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The Termination of Potentiality

Abortion, forever a grand canyon of emotive ethics, whose discussion like a raging river distances ever more the opposing banks of belief, seems to defy rational conclusion. And yet it is precisely upon rationality that both sides claim their claim to truth. In an attempt to bridge that gaping gap, we will examine the extreme views espoused by both banks, extract the rhetoric, the errors, the distortions and red herrings, cast them to the current, and with what remains attempt a modest bridge.

Noonan begins his essay upon the wrongs of abortion by attempting to clarify what, precisely, it means to be human. Certainly, early textual evidence suggests in fact that to err is to be human: Noonan offers the "all embracing: if you are conceived by human parents, you are human"(461) as *the* criterion for humanity. The main characteristic of this simple cover-all is its ability to cover all the question, for it assumes as given what it attempts to take. The question remaining then, in this "if *you* are conceived by human parents, *you* are human," is whether or not you are actually you. At what point did you become you? Were you *always* you? Was that nameless zygote truly the apple of thine father's eye? Noonan's proposition, his overture, is more truthfully an epilogue.

Noonan realises this and suggests that it be tested by a

review of some of the traditional abortion arguments, the first being viability. Before a certain age, the foetus is entirely dependent upon its mother and is not itself a viable being. This dependence, Noonan suggests, is "made the basis of denying recognition of its humanity." With this seemingly innocuous statement, we nevertheless see the flashing lights and hear the clanging bells of Rhetoric Alert! Rather than denying the "humanity" of an early stage foetus, we should perhaps instead see its lack of viability as proof simply of its potentiality. The perfecting of "artificial incubation" (461) systems, Noonan then suggests, makes this lack of viability an argument whose time has been and gone. A foetus might, some hypothetical day, be removed from the womb at any stage and be "artificially sustained"; (461) and so "there is considerable elasticity to the idea of viability." (461) Although artificial is what artificial does, the repeated "artificial," pronouncing itself twice in the same sentence, seems, to Noonan, a word of little import. The issue is further clouded by the discussion of how viability is to be measured: weight and length opposed to age considered in the context of individual and racial variances. It is clear that Noonan seeks a magic number--when something that is not suddenly becomes something that is--knowing that no magic number will be found, and thus the viability argument lost by default. What ever elasticity "viability" inherently contains, or lack thereof, Noonan certainly attempts to stretch it well past breaking point: The next pull and twist is to confuse the dependence of a baby with the dependence of a foetus:

The unsubstantial [sic] lessening in dependence at viability does not seem to signify any special acquisition of humanity. (461)

Rhetoric Alert! "Unsubstantial?" "Humanity?" It seems almost redundant to clarify the distinction between the natural nurturing required by a baby and the often impossibly often only hypothetical high tech. aid a foetus demands. Essentially, the needs of a baby are identical to its parents: sustenance, shelter and the occasional spank on the bum.¹ The needs of a dislocated early stage foetus, alternately, are so epic that their reality lies only in future promise and wild imaginings. This then is an "unsubstantial" difference? As to the "humanity," we have already noted that the lack of viability is not so much a proof of lacking humanity as to possessing potentiality. The effort here is not to ply tricks of Sophistry, but to avoid the danger of too loaded terms like "humanity."

When Noonan moves to the argument of worth measured by experience, he finds more solid ground. Certainly we can understand the importance of experience in shaping our character, though the profoundly experienced is in no manner more worthy of life than the "unfoundly" experienced.

