

Abortion: Listening to the Middle

by EDWARD A. LANGERAK

Says one critic of the philosophical debate on abortion: "Philosophers are not listened to because they do not listen."¹ Though I believe the charge is too strong, my own review of the literature makes it uncomfortably understandable. If there is any public consensus on abortion, as reflected in legal systems as well as in public opinion surveys, it is the middle-of-the-road view that some abortions are not permissible but that others are, and that some of the permissible abortions are more difficult to justify than others. But many of the most widely cited philosophical writings on abortion argue that the only coherent positions tend toward the extremes: all or most abortions are put into the same moral boat with either murder or, more frequently, elective surgery. In fact, proponents of the extremes tend to respect one another as at least being self-consistent, while joining in swift rebuttal of those who want it both ways and ignominiously try to be moderates on either murder or mandatory motherhood.

This reaction against the middle derives from some basic beliefs of those on the extremes. On the liberal side are those who believe that fetuses, and perhaps even very young infants, lack some necessary condition (say, self-consciousness) of personhood.² This view is often combined with the further assertion that the social consequences of society's conferring on the fetus a claim to life are such that the conferral should not be made until birth or shortly thereafter. On the conservative side there are those who believe that from conception (or very shortly thereafter) the fetus has as strong (or almost as strong) a claim to life as does any person. This claim resides either in some property thought sufficient for personhood (say, genetic endowment) that the fetus has in itself, or in the immediate conferral of personhood on the fetus by God or society.

Of course, as Schopenhauer said, arguments are not like taxicabs that you can dismiss when they become inconvenient; and the two extremes are quick to point out the problematic implications of each other's positions. The liberals are accused of courting infanticide and the conservatives of trivializing the moral category of murder. Such implications would be more damaging to the extremes were it not that most moderate positions have an equally problematic

flaw—that of arbitrary line-drawing. My reading of the abortion literature suggests that there are two widely shared beliefs that moderate positions seek to incorporate in their approaches to the abortion issue. The first belief is that something about the fetus itself, not merely the social consequences of abortion, makes abortions (or at least many abortions) morally problematic. The second belief is that late abortions are significantly more morally problematic than early abortions. Not only are these beliefs widely shared by moderates, but I find that liberals and conservatives, whose positions implicitly reject one or both of these beliefs, often feel uncomfortable in rejecting them.

In accounting for these two beliefs, most middle positions maintain variations of what I call the "stage" approach and what its critics call the "magic moment" approach. The assertion is that at some point in the development of the fetus, say at the point of acquiring some vital sign, of sentience, of quickening, or of viability, the fetus suddenly moves from having no claim to life to having as strong (or almost as strong) a claim as an adult human. While the "stage" approach is consistent with the two beliefs underlying the moderate position, its difficulty has always been to explain the tremendous moral weight put on some specific point in what really amounts to a continuum in development. Critics on both extremes argue that, no matter what stage is picked as the "magic moment," the whole approach is *prima facie* arbitrary.

The implications of the liberal and conservative positions, including their denial of one or both of the moderate beliefs, and the *prima facie* arbitrariness of the stage positions, motivate consideration of an alternative that both is coherent and listens to the middle by accounting for the two beliefs.

Without examining all the alternatives, I will argue that the potentiality principle is plausible and accounts for the first belief—that something about the fetus itself makes abortion morally problematic—but that, by itself, it cannot account for the second belief—that late abortions are significantly more problematic than early abortions. I will then argue that a conferred claims approach is plausible, consistent with the potentiality principle, and accounts for the second belief though it cannot account for the first.

I will suggest that combining the potentiality principle with a conferred claims approach provides moderates with a coherent framework for thinking through the central questions of the abortion debate: (1) When does an individual human being attain either an inherent claim to life or such properties that society ought to confer on it a claim to life?

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(2) When do a person's or a group of persons' claims to life, physical or mental health, freedom, privacy, and self-actualization override another human being's claim to life? (3) When should answers to the first two questions be incorporated into the law of a pluralistic society?

