

## Discussion

Reply to Johnson and Rasmussen

### Another Look at Abortion

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Ayn Rand believed that abortion is not murder. She did so because she believed that a fetus—or, to use the pro-life PC term, “unborn child”—is only a potential not actual human being.<sup>1</sup> So killing a fetus is not homicide, just as killing a seed is not equivalent to killing a flower and killing a caterpillar is not equivalent to killing a butterfly.

Here, I wish to spell out a view on abortion along roughly Randian lines that would escape the criticisms that Johnson and Rasmussen level at Rand’s treatment of the topic. It is something of a departure from Rand’s position, although I would argue fully within its spirit.

It is useful here to recall that Rand was no professional philosopher and certainly did not carve out a special place for herself in the area of bio-ethics, where the abortion issue is being discussed in more and more technical terms. Nevertheless, I do not wish to get bogged down in the highly technical issues of biology. I believe what I will present will be useful, however, in making sense of this explosive and vital issue along lines that Rand might have appreciated.

The main problem involved in the abortion debate is: When does a human being come into existence? As Feinberg (1980, 184) poses the question: “At what stage, if any, in the development between conception and birth do fetuses acquire the characteristic (whatever it may be) that confers on them the appropriate status to be included in the scope of the moral rule against homicide—the rule ‘Thou shalt not kill’? Put more tersely, at what stage, if any, of their development do fetuses become people?”

This question involves many ancient, serious and divisive

philosophical topics, one for which different schools of philosophy, religions and moral theories have suggested diverse answers. Hindus, Aristotelians, Kantians, utilitarians, Christians of one or another denomination and so forth identify different points of the development of the organism at which a human being comes into existence. Other disputes also arise, based on the varieties of ontological and epistemological doctrines that are deployed in the discussion of human nature, including abortion.

In a predominantly Christian culture, the answer to questions of the sort identified by Feinberg are usually sought from the *Bible*. Even if this were all that were needed, the *Bible* does not directly answer this question. While it is commanded by the Christian God that no one kill another human being, there is no clear Biblical determination of when a human being starts to exist. Birthdays are indicated as the usual point of the emergence of the child from the mother's womb. This is true, for example, of Jesus!

Nevertheless, many Christian denominations, especially some of those called fundamentalist as well as Roman Catholic, have committed themselves to the view that it is at conception that a human being comes into existence. This despite the biological fact that at conception no individual organism, only a zygote, exists—it will take about fourteen days before one, two or more individual embryos come into existence. It is only at this point that ensoulment could occur since it is at this point that the number of souls to be carried in pregnancy will be determined.

Secular thinking is not uniform about this issue either. Some believe that the human being comes into existence at birth because its identity is determined by its being socially acknowledged, recognized. Others think that because of the difficulty of establishing the point of full development of the embryo, we should recognize that a human being exists from the fourteenth day after conception. Yet others hold the view, implicit in the famous U.S. Supreme Court decision *Roe v. Wade*, that only after the cerebral cortex has fully developed, at about the twenty-fourth week of pregnancy, has a human being emerged. Prior to that point, the pregnancy involves only a *potential, undeveloped* human infant. (The analogy would be to a caterpillar becoming a butterfly or a seed a sapling.)

What is especially troublesome for political or public policy

purposes in the United States of America is that the government must forge policy for people from a great variety of traditions, cultures, and religions. By contrast, a nearly homogenous people populates many other countries, with a preponderance of specific ethnic, religious, or racial groups making up the citizenry. Israel, Iran, and Pakistan are reasonably good examples, although even here diversity exists.

In contrast, the United States of America is, by its historical origins, a country composed of an enormously diverse population. Therefore, U. S. public policy, especially, must address people from many different traditions. There is no way to rely on just one religion or tradition. Of course, arguably this is true of other countries, as well, since in principle at least their borders are open enough to welcome immigrants from any culture or ethnic group.

