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R.M. HARE

Abortion and the Golden Rule

I

If philosophers are going to apply ethical theory successfully to practical issues, they must first have a theory. This may seem obvious; but they often proceed as if it were not so. A philosopher's chief contribution to a practical issue should be to show us which are good and which are bad arguments; and to do this he has to have some way of telling one from the other. Moral philosophy therefore needs a basis in philosophical logic—the logic of the moral concepts. But we find, for example, Professor Judith Jarvis Thomson, in an article on abortion which has been justly praised for the ingenuity and liveliness of her examples, proceeding as if this were not necessary at all.¹ She simply parades the examples before us and asks what we would say about them. But how do we know whether what we feel inclined to say has any secure ground? May we not feel inclined to say it just because of the way we were brought up to think? And was this necessarily the right way? It is highly diverting to watch the encounter in the same volume between her and Mr. John Finnis, who, being a devout Roman Catholic, has intuitions which differ

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This is a revised version of the Hurst Lecture given at American University, Washington, D.C., in 1974.

1. Judith Jarvis Thomson, "A Defense of Abortion," *Philosophy & Public Affairs* 1, no. 1 (Fall 1971). Reprinted in *The Rights and Wrongs of Abortion*, ed. Marshall Cohen, Thomas Nagel, and Thomas Scanlon (Princeton, N.J., 1974), hereafter cited as *RWA*.

from hers (and mine) in the wildest fashion.² I just do not know how to tell whether Mr. Finnis is on safe ground when he claims that suicide is "a paradigm case of an action that is always wrong"; nor Professor Thomson when she makes the no doubt more popular claim that we have a right to decide what happens in and to our own bodies.³ How would we choose between these potentially conflicting intuitions? Is it simply a contest in rhetoric?

In contrast, a philosopher who wishes to contribute to the solution of this and similar practical problems should be trying to develop, on the basis of a study of the moral concepts and their logical properties, a theory of moral reasoning that will determine which arguments we ought to accept. Professor Thomson might be surprised to see me saying this, because she thinks that I am an emotivist,⁴ in spite of the fact that I devoted two of the very first papers I ever published to a refutation of emotivism.⁵ Her examples are entertaining, and help to show up our prejudices; but they will do no more than that until we have a way of telling which prejudices ought to be abandoned.

II

I shall abjure two approaches to the question of abortion which have proved quite unhelpful. The first puts the question in terms of the "rights" of the fetus or the mother; the second demands, as a necessary condition for solving the problem, an answer to the question, Is the fetus a person? The first is unhelpful at the moment because nobody has yet proposed an even plausible account of how

2. John Finnis, "The Rights and Wrongs of Abortion: A Reply to Judith Thomson," *Philosophy & Public Affairs* 2, no. 2 (Winter 1973); reprinted in *RWA*.

3. Finnis, "Rights and Wrongs," p. 129; *RWA*, p. 97. Thomson, "Defense," pp. 53f.; *RWA*, pp. 9f.

4. Judith Jarvis Thomson and Gerald Dworkin, *Ethics* (New York, 1968), p. 2. Cf. David A.J. Richards, "Equal Opportunity and School Financing: Towards a Moral Theory of Constitutional Adjudication," *Chicago Law Review* 41 (1973): 71, for a similar misunderstanding. I am most grateful to Professor Richards for clearing up this misunderstanding in his article, "Free Speech and Obscenity Law," *University of Pennsylvania Law Review* 123 (1974), fn. 255.

5. "Imperative Sentences," *Mind* 58 (1949), reprinted in my *Practical Inferences* (London, 1971); "Freedom of the Will," *Aristotelian Society Supp.* 25 (1951), reprinted in my *Essays on the Moral Concepts* (London, 1972).

we might argue conclusively about rights. Rights are the stamping-ground of intuitionists, and it would be difficult to find any claim confidently asserted to a right which could not be as confidently countered by a claim to another right, such that both rights cannot simultaneously be complied with. This is plainly true in the present controversy, as it is in the case of rights to property—one man has a right not to starve, another a right to hold on to the money that would buy him food. Professor Thomson evidently believes in property rights, because she curiously bases the right of a woman to decide what happens in and to her own body on her ownership of it. We might ask whether, if this is correct, the property is disposable; could it be held that by the marriage contract a wife and a husband yield up to each other some of their property rights in their own bodies? If so, might we find male chauvinists who were prepared to claim that, if the husband wants to have an heir, the wife cannot claim an absolute liberty to have an abortion? As a question of law, this could be determined by the courts and the legislature; but as a question of morals . . . ?