The Potentiality Principle

I formulate the potentiality principle as follows: "If, in the normal course of its development, a being will acquire a person's claim to life, then by virtue of that fact it already has some claim to life." To understand this principle, one must distinguish among "actual person," "a capacity for personhood," "potential person," and "possible person." An *actual person* is a being that meets a sufficient condition (whatever that may be)³ for personhood and thereby has as strong a claim to life as normal adult human beings. Roughly, a *capacity for personhood* is possessed by any being not currently exhibiting that capacity, but who has proceeded in the course of its development to the point where it could currently exhibit it (for example, a temporarily unconscious person). A *potential person* is a being, not yet a person, that will become an actual person in the normal⁴ course of its development (for example, a human fetus). A *possible person* is a being that could, under certain causally possible conditions, become an actual person (for example, a human sperm or egg).⁵

This technical set of distinctions is important because the potentiality principle asserts that potential persons, but not possible persons, have a claim to life. Some attacks on the principle confuse these categories.⁶ Also, the principle is consistent with granting full personhood to those with a capacity for personhood, a fact ignored by those who collapse "capacity" and "potentiality" and argue, for example, that the category of "potential person" endangers sleeping persons. Moreover, the distinctions can help us avoid sloppy language, such as that of the Supreme Court in *Roe v. Wade* when it asserted that at viability the state begins to have a compelling interest in "potential life." Clearly a fetus is actually alive and is even an actual human being, genetically defined; its unique status is that, given most criteria of personhood, it is neither an actual person nor a merely possible person—it is a potential person.

Potentiality and Temporality

The potentiality principle asserts that a potential person has a claim to life, albeit one that may be weaker than the claim of an actual person. Many people find this assertion intuitively plausible, but are unable to persuade those who challenge it. Here is my attempt to persuade.

It is clear that the unique status of the potential person has to do with its inherent "thrust" or predetermined tendency. A potential person is not simply a set of blueprints, it is an organism that itself will become the actual person toward

which it is already developing. Controversial issues of personal identity arise here, but two points seem obvious. First, we cannot simply assume that its predetermined tendency already grants it the claims it will have in the future. To paraphrase H. Tristram Engelhardt, Jr., we must not lose the ability to distinguish between the claims of the future and those of the present;⁷ or as S.I. Benn succinctly puts it, a potential president is not already commander-in-chief.⁸ Second, those attracted to the potentiality principle do see some derivative relationship between the claims that a being will have in the normal course of its development and those that it has in the present.

I believe that the plausibility of the last point rests in perceiving humans as basically temporal beings. For actual persons this is true, first of all, from an internal point of view (a fact Heidegger uses for his entire ontology). Our self-consciousness so orients us to our past and our future that, in an important sense, we *are* our history and our projections as well as our present. A premedical student, for example, sees himself or herself as a future physician, not just as a science student. This temporal perception is also true from an external point of view, a point of view that extends to humans that are not yet persons. When we see a very young child, we see something of the adult it will, in the normal course of its development, become, as well as something of the baby that it once was. In this temporal perception lies, I believe, the respect we feel is due former persons (for example, respectful treatment of corpses) and, for that matter, former presidents. The respect we give former persons and presidents is not as great as that which we give actual ones, but that does not undermine the fact that some respect is due the former and that it is derivative from, indeed proportional to, the respect due to the latter.

Similarly, perceiving humans in a temporal context accounts for the respect many feel is due to humans by virtue of their potential. As an analogy, consider a potential president. Following my distinctions, such a person is not merely a possible president (something civics teachers used to say about every American child); he or she has already won the election but has not yet been inaugurated (on a somewhat arbitrarily selected date). The person is not yet commander-in-chief but, in the normal course, *will* (not *could*) be. Already that person receives some of the perquisites of the future office. The fact that the news media and others give the potential president more attention than the actual president, of course, may be the result of prudence, if not exploitation (the same derivation for much of the respect given actual presidents). But, at least in pre-Watergate times, some of the respect given actual presidents, and most of that given former presidents, derives from the high office that the person has or had, even when the person is not particularly deserving. Those who perceive a person in a temporal context and who, like myself, still respect an actual or former president by virtue of the office (apart from achievements in it), will derivatively have some respect

toward a potential president by virtue of the office he or she will have.

Even those who deny that presidents ought to be respected simply by virtue of their office, should agree that some of the respect given persons derives from their "office" of personhood, apart from their achievements. In fact, traditionally the respect involving a claim to life derives from what persons are, rather than what they achieve or fail to achieve. If so, then perceiving humans in a temporal context should elicit some respect for former and potential persons, respect that is derivative from and proportional, though not identical, to the respect elicited by the actual persons they were or will become.