The Founders of America appear to have been at least implicitly aware of how political communities must not be shaped for specific ethnic, racial or religious membership when they spoke, in the Declaration of Independence, of "all men" having been created equal. The Framers, in turn, created a constitution with a Bill of Rights that speaks of the rights of the people as *individuals*. They drew heavily on both the secular and faith-based political ideas of humanists, such as Socrates, Aristotle and Thomas Hobbes, as well as Christians, such as John Locke and others, and they wrote in circumspect enough fashion so as to be inclusive of both religious and secular interpretations of humanity's creation and nature.

Now when it comes to identifying basic laws of human communities and to whom these apply, while there is a common core of agreement across traditions and religions, there are many differences as well, especially in borderline regions. For some, for example, animals are owed the kind of protection of rights that nearly everyone recognizes human beings possess. For others, the rearing of children can omit such ordinary care as medical services and rely solely on prayer.

The direction of U.S. constitutional law has been to deal with these kinds of issues on the basis of what can be made clear to *all members* of the population regardless of specific tradition, religion or ethnic origin. Accordingly, for example, whatever one's religion teaches, a child must receive the ordinary medical care from his or her

parents or guardians. The killing of a cow is not a crime, regardless of the fact that one may believe this very sincerely on religious grounds.

The abortion issue is also in flux. Yet, we are in need of a reasonably stable approach to it that satisfies the requirement of being suitable to a diverse population that shares but a few common premises based on a common humanity. The direction of this approach is that *we shall not wait until a child has been born in the usual sense to consider killing it homicide; nor will we consider it homicide to kill someone who has not yet developed even in the slightest the familiar distinguishing capacity of a human being, namely, thinking or idea formation, conceptualization.*

Around the twenty-fourth week of pregnancy, the biological basis for the capacity for thinking develops within the fetus and at this point if one were to abort it, one would most sensibly be considered to be killing an infant human being. Prior to this stage of pregnancy, it may be immoral to abort the fetus but it cannot sensibly be construed, apart from some specific religious tradition, as homicide.

That seems to be a most reasonable approach to the situation, whatever one's personal, subjective, unique religious, philosophical or related orientation might be. One cannot convict someone of killing a human being if by normally available means one cannot identify the victim to be a human being, only one that will eventually become one. Under such circumstances, the pregnant woman's rights to life, liberty and the pursuit of happiness must be accorded full legal protection. Similarly, one cannot convict a killer of a cow or a rhesus monkey of homicide just because a unique religious or philosophical tradition would classify it as such.

Some have been arguing that the identity of someone remains constant from conception to death, but this is wrong. Among the various reasons given, one is of some importance here since the present discussion rests on certain Aristotelian ideas invoked by pro-life advocates. In their recent paper, Gregory R. Johnson and David Rasmussen (2000, 246) write that "[Ayn] Rand's basically Aristotelian framework would seem an unlikely foundation for a defense of abortion on demand, for the simple reason that Catholic natural law moralists use essentially the same premises to argue that abortion on demand is murder." This is misleading. Thomas Aquinas, who is the quintessential Roman Catholic natural law moralist, believed that not

until the twenty-fourth or so week does a human being come into existence. That is when quickening or the life of a human being begins.<sup>2</sup> So at least one major Roman Catholic Aristotelian—the one who would matter significantly in this debate, I should think—is closer to Rand's pro-choice position than to her pro-life critics on this topic.<sup>3</sup> For now, it does not matter whether Aquinas was correct, or whether the old or contemporary Roman Catholic position on abortion is right. What needs to be pointed out is simply that being Aristotelian does not place one in either camp in any easy fashion.