In the law, cash value can be given to statements about rights by translating them into statements about what it is or is not lawful to do. An analogous translation will have to be effected in morals, with "right" (adjective), "wrong," and "ought" taking the place of "lawful" and "unlawful," before the word "rights" can be a dependable prop for moral arguments. It may be that one day somebody will produce a theory of rights which links the concept firmly to those of "right," "wrong," and "ought"—concepts whose logic is even now a *little* better understood. The simplest such theory would be one which said that *A* has a right, in one sense of the word, to do *X* if and only if it is not wrong for *A* to do *X*; and that *A* has a right, in another sense, to do *X* if and only if it is wrong to prevent *A* from doing *X*; and that *A* has a right to do *X* in a third sense if and only if it is wrong not to assist *A* to do *X* (the extent of the assistance, and the persons from whom it is due, being unspecified and, on many occasions of the use of this ambiguous word "rights," unspecified). It is often unclear, when people claim that women have a right to do what they like with their own bodies, which of these senses is being used. (Does it, for example, mean that it is not wrong for them to terminate their own pregnancies, or that it is wrong to

stop them doing this, or that it is wrong not to assist them in doing this?) For our present purposes it is best to leave these difficulties on one side and say that *if* at some future time a reliable analysis of the various senses of "rights" in terms of "wrong" or "ought" is forthcoming, then arguments about rights will be restatable in terms of what it is wrong to do, or what we ought or ought not to do. Till that happy day comes, we shall get the issues in better focus if we discuss them directly in terms of what we ought or ought not to do, or what it would be right or wrong to do, to the fetus or the mother in specified circumstances.

III

The other unhelpful approach, that of asking whether the fetus is a person, has been so universally popular that in many of the writings it is assumed that this question is the key to the whole problem. The reason for this is easy to see; if there is a well-established moral principle that the intentional killing of other innocent persons is always murder, and therefore wrong, it looks as if an easy way to determine whether it is wrong to kill fetuses is to determine whether they are persons, and thus settle once for all whether they are subsumable under the principle. But this approach has run into well-known difficulties, the basic reason for which is the following. If a normative or evaluative principle is framed in terms of a predicate which has fuzzy edges (as nearly all predicates in practice have), then we are not going to be able to use the principle to decide cases on the borderline without doing some more normation or evaluation. If we make a law forbidding the use of wheeled vehicles in the park, and somebody thinks he can go in the park on roller skates, no amount of cerebration, and no amount of inspection of roller skates, are going to settle for us the question of whether roller skates are wheeled vehicles "within the meaning of the Act" if the Act has not specified whether they are; the judge has to decide whether they are *to be* counted as such. And this is a further determination of the law.⁶ The judge may have very good reasons of public interest or morals for his decision; but he cannot make it by any physical or

6. Cf. Aristotle, *Nicomachean Ethics* 5, 1137^b20. I owe the roller-skate example to H.L.A. Hart.

metaphysical investigation of roller skates to see whether they are *really* wheeled vehicles. If he had not led too sheltered a life, he knew all he needed to know about roller skates before the case ever came into court.

In the same way the decision to say that the fetus becomes a person at conception, or at quickening, or at birth, or whenever takes your fancy, and that thereafter, because it is a person, destruction of it is murder, is inescapably a moral decision, for which we have to have moral reasons. It is not necessary, in order to make this point, to insist that the word "person" is a moral word; though in many contexts there is much to be said for taking this line. It is necessary only to notice that "person," even if descriptive, is not a fully determinate concept; it is loose at the edges, as the abortion controversy only too clearly shows. Therefore, if we decide that, "within the meaning of" the principle about murder, a fetus becomes a person as soon as it is conceived, we are deciding a moral question, and ought to have a moral reason for our decision. It is no use looking more closely at the fetus to satisfy ourselves that it is *really* a person (as the people do who make so much of the fact that it has arms and legs); we already have all the information that we need about the fetus. What is needed is thought about the moral question, How ought a creature, about whose properties, circumstances, and probable future we are quite adequately informed, to be treated? If, in our desire to get out of addressing ourselves to this moral question—to get it settled for us without any moral thought on our part—we go first to the physicians for information about whether the fetus is really a person, and then, when they have told us all they can, to the metaphysicians, we are only indulging in the well-known vice of philosophers (which my fellow linguistic philosophers, at any rate, ought to be on their guard against, because that is the mainstay of our training)—the vice of trying to settle substantial questions by verbal maneuvers.

I am not saying that physiological research on the fetus has no bearing on moral questions about abortion. If it brought to light, for example, that fetuses really do suffer on the same scale as adults do, then that would be a good moral reason for not causing them to suffer. It will not do to show that they wriggle when pricked, for so do

earthworms; and I do not think that the upholders of the rights of unborn children wish to extend these rights to earthworms. Encephalograms are better; but there are enormous theoretical and practical difficulties in the argument from encephalograms to conscious experiences. In default of these latter, which would have to be of such a sort as to distinguish fetuses radically from other creatures which the antiabortionists would not lift a finger to protect, the main weight of the antiabortionist argument is likely to rest, not on the sufferings of the fetus, but on harms done to the interests of the person into whom the fetus would normally develop. These will be the subject of most of the rest of this paper.

