

REPUBLICANS ON ABORTION RIGHTS

Clement Dore

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1.

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the same right to life as *any* human being – a right which cannot be overridden by the consideration that the child has an incestuous parent, or was begotten by a rapist. Another Republican Congressman, Jon Huntsman, has seen that that conclusion – a conclusion with which Huntsman is in full agreement – is the one which Ryan should, in consistency, have drawn. As for the case in which the mother will die unless the fetus is aborted, Congressman Huntsman might, upon reflection, want to say that, since the mother has lived for more than a decade and the fetus has not, then, if the mother has enjoyed a reasonably pleasant life, it is only fair to let the mother die in order to give the fetus an opportunity to have an equally worthwhile life. In any case, it is entirely unclear why Ryan, given his premise, should not, barring purely political considerations, have drawn those conclusions.

Politically liberal commentators are disposed to say that, instead of agreeing with those conclusions, rationality dictates that we view them as a reduction to absurdity of Congressman Ryan's (typically Republican) opposition to *Roe v. Wade*. And some observers may believe that we are confronted here with an impasse which consists of an irresolvable conflict of intuitions. On the other hand, it may look to others as though liberals can get around this impasse by pointing out that (1) conservatives like Ryan almost invariably believe that it is morally wrong to kill a human fetus, even at conception, because, even at that earliest stage of its existence, the fetus resembles adult human beings in having what conservatives call 'a soul'; and (2) the fact that even St. Thomas Aquinas, the official theologian of the Roman Catholic Church, had the good sense to disagree with this particular religious doctrine, is a very good reason for holding that it is morally and legally wrong to try to enforce it. And, anyway, since a tiny bundle of DNA molecules is obviously not conscious, it follows that if it has a soul, then either that soul is not a spirit or there is a spirit which hasn't become conscious yet. But it is very unlikely that anyone who is willing to deny that a soul is a spirit

really knows what he means by the word 'soul'. And, of course, the expression 'a spirit which hasn't become conscious yet' embodies a contradiction in terms.

But, though most opponents of abortion give the envisaged, wrong-headed religious reason for opposing it, some conservatives maintain as well that there is a very good *secular* reason for overturning *Roe v. Wade*, namely that liberals are unwittingly committed to the counterintuitive conclusion that infanticide is morally acceptable. If these conservatives are right, then that calls into question the liberal claim that the Republican Party has been taken over by religious fanatics. The secular argument against *Roe v. Wade* goes as follows: 'There is no morally relevant difference between killing a neonate (a human infant just out of the mother's womb) and the fetus just before it emerges from the womb. And this is true as well at every stage in the development of the fetus. There is no morally relevant difference between killing the fetus at *that* stage of its development and killing it at a slightly earlier moment. It follows that there is *no* stage of its development – not even conception – at which killing the fetus is morally admissible. Abortion is, without qualification, morally wrong.'

This argument is sometimes dismissed on the ground that a similar argument would show that an oak tree is identical with the acorn from which it grew. But, though it is obvious that a gradual change over a long duration can make a considerable physical difference in a thing, the conservative is arguing not that there is no *physical* difference between the neonate and the fetus at conception, but that there is no *morally relevant* difference, since there is no cut-off point *before* which it is morally admissible to kill the fetus and *after* which it is not. That is why this argument is called 'a slippery slope argument'.

Someone may object here that the slippery slope argument looks suspiciously like the seemingly sound (ancient Greek) argument for the obviously false conclusion that, given that a (slow) tortoise has a head-start over a (fast) hare, the hare can never catch the tortoise.¹ But, even

though the two arguments do in some respects resemble one another, there is to this day no consensus about how to solve the tortoise-hare paradox; and there is a very plausible refutation of the slippery slope argument.

2.

The beginning of a reply to the conservative's slippery slope argument goes as follows: 'There need *not* be a moment in the development of the fetus, before which it is morally admissible to abort the fetus and after which it is not. There need only be a continuum of *prima facie* obligations not to kill the fetus, which become harder and harder to override as the developing fetus comes more and more physically to resemble a neonate. Thus, the *prima facie* obligation not to abort the fetus at conception and shortly thereafter, when the fetus bears no physical resemblance to a neonate, can be overridden by such considerations as that the mother's pregnancy poses a slight risk to her health, or that it will be difficult to afford a good education for the young adult into which the fetus will develop if it is not aborted. But during the second trimester, when the fetus resembles a neonate to a much greater extent, the *prima facie* obligation not to kill it can only be overridden by such considerations as that the mother's pregnancy poses a significant degree of risk to her health, or that the fetus, if born, will be physically handicapped or born into poverty with all the disadvantages which that entails. When the fetus nears birth, however, only such considerations as that letting it be born will result in the death, or extreme and prolonged ill-health, of the pregnant mother, or that it is suddenly discovered that the fetus, if it is born, will be painfully deformed or severely mentally handicapped can override the *prima facie* obligation not to kill it. But, once again, there *is* no temporal cut-off point, only a temporal *continuum* of more and more stringent *prima facie* obligations, of the kind just considered, not to abort the fetus.'