Feelings, we are assured, are notoriously unreliable: the feelings of parents when a foetus is lost compared to those when

¹How could I resist? Please feel free to dock 1/2 a point for misplaced whimsy. (Based upon a two thousand point grading system, of course.)

a baby dies is seen as insignificant, or merely an effect of visibility and invisibility. Although this is only a passing point for Noonan, it seems so far off the mark as to deserve special consideration. Firstly, we seem to smell a rat: if feelings are indeed a notoriously unreliable beast, why does the rhetoric of Noonan's text rely so heavily upon the emotive quality of diction? Why, in other words, does he so often rattle the bars that cage the beast, using its roar to distract the opposition? Secondly, if emotions are indeed so fickle and trifling, why has their exploration been the eternal pursuit of all man's artistic endeavours? This is particularly important when we realise that a large part of our humanity is measured in our self-reflexive creativity, the artistic expression of self-awareness. More importantly though, language might lie, but emotion speaks true.² The unlearned reaction of a pregnant woman who loses her early stage foetus by accident, when held in comparison to a woman who instead loses her new-born, seems to speak volumes of the difference between mediate potentiality and immediate reality.

Since emotions have been dismissed from our consideration, we are supposedly left with pure rationale, and so it seems entirely fitting now to turn to science for further exploration. Of course, medical science might prove too dangerous a bedfellow, so Noonan instead moves back the sheets and beckons mathematics to his side. We have left behind the issue of a

²Please excuse my own recourse to rhetoric.

foetus's humanity, which was in actual fact a non issue, and now turn to plain and simple morality, which is, according to Noonan, largely a question of probability!

Consider . . . spermatozoa . . . 200,000,000 in a single ejaculation . . . one chance . . . developing . . . zygote. Consider . . . oocytes . . . 100,000 to 1,000,000 . . . maximum of 390 are ovulated. Once [they] meet, 20 percent spontaneous abortion occur. Chances . . . 4 out of 5. (463)

Life itself is a matter of probabilities; and so "the appeal to probabilities is the most commonsensical of arguments" (463) pertaining to morality. Typo Alert! For "commonsensical," read *nonsensical*. The relevance of probability to morality is made clear by the scenario of a man firing a gun into a bush. Big chance someone lurks in bush, big immorality in shooting. Small, small. Certain questions remain: is it moral to have a gun in the first place? Whose bush is it? Why shoot at it? Do you already have a bird in the hand . . . ? The whole point of Noonan's wood wandering bush shooting exploration is to demonstrate that the spillage of semen during masturbation is to some degree innocuous--and so should not be compared to abortion--since such a "being"--spermatozoon--has "a chance of far less than 1 in 200 million of developing into a reasoning being." This is an example then of probability morality. Probability explains why masturbation is not *wholly* sinful, and the characterisation of a spermatozoon as a "being" explains why Noonan felt the need to do his shameful business behind a bush.

Leaving the improbable probability bush behind, Noonan again returns to his well trod path. It seems to be the only path he knows and leads to the land of understanding, where the foetus is recognised as human. Although the "humanity" of the foetus is not the only question that must be resolved--indeed, we have already suggested that it is in fact a non-issue--it seems the only point Noonan wishes to explore.

The positive argument for conception as the decisive moment of *humanization* is that at conception the new being receives the genetic code. It is this genetic information . . . which makes him a self-evolving being. (463) (my italics)

Firstly we might note the Dr. Hellegers' comments upon this point.

. . . although at fertilization a new genetic package is brought into being within the confines of one cell, this anatomical fact does not necessarily mean that all of the genetic material in it becomes crucially activated at that point, or that final irreversible individuality has been achieved. (457)

In other words, the genetic material has been received, though it has not been used and even its arrival has escaped notice. We might compare this to the arrival of an unexpected cheque for ten zillion pounds in the post. Mr. Smith, the tenant and recipient, is out at the time, and the cleaning lady accidentally throws it in the bin, thinking it an advertisement from a toothpaste company. Has there been a delivery? A loss?

Will Mr. Smith's teeth still shine? Again, we see, this time from Hellegers, that the new genetic being is all potential.

As we have noted, Noonan examines the morality of abortion almost entirely from one standpoint: the humanity of the foetus. The purpose of this is apparent enough, though clearly reiterated in his concluding paragraph:

. . . once the humanity of the fetus is perceived,
abortion is never right except in self defence. (464)

The essential problem with Noonan's thesis is that the terms human and humanity is so problematical, which is precisely why they are so valuable as a tool of rhetoric. Simply stating that to be conceived by human parents is to be human, is, as we initially saw, an empty statement that founds its conclusion upon its conception. We have attempted to avoid Noonan's humanity traps, preferring think of the foetus wholly in terms of its potentiality. This neither denies nor affirms its humanity; but in effect accepts both. If we were to question the humanity of the foetus, we might perhaps do so by differentiating between human and person. What is human is not always nor necessarily a person.

