or to ensure that fetal tissue use does not contribute to a higher incidence of abortions, then the arguments presented in this chapter count against that view. At least when carried out before 18 weeks, abortion is in itself morally neutral. Even later abortions, when some pain may be involved, could be justified if the outcome were to prevent much greater suffering by saving the life of a child suffering from an immune system disorder, or to cure Parkinson's or Alzheimer's disease in an older person. If the requirement that we separate the act of abortion from the donation of fetal tissue cannot be soundly based on the need to protect the fetus, can it be founded instead on a need to protect the parents, in particular the woman? Different aspects of this separation need to be considered. If the doctor counselling the pregnant woman about her abortion and the doctor seeking fetal tissue for a dying patient are one and the same, the conflict of interest is clear, and there seems a real risk that the doctor will not be able to give disinterested advice to the pregnant woman. So this separation is an important aspect of protecting the position of the pregnant woman.

What, though, of the view that the pregnant woman must

be separated from the recipient by a veil of anonymity? This, of course, prevents her having an abortion in order to provide tissue to someone she knows. Is this restriction justified by consideration of her own interests? On the one hand, without this protection it is easy to imagine scenarios in which a pregnant woman would find herself under great pressure to abort a pregnancy in order to save the life of a dying relative; or a woman who is not pregnant might feel that she has to become pregnant and then terminate the pregnancy to provide the needed fetal tissue. Feminists may well feel that in a society in which men are dominant, the prospects for further intensifying the oppression of women in this way is reason enough to exclude the designation of tissue for a particular known person.

Yet the argument for the opposite conclusion is also strong. It is neither unusual nor unreasonable for a parent to make great sacrifices for a child. We allow both men and women to work long hours doing meaningless factory labor in order to save enough money to ensure that their children receive a good education. This suggests that sacrifice for the sake of a relative or loved one is not in itself wrong or something we need to prohibit. In many countries, we also allow women to have abortions for reasons that are far less important than the saving of a life. This indicates that we do not regard an abortion as something so bad (from the point of view of the fetus, or of the woman) that it should be prohibited, or even restricted to situations in which it is necessary to save a life. If we accept the assumptions that underly both these attitudes, we can scarcely criticise a woman who decides to have an abortion in order to provide fetal tissue that could save the life of her child. Not every woman may want to do this, but those who do may well be making a perfectly reasonable, autonomous decision. It is highly paternalistic for the law to step in and say that a doctor must not give effect to such decisions. From this perspective it is odd that some feminists, whom one might expect to find upholding the right of women to autonomy, should be among

those who think that women need special laws to protect them against the effects of their own freely chosen actions.

There is considerable force in both of these opposed arguments, but we should favour autonomy unless there is clear evidence that the results of doing so are very bad indeed. I know of no evidence to that effect. I suspect, in fact, that much (though certainly not all) of the motivation for prohibiting designated donations of tissue derives from a desire to avoid causing more abortions, and in particular, to avoid women becoming pregnant in order to make fetal tissue available. But for the reasons already given, I see nothing inherently wrong with more abortions, or with pregnancies being undertaken in order to provide fetal tissue, as long as the women involved are freely choosing to do this, and the additional abortions really do make some contribution to saving the lives of others. If the chief objection is that the women's actions might be coerced rather than freely chosen, the solution would be not to prohibit *all* choices for abortion to provide fetal tissue, but rather to set up procedures to ensure that those who do this have chosen freely, in the light of all the available relevant information.

At this point commerce is bound to rear its head. Someone will ask: What if women become pregnant and terminate their pregnancies not in order to save the lives of those they care about, but because they will be paid for the fetal tissue? Do not arguments from autonomy suggest that this, too, should be up to the woman to decide? Is it really worse to become pregnant and terminate the pregnancy in order to receive, say, \$10,000 than to spend six months doing repetitious labour in a noisy, polluted, hazardous factory for the same amount of money?

Despite my willingness to facilitate fetal tissue use, I am much more reluctant to embrace the free market. This is not because I think that women would be unable to protect themselves from the exploitation of the market; it really does not seem to me a worse form of exploitation than those that we accept in more common forms of employment. Rather, I dislike the idea of a

free market in fetal tissue because, as R.M. Titmuss argued many years ago in the case of blood supplies for medical purposes, when we choose between a social policy based on altruism and one based on commerce, we are choosing between two different types of society. It may well be better, for a variety of reasons, that there are some things that money cannot buy; some circumstances in which we must rely on the altruism of those we love, or even of strangers in our society. I support efforts to resist the creeping commercialisation of every aspect of our lives, and so I would resist the commercialisation of fetal tissue.