Temporality and Probability

Some may grant the strength of this argument as it applies to former persons, sensing that it accounts, for example, for our aversion to artificially keeping former persons "alive" in order to harvest their organs at a convenient time. However, whatever else we may say about former persons, they were certainly, at one time, actual persons. But the personhood of potential persons is still "outstanding" and there is no guarantee that it will be realized. The contingency of the "not yet" makes it asymmetrical with the "has been" even when we perceive humans in a temporal context.

This objection forces us to ask just what is the moral significance of the predetermined tendency of a potential person. Though the tendency does not guarantee personhood, it does distinguish the organism from possible persons by guaranteeing a dramatic shift in probabilities. This difference in probabilities is similar to that which distinguishes a potential president from a possible president. The potentiality principle asks us to respect a potential person by virtue not of what it *could* be, but of what it *will* be in the normal course of its development. Even those of us who refuse to mythologize the predetermined tendency in potential persons must agree that this tendency makes it highly likely that, without outside interference, they will become persons. Is this shift in probabilities of moral significance?

Consider the other end of the life-span. Those who believe that it is sometimes permissible to cease striving officiously to keep humans in an irreversible coma artificially alive, must agree that the irreversibility of the coma is seldom, if ever, absolutely guaranteed. But we believe it is morally irresponsible to allow the rare "miraculous recovery" to prevent acting on the best medical prognosis, when it indicates no reasonable hope of recovery. To shut off a respirator when there is a 50 percent chance of recovery, (or even a 5 percent chance, given our laudable bias toward erring in favor of personal life), is morally wrong, but not when the probability of recovery approaches (without reaching) zero. In an uncertain world, judgements of high probabilities are often the only kind we have. This makes

dramatic shifts in probabilities morally significant.⁹

So I believe that the high probability of future personhood, inherent in a potential person, is of moral significance to those who perceive humans in a temporal context, and that this makes plausible the assertion of the potentiality principle. I hope I have at least shifted the burden of proof on to those who deny that the high probability of a fetus's becoming a person with a strong claim to life already grants it some (proportional) claim to life and respect.

Conferred Claims

Although the potentiality principle, as defended, accounts for the first belief—that something about the fetus itself makes abortion morally problematic—it leaves open the question of just how strong a claim to life should be attributed to the fetus. There are extreme liberals on the abortion issue who may grant the fetus some claim to life but simply argue that the claims of an actual person—claims to freedom and mental health—always override the claim to life of a fetus. Among those who use the potentiality principle, there will be intramural debates on how strong a claim to life it implies. I cannot argue the case here, but I believe that the most plausible use of it is one that allows the use of IUDs and "morning after" pills (both of which probably act as abortifacients), as well as abortions during the first trimester for such reasons as the woman's being too young for motherhood.¹⁰ But then the claim to life attributed to the very early fetus cannot be very strong. The incidence of early spontaneous abortion is estimated¹¹ variously from 15 percent to over 50 percent, and second-trimester fetuses have a somewhat higher natural death rate than postviable fetuses. In other words, the probability of an older fetus becoming an actual person is perhaps double the probability of a zygote becoming a person. While this shift in probability is noteworthy, and marks implantation as a point of some moral significance, it is not nearly as significant as the difference in moral seriousness moderates see between a very early abortion and a late one. Consequently, if the inherent claim to life of a potential person is derived from and proportional to the probability of its becoming an actual person, one cannot in good faith allow the claim to life of a zygote to be easily overridden and then assert that the inherent claim to life of an older fetus is so vastly stronger that it all but cannot be overridden. Therefore, although the potentiality principle can account for the belief that something about the fetus itself makes abortion morally problematic, it cannot by itself account for the belief that late abortions are significantly more morally problematic than very early abortions.

However, the conferred claims approach can account for the second belief, although it cannot account for the first. Assume that, whatever moral claim to life an older fetus may have by virtue of its potentiality, the claim may not be strong enough to override the claim of a pregnant woman

for an abortion. At what point should society confer a stronger claim to life on the fetus? At what point should society treat it as if it were a person?