The extremist view of Noonan is made doubly clear when, in his conclusion, we find the notion that self-sacrifice, carried to the point of death is a notion "not without meaning." The precedence for this, not surprisingly, has strong connections with chocolate eggs. Its relevance to the abortion debate, however, seems most insidious.

With only the minor effort of changing paragraph, we leave the

martyred mother to greet the martyred infant. Mary Anne Warren follows the extremist feminist ideology up the proverbial garden path and finds herself slaying children in the name of womanhood.

Warren, like Noonan, follows the time tested technique of the casuist by presenting *the* fundamental question which, its wrappings removed, proves fundamental not to the issue but to the thesis. Accordingly, Noonan's defining the humanity of a being here becomes Warren's defining the "moral community". The fact that this "moral community" seems composed of members unaware of its existence immediately suggests certain trickery. Members of this community have, according to Warren, not human rights--we have already seen the value of this term to the anti-abortion camp--but moral rights.³ Warren, unable to avoid the defining of "human," suggests that there are two senses, the first defined in genetics--Noonan's focus--the second, and *apparently* more valid, defined in morality.

Essentially, Warren's "moral community" is a somewhat pedantic and circuitous affirmation the dichotomy of humanity and "personity." The "moral community" then is made up only of persons and not merely humans. Just as Noonan's thesis seemed to include great aunt Gertrude's genetically intrinsic toe nail in the human community, Warren, on the other hand, offers an

³We can only assume that these "moral" rights are the opposite of immoral rights, which are rather rare due to their low birth rate and high incidence of abortive terminations.

exclusive "moral community".

If he wants to be sure of behaving morally towards these beings, he has to somehow decide whether they are people, and hence have full moral rights, or whether they are the sort of thing which he need not feel guilty about treating as, for example, a source of food. (466)

Again, this "moral" rights seems problematical. It seems clear though that such rights are owed uniquely to persons, and what we see here is the dangerous beginnings of the objectification of life. Using "things" for food is only an example, and need not disturb our conscience. Using those same "things" for experimentation by the cosmetics industry, fodder for fur traders, minions of religious sacrifice, their several parts as sources of aphrodisiac and dagger handles, and so on, like wise need not disturb our rest. We might wander then at the increasing movement against all these, since animals are excluded from the "moral community" and so have no moral relevance. And we can only wonder at the miraculously manipulative mind that can assert all this, and yet still conclude:

The belief that moral strictures against killing should apply equally to all genetically human entities, and *only* to genetically human entities, is such an error. (470)

Essentially, both the religious based anti-abortionist and the extremist feminist right to self determination without

qualification suffer from the same homocentric fault, which views two divergent definitions of man of supreme and unique importance.

If Warren is correct at least in understanding the difference between being human and being person, her thesis will not allow for a valid assessment of what it really means to be a person. The criteria to be met are, briefly: consciousness, reasoning, self motivated activity, capacity to communicate, self awareness. Of course, *all* these criteria need not be met in the same individual, but Warren is unclear how they then allow us to decide if a being is a member of the "moral community" or not. Warren presents these criteria in a numbered list, and the effect is to offer pseudo-scientific jiggery-pockery as authentic science. It is akin to Noonan's use of mathematical moral probability. We must agree that "(1)-(5) are central to the concept of personhood," (466) though they can clearly provide no sound test offering a definitive answer to the problem they seek to resolve. This is not to say that such criteria do not exist, but that Warren's political ideology will not allow their discovery, for she seeks a method not to test personhood, but to exclude the foetus at every stage of development from personhood. It is this effort that takes Warren into the realm of infanticide. By asserting that even a nine month foetus has no "moral" rights, being in all respects identical to a new-born and not so new born, the logic must also allow for the killing of unwanted infants. Whether or not Warren walks willingly into this black wilderness, or is dragged bodily

by the unfortunate perpetuation of a logic which ironically cannot be aborted, must remain a mystery. But whether or not infanticide is Warren's legitimate or illegitimate offspring is not so important as the fact that she willingly offers it nourishment.