#### ABORTION AND INFANTICIDE

There remains one major objection to the argument I have advanced in favour of abortion. We have already seen that the strength of the conservative position lies in the difficulty liberals have in pointing to a morally significant line of demarcation between an embryo and a newborn baby. The standard liberal position needs to be able to point to some such line, because liberals usually hold that it is permissible to kill an embryo or fetus but not a baby. I have argued that the life of a fetus (and even more plainly, of an embryo) is of no greater value than the life of a nonhuman animal at a similar level of rationality, self-consciousness, awareness, capacity to feel, etc., and that since no fetus is a person no fetus has the same claim to life as a person. Now it must be admitted that these arguments apply to the newborn baby as much as to the fetus. A week-old baby is not a rational and self-conscious being, and there are many nonhuman animals whose rationality, self-consciousness, awareness, capacity to feel, and so on, exceed that of a human baby a week or a month old. If the fetus does not have the same claim to life as a person, it appears that the newborn baby does not either, and the life of a newborn baby is of less value to it than the life of a pig, a dog, or a chimpanzee is to the nonhuman animal. Thus while my position on the status of fetal life may

be acceptable to many, the implications of this position for the status of newborn life are at odds with the virtually unchallenged assumption that the life of a newborn baby is as sacrosanct as that of an adult. Indeed, some people seem to think that the life of a baby is more precious than that of an adult. Lurid tales of German soldiers bayoneting Belgian babies figured prominently in the wave of anti-German propaganda that accompanied Britain's entry into the First World War, and it seemed to be tacitly assumed that this was a greater atrocity than the murder of adults would be.

I do not regard the conflict between the position I have taken and widely accepted views about the sanctity of infant life as a ground for abandoning my position. These widely accepted views need to be challenged. It is true that infants appeal to us because they are small and helpless, and there are no doubt very good evolutionary reasons why we should instinctively feel protective towards them. It is also true that infants cannot be combatants and killing infants in wartime is the clearest possible case of killing civilians, which is prohibited by international convention. In general, since infants are harmless and morally incapable of committing a crime, those who kill them lack the excuses often offered for the killing of adults. None of this shows, however, that the killing of an infant is as bad as the killing of an (innocent) adult.

In thinking about this matter we should put aside feelings based on the small, helpless, and – sometimes – cute appearance of human infants. To think that the lives of infants are of special value because infants are small and cute is on a par with thinking that a baby seal, with its soft white fur coat and large round eyes deserves greater protection than a gorilla, who lacks these attributes. Nor can the helplessness or the innocence of the infant *Homo sapiens* be a ground for preferring it to the equally helpless and innocent fetal *Homo sapiens*, or, for that matter, to laboratory rats who are 'innocent' in exactly the same sense

as the human infant, and, in view of the experimenters' power over them, almost as helpless.

If we can put aside these emotionally moving but strictly irrelevant aspects of the killing of a baby we can see that the grounds for not killing persons do not apply to newborn infants. The indirect, classical utilitarian reason does not apply, because no one capable of understanding what is happening when a newborn baby is killed could feel threatened by a policy that gave less protection to the newborn than to adults. In this respect Bentham was right to describe infanticide as 'of a nature not to give the slightest inquietude to the most timid imagination'. Once we are old enough to comprehend the policy, we are too old to be threatened by it.

Similarly, the preference utilitarian reason for respecting the life of a person cannot apply to a newborn baby. Newborn babies cannot see themselves as beings who might or might not have a future, and so cannot have a desire to continue living. For the same reason, if a right to life must be based on the capacity to want to go on living, or on the ability to see oneself as a continuing mental subject, a newborn baby cannot have a right to life. Finally, a newborn baby is not an autonomous being, capable of making choices, and so to kill a newborn baby cannot violate the principle of respect for autonomy. In all this the newborn baby is on the same footing as the fetus, and hence fewer reasons exist against killing both babies and fetuses than exist against killing those who are capable of seeing themselves as distinct entities, existing over time.