3.

But this reply is incomplete. For it raises, but does not answer, the question of why the degree of physical resemblance of a fetus to a neonate at a given stage of its development is relevant to the question of whether it is morally wrong to abort the fetus at that stage. In order to answer that question, liberals need to make use of the concept of spatio-temporal continuity. Let us say that *X* is spatio-temporally continuous with *Y* if and only if when *X* is at a given place, P_1 , at a given time, t_1 , *Y* is at the same place at a later time, t_2 , and *X* has not moved between t_1 and t_2 ; or, if *X* is at a different place, P_2 , at a given time, t_2 , than the place which *X* occupied at t_1 because *X* has moved from P_1 to P_2 , then *Y* is also at P_2 at t_2 . The reason that spatio-temporal continuity is relevant here is that, when *X* and *Y* both resemble each other, and are thus spatio-temporally continuous with one another, they are, roughly speaking, identical with one another. And, if *X* is identical with *Y* and it would be morally wrong to kill *Y*, then it is morally wrong to kill *X*.

I say 'roughly speaking' because, though there are no such things as degrees of spatio-temporal continuity between *X* and *Y* – either *X* and *Y* are spatio-temporally continuous with one another or they are not – there are in fact degrees of physical resemblance. *X* and *Y* physically resemble one another to a greater or lesser extent at different times. And, since *X* and *Y* must physically resemble each other, as well as being spatio-temporally continuous, in order to be identical with one another (the ashes which will remain after I am cremated will be spatio-temporally continuous with my present body, but they will not be *identical* with that body, since they will not bear even a slight semblance to it), it follows that there are degrees of identity. Moreover, when a fetus is to only a slight extent identical with a neonate, it is far from clear that we can justify the claim that it is wrong to kill the fetus because the fetus bears only that slight physical resemblance to a neonate. As is well known, there is, in English and

American law, an onus on the prosecution to establish the guilt of someone who has been accused of a crime. There is, in other words, a *prima facie* case on behalf of his innocence which must be overthrown by whatever evidence may be available to the prosecution. Now, analogously, there can be *prima facie* obligations – obligations which are such that it is more or less difficult to overthrow the assertion that we have them. And, since it is doubtful that we are, without qualification, morally obliged not to abort a fetus which bears only a slight physical resemblance to a neonate, it is appropriate to conclude instead that, though there is a *prima facie* obligation not to abort the fetus at the envisaged (early) stage of its development, it is easier to overthrow that *prima facie* obligation than it would be if the degree of identity of the fetus to a neonate were greater. Considerations such as that the mother's health would be improved if the fetus were aborted or that, if the fetus is not aborted, then it will be born into poverty become less and less relevant to the question of whether it is morally wrong to kill the fetus as the degree of the resemblance-cum-identity of the fetus to a neonate with whom it will become spatio-temporally continuous increases

There are other examples of degrees of identity. Mr. Hyde looks so different, and behaves so differently, from Dr. Jekyll that the question, 'Is Mr. Hyde identical with Dr. Jekyll?' does not have a definite answer. But, though they are spatio-temporally continuous, it is clear that, if they didn't bear even a slight resemblance to one another, we would reject out of hand the claim that they are one and the same individual. That is why, in Jekyll and Hyde movies, the two do look alike to some extent.

4.

The Stanford philosopher, Michael Tooley, argued that a) it is a necessary condition of a person's having a right to something that either he desires that thing in present time

or that he *has* desired it in the past, and b) since neonates do not desire continued life and have never done so in earlier stages of their development, infanticide is morally acceptable² (though, of course, as things stand, it is not *legally* acceptable). If Tooley was mistaken about the moral acceptability of infanticide, then it is false that there is only an over-ridable *prima facie* obligation not to kill the neonate. The killing of neonates, like the killing of innocent adult human beings against their will, is (simply) murder. There can be no question of its being *less* wrong to kill a neonate than to kill a human being who is more advanced in age. But there is this much to be said for Tooley: He offers an explanation of why it is normally seriously morally wrong to kill an innocent adult who desires to go on living, namely, that the person who does so is frustrating a desire which we ought to honor to at least as great an extent as, say, an individual's desire not to be starved to death. (Rival explanations such as the claim that killing people is destroying God's property are less plausible.)