Approaching our moral question in the most general way, let us ask whether there is *anything* about the fetus or about the person it may turn into that should make us say that we ought not to kill it. If, instead of asking this question, somebody wants to go on asking, indirectly, whether the fetus is a person, and whether, *therefore*, killing it is wrong, he is at liberty to do so; but I must point out that the reasons he will have to give for saying that it is a person, and that, therefore, killing it is wrong (or that it is not a person and, therefore, killing it is not wrong) will be the very same moral reasons as I shall be giving for the answer to my more direct question. Whichever way one takes it, one cannot avoid giving a reasoned answer to this moral question; so why not take it the simplest way? To say that the fetus is (or is not) a person gives *by itself* no moral reason for or against killing it; it merely incapsulates any reasons we may have for including the fetus within a certain category of creatures that it is, or is not, wrong to kill (i.e. persons or nonpersons). The word "person" is doing no work here (other than that of bemusing us).

IV

Is there then anything about the fetus which raises moral problems about the legitimacy of killing it? At this point I must declare that I have no axe to grind—I am not a fervent abortionist nor a fervent anti-abortionist—I just want fervently to get to the root of the matter. It will be seen, as the argument goes on, that the first move I shall make is one which will give cheer to the antiabortionists; but, before they have had time to celebrate, it will appear that this move brings with

it, inescapably, another move which should encourage the other side. We shall end up somewhere in between, but perhaps with a clearer idea of how, in principle, to set about answering questions about particular abortions.

The single, or at least the main, thing about the fetus that raises the moral question is that, if not terminated, the pregnancy is highly likely to result in the birth and growth to maturity of a person just like the rest of us. The word "person" here reenters the argument, but in a context and with a meaning that does not give rise to the old troubles; for it is clear at least that we ordinary adults are persons. If we knew beyond peradventure that a fetus was going to miscarry anyway, then little would remain of the moral problem beyond the probably minimal sufferings caused to the mother and just possibly the fetus by terminating the pregnancy now. If, on the other hand, we knew (to use Professor Tooley's science-fiction example)⁷ that an embryo kitten would, if not aborted but given a wonder drug, turn into a being with a human mind like ours, then that too would raise a moral problem. Perhaps Tooley thinks not; but we shall see. It is, to use his useful expression, the "potentiality" that the fetus has of becoming a person in the full ordinary sense that creates the problem. It is because Tooley thinks that, once the "potentiality principle" (see below) is admitted, the conservatives or extreme antiabortionists will win the case hands down, that he seeks reasons for rejecting it; but, again, we shall see.

We can explain why the potentiality of the fetus for becoming a person raises a moral problem if we appeal to a type of argument which, in one guise or another, has been the formal basis of almost all theories of moral reasoning that have contributed much that is worth while to our understanding of it. I am alluding to the Christian (and indeed pre-Christian) "Golden Rule," the Kantian Categorical Imperative, the ideal observer theory, the rational contractor theory, various kinds of utilitarianism, and my own universal prescriptivism.⁸ I would claim that the last of these gives the greatest promise

7. "Abortion and Infanticide," *Philosophy & Public Affairs* 2, no. 1 (Fall 1972): 60; *RWA*, p. 75. It will be clear what a great debt I owe to this article.

8. See my "Rules of War and Moral Reasoning," *Philosophy & Public Affairs* 1, no. 2 (Winter 1972), fn. 3; reprinted in *War and Moral Responsibility*, ed.

of putting what is common to all these theories in a perspicuous way, and so revealing their justification in logic; but it is not the purpose of this paper to give this justification. Instead, since the problem of abortion is discussed as often as not from a Christian standpoint, and since I hope thereby to find a provisional starting point for the argument on which many would agree, I shall use that form of the argument which rests on the Golden Rule that we should do to others as we wish them to do to us.⁹ It is a logical extension of this form of argument to say that we should do to others what *we are glad was* done to us. Two (surely readily admissible) changes are involved here. The first is a mere difference in the two tenses which cannot be morally relevant. Instead of saying that we should do to others as we wish them (in the future) to do to us, we say that we should do to others as we wish that they had done to us (in the past). The second is a change from the hypothetical to the actual: instead of saying that we should do to others as we wish that they had done to us, we say that we should do to others as we are glad that they did do to us. I cannot see that this could make any difference to the spirit of the injunction, and logical grounds could in any case be given, based on the universal prescriptivist thesis, for extending the Golden Rule in this way.