It would, of course, be difficult to say at what age children begin to see themselves as distinct entities existing over time. Even when we talk with two and three year old children it is usually very difficult to elicit any coherent conception of death, or of the possibility that someone – let alone the child herself – might cease to exist. No doubt children vary greatly in the age at which they begin to understand these matters,

as they do in most things. But a difficulty in drawing the line is not a reason for drawing it in a place that is obviously wrong, any more than the notorious difficulty in saying how much hair a man has to have lost before we can call him 'bald' is a reason for saying that someone whose pate is as smooth as a billiard ball is not bald. Of course, where rights are at risk, we should err on the side of safety. There is some plausibility in the view that, for legal purposes, since birth provides the only sharp, clear and easily understood line, the law of homicide should continue to apply immediately after birth. Since this is an argument at the level of public policy and the law, it is quite compatible with the view that, on purely ethical grounds, the killing of a newborn infant is not comparable with the killing of an older child or adult. Alternatively, recalling Hare's distinction between the critical and intuitive levels of moral reasoning, one could hold that the ethical judgment we have reached applies only at the level of critical morality; for everyday decision-making, we should act as if an infant has a right to life from the moment of birth. In the next chapter, however, we shall consider another possibility: that there should be at least some circumstances in which a full legal right to life comes into force not at birth, but only a short time after birth – perhaps a month. This would provide the ample safety margin mentioned above.

If these conclusions seem too shocking to take seriously, it may be worth remembering that our present absolute protection of the lives of infants is a distinctively Christian attitude rather than a universal ethical value. Infanticide has been practised in societies ranging geographically from Tahiti to Greenland and varying in culture from the nomadic Australian aborigines to the sophisticated urban communities of ancient Greece or mandarin China. In some of these societies infanticide was not merely permitted but, in certain circumstances, deemed morally obligatory. Not to kill a deformed or sickly infant was often regarded as wrong, and infanticide was prob-

ably the first, and in several societies the only, form of population control.

We might think that we are just more 'civilised' than these 'primitive' peoples. But it is not easy to feel confident that we are more civilised than the best Greek and Roman moralists. It was not just the Spartans who exposed their infants on hillsides: both Plato and Aristotle recommended the killing of deformed infants. Romans like Seneca, whose compassionate moral sense strikes the modern reader (or me, anyway) as superior to that of the early and mediaeval Christian writers, also thought infanticide the natural and humane solution to the problem posed by sick and deformed babies. The change in Western attitudes to infanticide since Roman times is, like the doctrine of the sanctity of human life of which it is a part, a product of Christianity. Perhaps it is now possible to think about these issues without assuming the Christian moral framework that has, for so long, prevented any fundamental reassessment.

None of this is meant to suggest that someone who goes around randomly killing babies is morally on a par with a woman who has an abortion. We should certainly put very strict conditions on permissible infanticide; but these restrictions might owe more to the effects of infanticide on others than to the intrinsic wrongness of killing an infant. Obviously, in most cases, to kill an infant is to inflict a terrible loss on those who love and cherish the child. My comparison of abortion and infanticide was prompted by the objection that the position I have taken on abortion also justifies infanticide. I have admitted this charge – without regarding the admission as fatal to my position – to the extent that the *intrinsic* wrongness of killing the late fetus and the *intrinsic* wrongness of killing the newborn infant are not markedly different. In cases of abortion, however, we assume that the people most affected – the parents-to-be, or at least the mother-to-be – want to have the abortion. Thus infanticide can only be equated with abortion when those closest to the child do not want it to live. As an infant can be adopted

by others in a way that a pre-viable fetus cannot be, such cases will be rare. (Some of them are discussed in the following chapter.) Killing an infant whose parents do not want it dead is, of course, an utterly different matter.

## TAKING LIFE: HUMANS

**I**N dealing with an objection to the view of abortion presented in Chapter 6, we have already looked beyond abortion to infanticide. In so doing we will have confirmed the suspicion of supporters of the sanctity of human life that once abortion is accepted, euthanasia lurks around the next corner – and for them, euthanasia is an unequivocal evil. It has, they point out, been rejected by doctors since the fifth century B.C., when physicians first took the Oath of Hippocrates and swore ‘to give no deadly medicine to anyone if asked, nor suggest any such counsel’. Moreover, they argue, the Nazi extermination programme is a recent and terrible example of what can happen once we give the state the power to kill innocent human beings.

I do not deny that if one accepts abortion on the grounds provided in Chapter 6, the case for killing other human beings, in certain circumstances, is strong. As I shall try to show in this chapter, however, this is not something to be regarded with horror, and the use of the Nazi analogy is utterly misleading. On the contrary, once we abandon those doctrines about the sanctity of human life that – as we saw in Chapter 4 – collapse as soon as they are questioned, it is the refusal to accept killing that, in some cases, is horrific.

‘Euthanasia’ means, according to the dictionary, ‘a gentle and easy death’, but it is now used to refer to the killing of those who are incurably ill and in great pain or distress, for the sake of those killed, and in order to spare them further suffering or distress. This is the main topic of this chapter. I shall also consider, however, some cases in which, though killing is not con-