It doesn't follow that infanticide is normally morally acceptable; even if Tooley is right in thinking that rights are based on desires, the killing of an infant would almost always be a case of frustrating the important desires of people who love the infant. And, anyway, given that Tooley is right in believing that rights are based on desires, my argument can be reformulated in such a way as to accommodate that fact. Just as there are degrees of identity of a fetus to the neonate which it will become, there are degrees of the identity of a fetus to the continuous life-desiring person which it will become if it is not aborted. And, just as there are degrees of the *prima facie* wrongness of aborting a fetus which corresponds to the degree of identity of the fetus with a future neonate (given, *pace* Tooley, that killing the neonate is a case of murder), so, too, there are degrees of *prima facie* wrongness of aborting a fetus which correspond to its degree of resemblance-cum-identity to a future continuous life-desiring, full-fledged human being. Indeed, if Tooley is right and killing a neonate is not as morally wrong as killing a continuous life-desiring

human being, this is because the neonate does not look enough like a full-fledged human being to be fully identical with him. (Neonates normally physically resemble one another to a greater extent than they resemble the grown human beings which they will become. But, unlike fetuses in the early stages of their development, normal neonates do to some extent resemble more fully developed human beings.)

5.

I have said, in effect, that spatio-temporal continuity is not sufficient for identity over time. I have pointed out that, though the ashes which will remain after I am cremated will be spatio-temporally continuous with my present body, they will not be identical with my present body. But, in fact, spatio-temporal continuity isn't even necessary for identity over time. Suppose that, while sitting at my desk in New York City, I suddenly vanish and then appear a moment later in a London pub. In that case, the individual in the London pub (A) would be spatially discontinuous with the person at my desk in New York City (B). Yet, because A would remember all and only the experiences which B remembers, A and B would be identical with each other. (In order to avoid having to pursue the question of whether A and B would be identical, even if they didn't physically resemble one another, let us imagine that they do look very much alike.) But fetuses, early in their development, don't *have* any experiences which a full-fledged human being can recollect. Hence, it would be a mistake to think that a full-fledged human being could be identical with a fetus because the former individual remembers (or will remember) having experiences which the fetus has (or had). It follows that, in the case of fetuses and the full-fledged human beings into which they develop, spatio-temporal continuity or something very close to it, is necessary for identity over time.

6.

Let me repeat that there are degrees of the identity of a viable fetus with a future full-fledged human being. It is not a matter of either/or. It is false that either the fetus is a human being or it is not a human being – just as it might be false that either a person is bald or he is not bald, tall or not tall, and so on. If I am right, then there are borderline cases in which it will be in principle impossible to say with certainty that a given fetus has reached a stage of its development at which it has become sufficiently human so that it would be morally wrong to take its life. And in such borderline cases, we ought to err on the side of caution. However, not all stages in the development of the fetus are borderline cases. The fetus at conception, and in the very early stages of its development, does not look at all like a human being – just as the pile of ashes which will remain after the cremation of my body will not resemble my body. Here we are not dealing with borderline cases. It may be that we have a *prima facie* obligation not to kill even the very early fetus which is based on the fact that if we don't kill it, then a future full-fledged human being will very probably be spatio-temporally continuous with it. But, once again, that *prima facie* obligation can be easily overridden. (One example of an overriding consideration is, as I have said, a slight risk to the health of the pregnant woman.)

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Notes

¹ The argument goes as follows: The hare cannot catch the tortoise without traveling half the distance between his starting point and the tortoise, when the hare will occupy a place, call it P1, which is still at a distance from the place which the tortoise occupies. But then, in order to catch the tortoise, the hare must travel half the distance between P1 and the tortoise,

when the hare will occupy a place, call it P2, which is half the distance from the place which the tortoise occupies. And since the hare must travel half the distance between P2 and the tortoise, and that will be true of any place at which the hare arrives, the hare can never catch the tortoise (even if the tortoise doesn't move at all; as Parmenides recognized, the argument can be used to show that motion through space is impossible).

² Tooley, Michael (1974). A defense of abortion and infanticide, in Joel Feinberg (ed.), *The Problem of Abortion* (Bellmont, CA: Wadsworth).