The application of this injunction to the problem of abortion is obvious. If we are glad that nobody terminated the pregnancy that resulted in *our* birth, then we are enjoined not, *ceteris paribus*, to terminate any pregnancy which will result in the birth of a person having a life like ours. Close attention obviously needs to be paid to the "*ceteris paribus*" clause, and also to the expression "like ours." The "universalizability" of moral judgments, which is one of the logical bases of the Golden Rule, requires us to make the same moral judgment about qualitatively identical cases, and about cases which are

Marshall Cohen, Thomas Nagel, and Thomas Scanlon (Princeton, N.J., 1974). See also my review of John Rawls, *A Theory of Justice*, in *Philosophical Quarterly* 23 (1973): 154f.; and my "Ethical Theory and Utilitarianism" in *Contemporary British Philosophy*, series 4, ed. H.D. Lewis (London, forthcoming).

9. St. Matthew 7:12. There have been many misunderstandings of the Golden Rule, some of which I discuss in my "Euthanasia: A Christian View," *Proceedings of the Center for Philosophic Exchange*, vol. 6 (SUNY at Brockport, 1975).

relevantly similar. Since no cases in this area are going to be qualitatively *identical*, we shall have to rely on relevant similarity. Without raising a very large topic in moral philosophy, we can perhaps avoid the difficulty by pointing out that the relevant respects here are going to be those things about our life which make us glad that we were born. These can be stated in a general enough way to cover all those persons who are, or who are going to be or would be, glad that they were born. Those who are not glad they were born will still have a reason for not aborting those who would be glad; for even the former wish that, if they had been going to be glad that they were born, nobody should have aborted them. So, although I have, for the sake of simplicity, put the injunction in a way that makes it apply only to the abortion of people who will have a life just like that of the aborter, it is generalizable to cover the abortion of any fetus which will, if not aborted, turn into someone who will be glad to be alive.

I now come back to Professor Tooley's wonder kitten. He says that if it became possible by administering a wonder drug to an embryo kitten to cause it to turn into a being with a human mind like ours, we should still not feel under any obligation either to administer the drug to kittens or to refrain from aborting kittens to whom the drug had been administered by others. He uses this as an argument against the "potentiality principle," which says that if there are any properties which are possessed by adult human beings and which endow any organisms possessing them with a serious right to life, then "at least one of those properties will be such that any organism *potentially* possessing that property has a serious right to life even now, simply by virtue of that potentiality, where an organism possesses a property potentially if it will come to have that property in the normal course of its development."¹⁰ Putting this more briefly and in terms of "wrong" instead of "rights," the potentiality principle says that if it would be wrong to kill an adult human being because he has a certain property, it is wrong to kill an organism (e.g. a fetus) which will come to have that property if it develops normally.

There is one minor objection to what Tooley says which we can pass over quickly. The administration of wonder drugs is not normal

10. Tooley, "Abortion and Infanticide," pp. 55-56; *RWA*, pp. 70-71 (my italics).

development, so Tooley ought not to have used the words "in the normal course of its development"; they spoil his "kitten" example. But let us amend our summary of his principle by omitting the words "if it develops normally" and substituting "if we do not kill it." I do not think that this substitution makes Tooley's argument any weaker than it is already.

Now suppose that I discovered that I myself was the result of the administration of the wonder drug to a kitten embryo. To make this extension of the example work, we have to suppose that the drug is even more wonderful and can make kitten embryos grow into beings with human bodies as well as minds; but it is hard to see how this could make any moral difference, especially for Tooley, who rests none of his argument on bodily shape. If this happened, it would not make my reasons for being glad that I was not aborted cease to apply. I certainly prescribe that they should not have aborted an embryo kitten which the wonder drug was going to turn into *me*. And so, by the Golden Rule, I must say that I should not abort an embryo kitten to whom the wonder drug had been administered and which therefore was going to turn into a creature just like me. And, for what it is worth, this is what I would say. The fact that I confidently assert this, whereas Tooley confidently asserts the opposite—so confidently, in fact, that he thinks that this single example is enough to establish his entire case against the potentiality principle, and produces no other—just shows how inadequate intuitions are as a guide to moral conclusions. The fantastic nature of his example (like that of some of Professor Thomson's) makes it even more difficult to be certain that we are saying what we *should* say about it. Our intuitions are the result of our upbringings, and we were not brought up on cases where kittens can be turned into beings with human minds, or where people get kidnapped and have distinguished violinists with kidney failure plugged into their bloodstreams, as in Professor Thomson's example.

The problem becomes more difficult if we ask whether the same argument could be used to establish that it would be wrong, if this wonder drug were invented, not to administer it to all the embryo kittens one could get hold of. I shall postpone discussion of this problem until we have discussed the similar problem of whether the potentiality principle, once established, will not force upon us an extreme

conservative position not only about abortion but also about contraception, and even forbid chastity. If we allow the potentiality of procreating human beings to place upon us obligations to procreate them, shall we not have a duty to procreate all the human beings that we can, and will not even monks and nuns have to obey King Lear's injunction to "let copulation thrive"?¹¹ To the general problem which this raises I shall return. We shall see that it is simply the familiar problem about the right population policy, which has to be faced whatever view we take of the present question.