Certainly, it all depends on what is counted as constituting one's identity. For some parties to the discussion, one's identity consists of one's heritage—as in identity politics, where one is always a Welsh, Irish, Italian, Croatian or Serb individual. For others, identity has much to do with gender or sex or even age. More precisely, however, one's identity consists in having those attributes in full measure that make one the kind of being one is, and a human being is a rational animal, a being of volitional consciousness. That is to say, to be a human individual is to be an animal that has the capacity to think, to form ideas, to conceptualize, with all the needed faculties and organs and limbs that this implies. So that is why the identity of a human being isn't merely what defines it—its definition does not spell out its full identity—except that what defines it does, in the actual instance, imply the existence of all of what it takes to be the actual instance of it.

So let us look, specifically, at the case of human development through potency to actuality. At conception, only a "pre-embryo" exists. As biologist F. M. Sturtevant (1994) points out, this "consists of the trophoblast, and a few cells comprising the embryoblast." Indeed, he continues, "before day 14, when the embryo can first be said to exist, the embryoblast can develop into an embryo proper, a tumor, a hydatidiform mole, a choriocarcinoma (i.e., cancer), twins, or triplets, or, in at least two-thirds of the cases, nothing at all (due to genetic defects)." Sturtevant adds that "until the primitive streak appears at day 14, there is no human individual." This means that no person with an identity—or, to use a different term for it, a soul—can exist prior to day 14 after conception. This alone shows that at conception no human individual could possibly exist, since no individual entity exists until the end of the second week of pregnancy.

The identity of that which does exist is pre-embryonic.

An argument against this, at least from an Aristotelian perspective, is that if one "wishes to maintain that an unborn child [!] is not an actual human being, but merely a potential one, then we are entitled ask: What kind of being is it *actually*?" (Johnson and Rasmussen 2000, 248).

The answer is that the identity of the being that is potentially human is a human fetus (not an unborn child, which is a question-begging designation, akin to calling a seed an "unborn sapling"). A potential human being can be an actual human fetus. That is its identity. Indeed, in Aristotle, eggs are potential chicken; they possess an identity, which is being eggs. And the killing of a human fetus is no more murder than, say, the killing of a human tooth, appendix or even kidney, unless, of course, it produces the death of the person whose tooth, appendix or kidney is being killed. Nor would killing an egg constitute the killing of a chicken. A thief who steals eggs is not the same as a thief who steals chickens.

There is much that is implied by all this but what matters here is that any individual human being lacks his or her distinctive identity as a rational animal without the capacity for generating ideas. Of course, this does not refer to instances when one is asleep or under anesthesia or in a coma, but *normally*, under ordinary circumstances. However, if what seems to be a human individual is typically incapable of any manner of concept formation, lies around as a vegetable, constantly, normally, then we can plausibly raise the issue of whether it is actually human at all or merely appears to be so, on first inspection.

In other words, of concern here are not borderline or defective, exceptional cases but typical ones. That is how kinds of beings are best understood, not by reference to extraordinary instances of their kind.

Of course, this is an issue that is widely debated and new light might be shed upon it any time. It is the kind of issue we run across *at the edges of typical instance of some kind of being*. No one would think of allowing the killing of a ten year old child, nor would anyone debate whether a healthy forty year old adult should be used for organ donation against his or her will. But whether a ten-week-old fetus can be killed is more readily debatable, just as whether a brain dead

adult can be used as an organ donor or whether a terminally ill and suffering patient might be helped with the effort to commit suicide. These untypical cases cannot be handled with the kind of confidence we can afford about the typical cases.

Still, decisions need to be made and, for the time, being the most *morally compelling* decision is one wherein the pro-choice position prevails until the twenty-fourth week of pregnancy and the pro-life position thereafter.

## Notes

1. If one were to think that only left-wing ideologues invoke political correctness, this is a clear example of how those on the right do so as well. Using "unborn child" emotionally loads the debate in ways that "fetus" does not—the colloquial usage leaves open whether fetuses are actual or potential human beings. ("Foetus" or "fetus" means "coming into being" in reference to animals and humans. See *The Compact Edition of the Oxford English Dictionary*, 1039.)