The conferral approach to the status of the fetus is not an unusual one,¹² though it is sometimes thought incompatible with an approach that asserts an inherent claim in the fetus itself. But an approach that *confers* claims rubs an approach that *recognizes* inherent claims only if the inherent claim to life is thought to be as serious as an actual person's claim to life. In this case it would be futile (rather than contradictory) to ask what claims society ought to confer on it. However, when the recognized inherent claim is weaker than a normal adult's claim to life, as can be the case with the potentiality principle, one can coherently ask whether society ought, in addition, to confer on the fetus a stronger claim to life.

The argument in favor of such a conferral basically appeals to the social consequences of abortions and infanticide. For example, infants are so similar to persons that allowing them to be killed would generate a moral climate that would endanger the claim to life of even young persons. And older fetuses are so similar to infants that allowing them to be killed without due moral or legal process would endanger infants. Of course there must be a cutoff for this sort of argument. For example, most would agree that preventing the implantation of zygotes would have no discernible effect on our sympathetic capacities toward persons. At what point would abortions begin to have such effects, especially on medical personnel, that it is in society's interest to endow the fetus at that point with a stronger claim to life? This seems largely an empirical question and one not easily answered,¹³ though I will suggest some guidelines below.

One difficulty with the conferral approach has always been that the relevant considerations are the interest and sympathies of actual persons, rather than moral claims inherent in the fetus itself. Indeed, the above argument is reminiscent of Kant's view that we ought not beat our dogs merely because beating our dogs might make us more inclined to beat people. Such arguments derive protection for some beings from the rather variable, even capricious, sympathies of other beings. Thus the conferral approach by itself does not account for the belief that something about the fetus itself makes abortion morally problematic; but this belief is accounted for by the potentiality approach.

Implantation, Quickening, Viability, and Birth

My combined approach escapes the problematic implications of the extremes but does it escape the flaw of arbitrary line-drawing that I attributed to those moderate positions that appeal to the stage or "magic moment" approach? Two related considerations show that it does. First, notice that the word "arbitrary" should not be used loosely. For example, there is a certain arbitrariness in making eighteen the

age of majority rather than seventeen or nineteen. But the relevant criteria nonarbitrarily imply that, if a legally precise line must be drawn within the continuum of growth, the debate must focus on that time span rather than, say, the span between seven and nine.

Second, I submit that the two criteria I use—important shifts in probabilities and dangerous social consequences—nonarbitrarily suggest four spans (beyond that of conception) for moral and legal line-drawing in a potential person's continuum of growth. Although these criteria imply distinct spans for definite increments in the strength of the claim to life, at no stage does a potential person move from having no claim to having one as strong as an adult.

The first span, as we saw, is that of implantation, when the shift in probabilities of actual personhood signifies a somewhat stronger inherent claim to life, at least from the moral point of view. The recognition of this change is due apart from any consequentialist considerations about the difference between more or less unknowingly preventing implantation and knowingly detaching an implanted embryo. However, the remaining spans are suggested by consequentialist considerations about the psychological and social impact of abortions, considerations in favor of conferring an even stronger claim to life on the fetus.

The second span involves the traditional indicator of "quickening." When the fetus begins making perceptible spontaneous movements (around the beginning of the second trimester), its shape, its behavior, and even its beginning relationship with the mother and the rest of society (every father recalls when he first felt the fetus's movements) all suggest that abortions after this point will have personal and social consequences specifiably more serious than those of earlier abortions.

The third is that of viability, when a fetus is capable of living, with simple medical care, outside the womb (around the end of the second trimester). Recall the "infanticide" trials of physicians who, claiming they were inducing abortions, were charged with participating in premature births and murders. This controversy is only one indication that killing potential persons after viability has social consequences (apart from legal ones) even more serious than abortions soon after quickening.

Finally, consider that allowing infanticide is generally regarded as a *reductio* of those positions that allow it. The aversion to infanticide is shared even by most of those whose criteria for personhood imply that a newborn is still only a potential person and not an actual one. This suggests that most people agree that at birth the potential person attains properties and relationships so close to those of actual persons that the consequences of killing at this point are practically the same as killing young persons.

If these observations are true, they justify conferring on newborns a claim to life as strong as that of adult persons. They also suggest partial wisdom in the Supreme Court's decision allowing states to grant a rather strong claim to life

to postviable fetuses, a claim overridden only by the claim to life or health (I would specify "physical health") of the mother. But the court decision, in effect, mandates the allowing of abortion on demand for all previable fetuses. If my observations about quickening are correct, we should also draw an earlier line, conferring a claim to life on the fetus at the beginning of the second trimester, a claim less strong than that conferred at viability, but one overridden only by such serious claims as that of the mother to mental or physical health.¹⁴ Probably the moral line drawn at implantation should remain outside the legal realm.