V

I propose to take it as established, that the potentiality principle is *not* refuted by Tooley's one example, and that it therefore holds the field until somebody produces a better argument against it—which I do not expect to happen, because the potentiality principle itself can be based on the Golden Rule, as the examples already considered show, and the Golden Rule has a secure logical foundation which I have already mentioned, though I have not had room to expound it.

Why does Tooley think that, if the potentiality principle is once granted, the extreme conservative position on abortion becomes impregnable? Obviously because he has neglected to consider some other potential beings. Take, to start with, the next child that this mother will have if this pregnancy is terminated but will not have if this pregnancy is allowed to continue. Why will she not have it? For a number of alternative reasons. The most knockdown reason would be that the mother would die or be rendered sterile if this pregnancy were allowed to continue. Another would be that the parents had simply decided, perhaps for morally adequate reasons, that their family would be large enough if and when this present fetus was born. I shall be discussing later the morality of family limitation; for the moment I shall assume for the sake of argument that it is morally all right for parents to decide, after they have had, say, fifteen children, not to have any more, and to achieve this modest limitation of their family by remaining completely chaste.

In all these cases there is, in effect, a choice between having this child now and having another child later. Most people who oppose

11. Act 4, sc. 6.

abortion make a great deal of the wrongness of stopping the birth of this child but say nothing about the morality of stopping the birth of the later child. My own intuition (on which I am by no means going to rely) is that they are wrong to make so big a distinction. The basis of the distinction is supposed to be that the fetus already exists as a single living entity all in one place, whereas the possible future child is at the moment represented only by an unfertilized ovum and a sperm which may or may not yet exist in the father's testes. But will this basis support so weighty a distinction?

First, why is it supposed to make a difference that the genetic material which causes the production of the future child and adult is in two different places? If I have a duty to open a certain door, and two keys are required to unlock it, it does not seem to me to make any difference to my duty that one key is already in the lock and the other in my trousers. This, so far, is an intuition, and I place no reliance on it; I introduce the parallel only to remove some prejudices. The real argument is this: when I am glad that I was born (the basis, it will be remembered, of the argument that the Golden Rule therefore places upon me an obligation not to stop others being born), I do not confine this gladness to gladness that they did not abort me. I am glad, also, that my parents copulated in the first place, without contraception. So from my gladness, in conjunction with the extended Golden Rule, I derive not only a duty not to abort, but also a duty not to abstain from procreation. In the choice-situation that I have imagined, in which it is either this child or the next one but not both, I cannot perform both these duties. So, in the words of a wayside pulpit report to me by Mr. Anthony Kenny, "if you have conflicting duties, one of them isn't your duty." But which?

I do not think that any general answer can be given to this question. If the present fetus is going to be miserably handicapped if it grows into an adult, perhaps because the mother had rubella, but there is every reason to suppose that the next child will be completely normal and as happy as most people, there would be reason to abort this fetus and proceed to bring to birth the next child, in that the next child will be much gladder to be alive than will this one. The Golden Rule does not directly guide us in cases where we cannot help failing to do to *some* others what we wish were done to us, because

if we did it to some, we should thereby prevent ourselves from doing it to others. But it can guide us indirectly, if further extended by a simple maneuver, to cover what I have elsewhere called "multilateral" situations. We are to do to the others affected, taken together, what we wish were done to us if we had to be all of them by turns in random order.¹² In this case, by terminating this pregnancy, I get, on this scenario, no life at all in one of my incarnations and a happy life in the other; but by not terminating it, I get a miserable life in one and no life at all in the other. So I should choose to terminate. In order to reach this conclusion it is not necessary to assume, as we did, that the present fetus will turn into a person who will be positively miserable; only that that person's expectation of happiness is so much less than the expectation of the later possible person that the other factors (to be mentioned in a moment) are outweighed.

In most cases, the probability that there will be another child to replace this one is far lower than the probability that this fetus will turn into a living child. The latter probability is said in normal cases to be about 80 percent; the probability of the next child being born may be much lower (the parents may separate; one of them may die or become sterile; or they may just change their minds about having children). If I do not terminate in such a normal case, I get, on the same scenario, an 80 percent chance of a normal happy life in one incarnation and no chance at all of any life in the other; but if I do terminate, I get a much lower chance of a normal happy life in the second incarnation and no chance at all in the first. So in this case I should not terminate. By applying this kind of scenario to different cases, we get a way of dramatizing the application of the Golden Rule to them. The cases will all be different, but the relevance of the differences to the moral decision becomes clearer. It is these differences in probabilities of having a life, and of having a happy one, that justify, first of all the presumptive policy, which most people would follow, that abortions in general ought to be avoided, and secondly the exceptions to this policy that many people would now allow—though of course they will differ in their estimation of the probabilities.

12. See C.I. Lewis, *An Analysis of Knowledge and Valuation* (La Salle, 1946), p. 547; D. Haslett, *Moral Rightness* (The Hague, 1974), chap. 3. Cf. my *Freedom and Reason* (Oxford, 1963), p. 123.