2. St. Thomas discussed the process of human generation in four places: In 2 Sent., d.18, q.2, aa.1,3; Summa contra gentiles 2, cc. 86–89; De potentia, q.3, aa.9–12; and ST 1a, q.118. See an analysis of this by Taylor 1981. For a paper that relates Thomas's teaching to modern embryology, see Ford 1989, 19–64. See, also Wallace 1995. (I borrow Wallace's reference to Aquinas' discussion of quickening and such without having verified them.)

For one relevant passage, see Aquinas, *De potentia*, q.3, a.12, which reads as follows:

Secundum quod Philosophus probat in XV De animalibus, semen non deciditur ab eo quod fuit actu pars, sed quod fuit superfluum ultimae digestionis; quod nondum erat ultima assimilatione assimilatum. Nulla autem corporis pars est actu per animam perfecta, nisi sit ultima assimilatione assimilata; unde semen ante decisionem nondum erat perfectum per animam, ita quod anima esset forma eius; erat tamen ibi aliqua virtus, secundum quam iam per actionem animae erat alteratum et deductum ad dispositionem propinquam ultimae assimilationis; unde et postquam decisum est, non est ibi anima, sed aliqua virtus animae. (quoted in Wallace 1995, 407)

3. What contemporary Roman Catholics say is this: "Human life must be respected and protected absolutely from the moment of conception. From the first moment of his existence, a human being must be recognized as having the rights of a person—among which is the inviolable right of every innocent being to life." *Catechism* 1994, Par. 2270.

Now this claim is ambiguous for several reasons. "Every innocent being" may mean all living beings capable of sinning but not having sinned, in fact; or it

could include all living beings without sin, including animals other than human beings. However, there is another problem with this view as part of Roman Catholic doctrine: If at birth we are sinful—that is, are possessed of *original sin*—and need to be baptized so as to be cleansed of our original sin(s), then from conception until baptism we are not “innocent beings.” A Roman Catholic says that “Abortion is wrong because it is an act that runs counter to natural, eternal, and divine law. That is, abortion is wrong for the same reason many sins are wrong. Abortion is murder, which Aquinas rules to be one of those sins that cannot be justified by any means or circumstances” (*Ibid.*; see also <<http://www.catholic-forum.com/luxveritatis/donumsanctum/abortion.htm>>). Of course, Aquinas cannot simply be interpreted as holding that all abortions are murder, though he did hold that murder is a sin of the highest order. Most pro-choice advocates agree with him and pro-life advocates on that. The dispute centers around whether in early pregnancy the woman carries a human being or, instead, a human fetus (and, thus, a potential human being).

## References

- Catechism of the Catholic Church*. 1994. Washington, D. C.: United States Catholic Conference.
- Feinberg, Joel. 1980. Abortion. In *Matters of Life and Death*, edited by Tom Regan. New York: Random House.
- Ford, Norman M. 1989. *When Did I Begin?: Conception of the Human Individual in History, Philosophy and Science*. Cambridge: Cambridge University Press.
- Johnson, Gregory R. and David Rasmussen. 2000. Rand on abortion: A critique. *The Journal of Ayn Rand Studies* 1, no. 2 (Spring): 245–61.
- Sturtevant, F. M. 1994. Letter to the editor. *The Wall Street Journal*. (14 November): A11.
- Taylor, Michael A. 1981. Human generation in the thought of Thomas Aquinas: A case study on the role of biological fact in theological science. S.T.D. diss., The Catholic University of America.
- Vari, Autori. 1995. *Sanctus Thomas de Aquino Doctor Hodiernae Humanitatis. Studi Tomistici* 58. Vatican City: Libreria Editrice Vaticana.
- Wallace, William A. 1995. St. Thomas on the beginning and ending of human life. <<http://www.nd.edu/Departments/Maritain/ti/wallace3.htm>>. Reprinted from Vari 1995, 394–407.