I admit the difficulties in legally implementing such an approach, but I doubt that they are insurmountable or as deep as the moral and legal difficulties of alternative approaches. Therefore I believe I have presented a plausible approach to the abortion issue that is coherent, is not arbitrary, and listens well to the considered intuitions of those in the middle.¹⁵

REFERENCES

¹Roger Wertheimer, "Philosophy on Humanity," in *Abortion: Pro and Con*, ed. Robert L. Perkins (Cambridge: Schenkman Publishing Company), p. 127.

²For brevity I use "fetus" in a generic sense to refer to unborn humans at any stage of development, including that of zygote, conceptus, and embryo. I assume the fetuses are human beings, genetically defined, and use "person" to refer to those human beings that have as strong a claim to life as a normal adult. I use "as strong a claim" rather than "same claim" because, if very young human beings are persons, their claim to life clearly involves the claim to be nurtured as well as the claim not to be killed, a feature that is not clearly true of a normal adult's claim to life. I use "claim" to life rather than "right" or "prima facie right" because my argument entails that a fetus's (though not a person's) claim to life can be held with varying degrees of strength, and I agree with Joel Feinberg (*Social Philosophy* [Englewood Cliffs: Prentice Hall, 1973], pp. 64-7) that this is a feature of claims rather than rights. Though Feinberg may object to my use of his distinction, I agree with him that the "right" or "valid claim" in a given instance is the strongest of competing claims. For an account of the relationship between claims and rights that I believe is consistent with my argument, see Bertram Bandman's "Rights and Claims" in *Bioethics and Human Rights*, eds. Elsie L. Bandman and Bertram Bandman (Boston: Little Brown and Company, 1978).

³One advantage of the potentiality principle is that one need not specify the necessary or sufficient conditions for actual personhood; one need only note that, whatever they are, a potential person will acquire them in the normal course of its development. My own position is that self-consciousness is a necessary and perhaps a sufficient condition for personhood: "The fact that man can have the idea 'I' raises him infinitely above all the other beings living on earth. By this he is a person" (Immanuel Kant, *Anthropology from a Pragmatic Point of View*, trans. Mary J. Gregor, The Hague: Martinus Nijhoff, 1947, p. 9). See also H. Tristram Engelhart, Jr. ("The Ontology of Abortion," *Ethics*, 84/3 April, 1974, p. 230n): "Only self-conscious subjects can value themselves, and, thus, be ends in themselves, and, consequently, themselves make claims against us." While Joel Feinberg seems to object to thinking of personhood as a property, he does appeal to the fact that persons are "equally centers of experience, foci of subjectivity" (*op. cit.*, p. 93).

⁴Although using the phrase "in the normal course of its development" rather than "in the normal course of events" emphasizes the teleological ("nature's aim") rather than the statistical probability aspect of "normal development," my later argument about probability and claims assumes that even a teleological notion of "normal" has statistical implications: if the natural end of (a) is to become (A) then it

is highly probable that, without interference, (a) will become (A). I believe I am referring to what some Thomists call "active, natural potentiality," though I deny potential personhood is as claim-laden as actual personhood.

⁵The class of potential and possible persons must be distinguished from the class (membership unknown) of future persons, namely the class of future actual persons who do not now exist but will in fact exist in the future. One must be careful with analogies between our duties to potential persons and our duties to future persons (for such an analogy, see Werner S. Pluhar, "Abortion and Simple Consciousness," *Journal of Philosophy*, 74/3 March, 1977, p. 167). If there are future persons (as is so likely as to be certain), they will be actual persons whose quality of life will be affected by actions we now perform, while it is debatable whether killing potential persons affects the quality of their lives as persons.

⁶A point I argue in reply to Michael Tooley's "Abortion and Infanticide," *Philosophy and Public Affairs* 2/4 (Summer, 1973), pp. 410-16.

⁷Engelhart, p. 223.

⁸"Abortion, Infanticide, and Respect for Persons," *The Problem of Abortion*, ed. Joel Feinberg (Belmont: Wadsworth Publishing Co., 1973), p. 103.