I conclude, therefore, that the establishment of the potentiality principle by no means renders impregnable the extreme conservative position, as Tooley thinks it does. It merely creates a rebuttable or defeasible presumption against abortion, which is fairly easily rebutted if there are good indications. The interests of the mother may well, in many cases, provide such good indications, although, because hers is not the only interest, we have also to consider the others. Liberals can, however, get from the present form of argument all that they could reasonably demand, since in the kinds of cases in which they would approve of termination, the interests of the mother will usually be predominant enough to tip the balance between those of the others affected, including potential persons.

The effect of this argument is to bring the morality of contraception and that of abortion somewhat closer together. Important differences will remain, however. There is the fact that the fetus has a very good chance of turning into a normal adult if allowed to develop, whereas the chance that a single coitus will have that result is much lower. Further, if a general duty to produce children be recognized (as the view I have suggested requires), to kill a fetus means the nonfulfilment of this duty for a much longer period (the period from its begetting to the begetting of the next child, if any); whereas, if you do not beget a child now, you may five minutes later. Thirdly, parents become attached to the child in the womb (hence the argument, "We should all think differently if wombs were transparent"), and therefore an abortion may (whatever the compensating good) do some harm to them in addition to that (if any) done to the prospective child that is aborted; this is not so if they merely refrain from procreation. These differences are enough to account for the moral gap between contraception and abortion which will be found in the intuitions of most people; one has to be very extreme in one's views either to consider contraception as sinful as abortion or to think of abortion as *just* another alternative to contraception.

VI

We must now consider some possible objections to this view. Some of these rest on supposed conflicts with received opinion. I shall not deal at great length with these, for a number of reasons. The first is

that it would be hard at the moment to point to any at all generally received opinion about abortion. But even if we could, it is a difficult question in moral philosophy, which I have discussed at length elsewhere,¹³ how much attention should be paid to received opinion on moral issues. I shall sum up my view, without defending it. There are two levels of moral thinking. The first (level 1) consists in the application of learnt principles, which, in order to be learnt, have to be *fairly* general and simple; the second (level 2) consists in the criticism, and possibly the modification, of these general principles in the light of their effect in particular cases, actual and imagined. The purpose of this second, reflective kind of thinking is to select those general principles for use in the first kind of thinking which will lead to the nearest approximation, if generally accepted and inculcated, to the results that would be achieved if we had the time and the information and the freedom from self-deception to make possible the practice of level-2 thinking in every single case. The intuitions which many moral philosophers regard as the final court of appeal are the result of their upbringing—i.e. of the fact that just these level-1 principles were accepted by those who most influenced them. In discussing abortion, we ought to be doing some level-2 thinking; it is therefore quite futile to appeal to those level-1 intuitions that we happen to have acquired. It is a question, not of what our intuitions *are*, but of what they *ought to be*—a question which can usefully be dramatized by asking, What opinions about abortion ought we to be teaching to our children?

This may help to answer two objections which often crop up. The first claims that common opinion makes a larger moral distinction between failure to procreate and killing a fetus than the present view would warrant. Sometimes this distinction is said to be founded on the more general one between omissions and acts. There are strong arguments against the moral relevance of this last distinction;¹⁴ and if we are always careful to compare like with like in our examples,

13. See "The Argument from Received Opinion," in my *Essays on Philosophical Method* (London, 1971); "Principles," *Aristotelian Society* 72 (1972–73); and my "Ethical Theory and Utilitarianism."

14. Tooley, "Abortion and Infanticide," p. 59; RWA, p. 74. See also J.C.B. Glover's forthcoming book on the morality of killing.

and apply the Golden Rule to them, we shall not obtain any morally relevant difference between acts and omissions, provided that we are engaged in level-2 thinking. However, it may well be that the level-1 principles, which we selected as a result of this thinking, *would* use the distinction between acts and omissions. The reason for this is that, although this distinction is philosophically very puzzling and even suspect, it is operable by the ordinary man at the common-sense level; moreover, it serves to separate from each other classes of cases which a more refined thinking would also separate, but would do so only as a result of a very protracted investigation which did not itself make use of the act-omission distinction. So the act-omission distinction serves as a useful surrogate for distinctions which really are morally relevant, although it itself is not. Thus there may be no morally relevant distinction, so far as the Golden Rule goes, between killing and failing to keep alive *in otherwise identical cases*; but if people have ingrained in them the principle that it is wrong to kill innocent adults, but not always so wrong to fail to keep them alive, they are more likely in practice to do the right thing than if their ingrained principles made no such distinction. This is because most cases of killing differ from most cases of failing to keep alive in *other* crucial ways, such that the former are very much more likely to be wrong than the latter. And in the case of abortion and failure to procreate, it is *possible* (I do not say that it is so) that the best level-1 principles for practical use would make bigger distinctions at birth and at conception than a refined level-2 thinking could possibly support. The reason is that conception and birth are dividing lines easily discerned by the ordinary man, and that therefore a level-1 principle which uses these dividing lines in order to draw the moral line (what moral line?) *may* lead in practice to the morally best results. But if we are arguing (as we are) whether or not this is so, appeals to the intuitions of the ordinary man are entirely beside the point.