⁹In this I agree with John T. Noonan, "An Almost Absolute Value in History," *The Morality of Abortion*, ed. John T. Noonan, Jr. (Cambridge: Harvard University Press, 1970), though he seems to argue wrongly that an abortion involves a high probability of killing a person. Instead, it kills a human that had a high probability of becoming a person.

¹⁰Notice that if one uses the potentiality principle to attribute a very strong claim to life for the fetus, one has, in effect, denied the belief that late abortions are significantly more morally problematic than early abortions.

¹¹See Malcolm Potts, Peter Diggory, and John Peel, *Abortion* (Cambridge: Cambridge University Press, 1977), Chap. 2. The highest estimate I have seen, at variance with most others, is 69 percent, by Harvard physiologist John D. Biggers (*Science*, vol. 202, October 13, 1978, p. 198).

¹²See R.B. Brandt, "The Morality of Abortion" (*The Monist*, Vol. 56, 1972, pp. 504-26), for a quasi-Rawlsian development of this approach. See also Ronald M. Green, "Conferred Rights and the Fetus," *Journal of Religious Ethics*, 2/1 (1974), and Benn, *op. cit.*

¹³See Magda Denes, *In Necessity and Sorrow: Life and Death in an Abortion Hospital* (New York: Penguin Books, 1977), for one description of the different social effects of abortions at different stages of pregnancy.

¹⁴Notice that adding the conferred claims approach highly qualifies a possible implication of my defense of the potentiality principle, namely the implication that it is somewhat easier to justify aborting fetuses with defects that lower their probability of attaining personhood. Any arguments for conferring a stronger claim to life on fetuses at a given point would apply to most defective fetuses as well.

¹⁵Patricia Fauser, James Gustafson, Gary Iseminger, Daniel Lee, and Frederick Stoutland gave me very helpful comments on an earlier draft of this essay.

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Abortion & the 'Middle' View

If Edward A. Langerak's proposals ("Abortion: Listening to the Middle," *Hastings Center Report*, October 1979, pp. 24-28) were enacted into law, the result would be an improvement on the present situation; in that sense, he and I are allies. But Langerak fails to meet a necessary condition for an intellectually acceptable moderate position on the abortion issue—he fails to provide principled arguments correlating stages of pregnancy with justifying grounds, for he lacks any principle assigning relative weight to potential personhood and the social sequence of denying the fetus's claim to life.

Langerak's failure in this respect emerges at two points in his article. First, he asserts without argument that abortion should be permitted during the first trimester because the woman is too young. It is not clear whether this ground includes emotional as well as physical immaturity, though Langerak's use of the word "woman" suggests that it does. In any event, this ground is rejected not only by so-called "conservatives" but also by some moderates: more traditional criteria such as rape and severe, long-lasting physical or psychic damage might cover some of the desired territory; but if applied in good faith hardly all.

Second, infants for Langerak are not persons, though they closely resemble them. How closely depends on when maturing human beings become persons—a point about which Langerak is somewhat unclear. He therefore needs to take more seriously than he does those who defend infanticide, if not at the unbridled discretion of the parents, then for moderately serious defects such as stunted or missing limbs. To rely on the unknown and unknowable consequences of combining a lethal chamber for some infants with appropriately tender care for others seems too weak a response.

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Over the years I have read and studied the many philosophic discussions in the *Report* concluding that abortion is unethical, denies rights to the child, etc.; this is purely a conservative secular theologic opinion. "Abortion: Listening to the Middle" is another variation. I strongly doubt the author's definition of "middle." There are many ideas as to when the fetus becomes a person, but our laws give rights only to persons, not to potentials. The acorn is never an oak until it sprouts.

Several years back I participated in a seminar "Dilemma of our times: the individual versus the system." Part of my thesis reviewed the varied definitions of humanness which ranged from the moment of conception to late adolescence when the child officially became a member of the tribe. Even in some fundamentalist religious beliefs, maternal health always has precedence over the products of conception. Many who believe that humanness and ensoulment as well as personage start at the moment of conception do not always follow through on the associated moral and ethical problems. There was a time when physicians in Catholic

hospitals were not permitted to remove an unruptured tubal pregnancy as this was considered an abortion. Later we were allowed to do this with the explanatory rationalization that we were not doing an abortion, but merely removing a diseased tube. Despite this concept, on many occasions I was asked to conditionally baptize the removed surgical specimen.

Going a bit farther along the same lane, many physicians and patients consider the patient pregnant until proven otherwise if she is unexpectedly two, three, or four weeks late in her menstrual period. With this thought, there is a human and a person (according to some) in the uterus. Yet, should bleeding start, none considers that the clots or the pads should be baptized or buried in hallowed ground. These are the same individuals who insist that other women have been involved in murder.

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Edward Langerak replies:

The acorn has to be the oldest chestnut in the abortion debate. Not only are acorns not oak trees, most of them probably are not even potential oak trees under the definition of "potential" used in my article. The paradigm case of a potential oak tree is the sprouting acorn that Mr. Eichner ambiguously labels an "oak" (it's not yet an oak tree). When one buys a seedling or sapling the price one is willing to pay may not come close to what one would pay for the mature plant; still, the reason one is willing to pay for it at all is more a function of what it will become than of what it has become. My colleague David Hoekema tells me that he is willing to pay much more for an immature but potentially great French burgundy than for a jug of Gallo with a greater current palatability but which lacks the former's promise. The fact is that there are numerous examples where the current value of or respect due beings is partly a function of what they normally will become. All these analogies do not entail that the claim to life of a potential person is related to what it normally will become, since the acquisition of a claim to life may well be a unique phenomenon. But they do, I think, put the burden of proof on those who deny that what a fetus will become, in the normal course of its development, has something to do with its current value and claims.

Eichner is wrong in saying that our laws do not give rights to potential persons. A wide range of rights have been legally granted to fetuses, including some that are not contingent on its becoming a mature human. Even the right to life has been included, according to the New Jersey Supreme Court, which decided that the life of an "unborn child" of a Jehovah's Witness who refused a blood transfusion "is entitled to the law's protection" (*New York Times*, June 17, 1966, p.1). Such decisions do not settle whether potential persons *ought* to be granted such rights, anymore than does the *Roe v. Wade* decision (which itself can be interpreted as deciding *which* potential persons may be granted legal protection).

I believe Eichner's observations about permissible abortions, baptisms, and burials are consistent with my position. Indeed, Mr. Devine is correct in noting that I may have trouble

deciding precisely which abortions are *not* permissible. The sorts of reasons I give for accepting the potentiality principle do not imply that the inherent claim to life of a potential person is as strong as that of an actual person, anymore than the seedling's or wine's potential would persuade one to pay as much for it as for the mature product. And my conclusion that it is the dramatic shift in probabilities that morally distinguishes a potential person from a possible person has limiting implications for using the potentiality principle in a gradualist way to account for the belief that late abortions are much more difficult to justify than very early abortions: After conception there are no more dramatic shifts in the probability of attaining personhood, though implantation apparently marks a shift of some significance. Now one might argue that the strength of the claim to life of a potential person is in strict proportion to its probability of becoming an actual person, thereby recognizing a claim to life in the zygote that is approximately half as strong as that of an actual person. But, apart from the inconsistency of this move with the very analogies I use to defend the potentiality principle, it seems no more inherent in the logic of the potentiality principle than is, say, an "eye for an eye" proportionality inherent in a retributivist theory of punishment. So it seems that one could accept what I say about potentiality and still allow the claim to life of potential persons to be overridden by other claims in cases where more conservative moderates would forbid abortion. Therefore either a different version and justification of the potentiality principle or premises additional to it are required to be more explicit about restricting abortions. I personally believe that the most helpful additional premises are some theological ones involving stewardship and salvation by grace rather than properties. But these premises probably should not and certainly will not motivate social and legal policy. However, the conferred claims approach can, I believe, appeal to all parties, and thus can be used by moderates to supplement the potentiality principle.

This combination seems to me clearly to imply that an infant's claim to life could be overridden only by the sorts of considerations that would justify euthanasia for adults. But I admit that this inference requires some debatable empirical premises about the social effects of infanticide, and that inferences about restricting abortion also require such premises (and, probably, a conservative bias when in doubt). So, although I think my proposal is more intellectually acceptable than does Devine, I admit that its practical implications are not as clear-cut as I would like. Its main advantage, I think, is that it is much less problematic than any alternative not employing theological or metaphysical premises that severely limit its usefulness for social and legal policy.