Secondly, we have the "thin end of the wedge" or "slippery-slope" objection. If we sanction contraception, why not abortion; and if abortion, why not infanticide; and if infanticide, why not the murder of adults? As an argument against the too ready abandonment of accepted general level-1 principles this argument has some force;

for, psychologically speaking, if the ordinary man or the ordinary doctor has got hold of some general principles about killing, which serve well enough in the ordinary run, and then somebody tells him that these principles ought not to be followed universally, it may well be that he will come to disregard them in cases where he ought not. The argument can be overplayed—I do not think that many doctors who have come to accept abortion are thereby made any more prone to murder their wives; but at this level the argument has *some* force, especially if, in the upbringing of the ordinary man and the ordinary doctor, enormous stress has been laid on general principles of great rigidity—such principles are naturally susceptible to thin ends of wedges. But when we are disputing at level 2 about our level-1 principles ought to be, the argument has little force. For it may be that we could devise other, equally simple principles which would be wedge-resistant and would draw lines in different places; it may be that we *ought* to do this, if the new places were more likely, if generally recognized, to lead most often to the right results in practice. Tooley recommends such a moral line very shortly *after* birth, and his arguments have a great attraction.¹⁵ For the present, it is enough to say that if the line proved wedge-resistant and if it separated off, in a workable manner, nearly all the cases that would be pronounced wrong by level-2 thinking from nearly all those which would be pronounced permissible, then it would be no argument against this proposal that it conflicted with people's intuitions. These intuitions, like earlier ones which made a big distinction at quickening, are the results of attempts to simplify the issues for a laudable practical purpose; they cannot without circularity be used in an appraisal of themselves. As Tooley implies, we have to find real moral reasons for distinguishing cases. If, as is sure to happen, the distinctions that result are very complicated, we have to simplify them for ordinary use as best we can; and there is no reason to assume that the simplifications which will be

15. Tooley, p. 64; RWA, p. 79. If the potentiality principle be granted, the number of permissible infanticides is greatly reduced, but not to nothing. See my "Survival of the Weakest" in *Documentation in Medical Ethics* 2 (1973); reprinted in *Moral Problems in Medicine*, ed. S. Gorovitz et al. (New York, forthcoming).

best are those which have been current hitherto—certainly not in a context in which circumstances have changed as radically as they have with regard to abortion.

VII

It might be objected, as we have seen, that the view I have advocated would require unlimited procreation, on the ground that not to produce any single child whom one might have produced lays one open to the charge that one is not doing to that child as one is glad has been done to oneself (viz. causing him to be born). But there are, even on the present view, reasons for limiting the population. Let us suppose that fully-grown adults were producible ad lib., not by gestation in human mothers or in the wombs of cats or in test tubes, but instantaneously by waving a wand. We should still have to formulate a population policy for the world as a whole, and for particular societies and families. There would be a point at which the additional member of each of these units imposed burdens on the other members great enough in sum to outweigh the advantage gained by the additional member. In utilitarian terms, the classical or total utility principle sets a limit to population which, although higher than the average utility principle, is nevertheless a limit.¹⁶ In terms of the Golden Rule, which is the basis of my present argument, even if the "others" to whom we are to do what we wish, or what we are glad, to have done to us are to include potential people, good done to them may be outweighed by harm done to other actual or potential people. If we had to submit to all their lives or nonlives in turn, we should have a basis for choosing a population policy which would not differ from that yielded by the classical utility principle. How restrictive this policy would be would depend on assumptions about the threshold effects of certain increases in population size and density. I think myself that even if potential people are allowed to be the objects of duties, the policy will be fairly restrictive; but this is obviously not the place to argue for this view.

One big gap in the argument of this paper is my failure to deal with the question of whether, when we are balancing the interests

16. See my review of Rawls, pp. 244f.

of the potential person into whom this fetus will turn against the interests of other people who might be born, we ought to limit the second class to other members of the same family, or include in it *any* potential person who might in some sense "replace" the first-mentioned potential person. This major question would seem to depend for its answer on a further question: To what extent will the birth or non-birth of *this* person make more or less likely the birth or non-birth of the others? This is a demographic question which at the moment baffles me; but it would obviously have to be gone into in any exhaustive account of the morality of abortion. I have, however, written (possibly too hastily) as if only other potential members of the same family need be considered. That was enough to illustrate the important principle that I was trying to explain.

VIII

Lastly, a logician might object that these potential people do not exist, and cannot be identified or individuated, and therefore cannot be the objects of duties. If I had put my own view in terms of rights or interests, the same objection could be expressed by saying that only actual people have these. Two points can be made against this objection at once. The first is a perhaps superficial one: it would be strange if there were an act whose very performance made it impossible for it to be wrong. But if the objection were correct, the act of aborting a possible person would be such an act; by preventing the existence of the object of the wrongdoing, it would remove its wrongness. This seems too easy a way of avoiding crime.

Secondly, there seems to be no objection in principle to condemning hypothetical acts: it would have been wrong for Nixon to stay on any longer in the presidency. And it seems a fairly safe principle that if it makes sense to make value-judgments about an act that was done, it makes equal sense to make opposite judgments about the hypothetical omission to do that act. "Nixon did right to resign" makes sense; and so, therefore, does "Nixon would have done wrong not to resign." But we do commend actions which resulted in our own existence—every Sunday in thousands of churches we give thanks for our creation as well as for our preservation and all the blessings

of this life; and Aristotle says that we ought to show the same gratitude to our earthly fathers as "causes of our being."¹⁷ So it is at least meaningful to say of God or of our fathers that if they had not caused us to exist, they would not have been doing as well for us as they could. And this is all that my argument requires.

Coming now to the purely logical points, we notice that the non-actuality of the potential person (the supposed object of the duty to procreate or not abort) is a separate issue from his nonidentifiability. Unfortunately "identifiable" is an ambiguous word; in one sense I can identify the next man to occupy my carrel at the library by describing him thus, but in another sense I cannot identify him because I have no idea who he is. The person who will be born if these two people start their coitus in precisely five minutes is identified by that description; and so, therefore, is the person who would have been born if they had started it five minutes ago. Moreover (this is an additional point) if we had enough mechanical and other information, we could specify the hair color and all the other traits of that person, if we wished, with as much precision as we could the result of a lottery done on a computer whose randomizing mechanism we could minutely inspect. In this sense, therefore, the potential person is identifiable. We do not know who he will be, in the sense that we do not know what actually now existing person he will be, because he will not be identical with any actually now existing person. But it is hard to see how his inability to meet this logically unmeetable demand for identifiability with some already existing person affects the argument; he is identifiable in the sense that identifying reference can be made to him. So it cannot be nonidentifiability that is the trouble.

Is it then nonactuality? Certainly not *present* nonactuality. We can do harm to and wrong succeeding generations by using up all the world's resources or by releasing too much radioactive material. But suppose that this not merely made them miserable, but actually stopped them being born (e.g. that the radioactive material made everybody sterile all at once). As before it seems that we can be thankful that our fathers did not do this, thereby stopping us coming into existence; why cannot we say, therefore, that if we behave

17. Nicomachean Ethics 8, 1161^a17, 1163^a6, 1165^a23.

as well as our fathers, we shall be doing well by our children or grandchildren, or that if we were to behave in this respect worse than our fathers, we would be doing worse by our children or grandchildren. It seems strange to say that if we behaved only a little worse, so that the next generation was half the size it would have been, we had done badly for that generation, but that if we behaved much worse, so that the succeeding generation was reduced to nil, we had not done badly for it at all.

This is obviously a very perplexing matter, and needs much more discussion. All I can hope to do here is to cast doubt on the assumption that some people accept without question, viz. that one cannot harm a person by preventing him coming into existence. True, he does not exist to be harmed; and he is not *deprived* of existence, in the sense of having it taken away from him, though he is *denied* it. But if it would have been a good for him to exist (because this made possible the goods that, once he existed, he was able to enjoy), surely it was a harm to him not to exist, and so not to be able to enjoy these goods. He did not suffer; but there were enjoyments he could have had and did not.

IX

I conclude, then, that a systematic application of the Christian Golden Rule yields the following precepts about abortion. It is *prima facie* and in general wrong in default of sufficient countervailing reasons. But since the wrongness of it consists, in the main, of stopping a person coming into existence and not in any wrong done to the fetus as such, such countervailing reasons are not too hard to find in many cases. And if the termination of this pregnancy facilitates or renders possible or probable the beginning of another more propitious one, it really does not take much to justify it.

I have not discussed what the law on abortion ought to be; that question would have to be the subject of another paper. I have been speaking only about the morality of terminating individual pregnancies. I will end as I began by saying that my argument has been based on a developed ethical theory, though I have not had room to expound this theory (I have done it in my books). This theory provides the logical basis of the Golden Rule. Though not *founded on* a utilitarian

principle, it also provides the basis for a certain sort of utilitarianism that escapes the vices which have been decried in some other sorts.¹⁸ But I shall not now try to defend these last assertions. If they are challenged, and if the view that I have advanced in this paper is challenged, the issue can only be fought out on the terrain of ethical theory itself. That is why it is such a pity that so many people—even philosophers—think that they can discuss abortion without making up their minds about the fundamental problems of moral philosophy.

18. See my "Ethical Theory and Utilitarianism."