Paying lengthy reference to her almost meaningless and certainly useless five criteria, Warren uses them to mean that, "even a fully developed fetus is not personlike enough to have any significant right to life." (468) This leads to the conclusion:

Whether or not it would be *indecent* (what ever that means)⁴ for a woman in her seventh month to obtain an abortion just to avoid having to postpone a trip to Europe, it would not, in itself, be *immoral*, and therefore it ought to be permitted. (468)

Woman, long the victims of gender "othering"--just as native peoples subjugated by expansionistic imperial powers were victims of ethnic "othering"--now begin to practice the same art upon the the foetus. It is an art which uses only the blackest of black paints.

Warren does admit that a foetus, as a potential person, might theoretically have some rights, but that the rights of the actual person and so member of the "moral community" supersedes those of the none-member. This takes no account of what those

⁴Strange that someone claiming such insight into so difficult an issue seems unable to comprehend the meaning of "indecent."

respective rights might be; and so the right to a member's "European holiday" will always outweigh the non-member's right to life itself.

Although Warren's diatribe is more overtly extreme than the Noonan essay, both offer entirely polarised views. The idea of viability somehow being reckoned in the ethical equation is dismissed by both sides: Noonan suggesting that a foetus is increasingly viable at decreasing stages due to technological progress, and that the dependence of a foetus is identical to that of a new-born; Warren dismisses entirely the question of viability since the being in question, viable or not, is not a fully paid up member of the "moral community," and its value is not intrinsic but dependant upon that granted by members of that community.

The notion of individual worth based upon personal experience is one which Noonan rightly questions, and which seems painfully evident. And yet it seems to be quite central, though not overtly expressed, to Warren's notion of who is a who and who is a what, what is a who and what is a what; central to membership in her "moral community," for she clearly states:

It remains true that according to my argument
neither abortion nor the killing of neonates is
properly considered a form of murder.

Rhetoric Alert! "Neonates?" Just as Noonan used diction to inflame our emotions, Warren's scientific jargon attempts here to extinguish them.

The question of genetic code, similarly found to dissimilar

results: for Noonan it is everything, for Warren it is nothing.

It is not surprising that these two antagonists can find no common ground, for they are each in search of a different treasure: one shows the humanity of the foetus, the other decides that humanity is a worthless prize and that personhood is what counts. But it is in the very extreme nature of their arguments that *reason* seems revealed.

We can hardly deny that a foetus is human; and it is, certainly, a potential person, and that potential increases with the passage of time. Just as there is no particular moment when we might say night has arrived; likewise, the personhood of the foetus has no definitive moment of realisation--although certainly a foetus in the final trimester does actually become a person, since it actually becomes viable in its own right and so identical to a new-born in all aspects save its location. To deny this is to deny an Englishman living in Canada is not actually an Englishman, despite the fact that he eats fish and chips and dreams nightly of the Queen. What we see then is that personhood is an important factor, and that personhood is firmly attached to viability. The conclusion seems simple: the foetus, as a human, has certain inalienable rights; those rights, as the human develops towards personhood, become, like the foetus, ever stronger, increasingly difficult to overrule. The rights of the woman, being an actual person, have become actualised and so have immediate strength. But when conflict arises between the rights of one and the other, we cannot simply assert that the woman's automatically take precedence: firstly because, as we

have said, the foetus itself is at some stage an authentic viable person--a member of the "moral community" if you will--and so its rights possess, at that time, the same power as the pregnant woman's; secondly, because those rights must be defined. Certainly, concerning the foetus it is almost always the right to life, but with the woman the right, as expressed by Warren, might be to the unencumbered "European holiday." So we must compare the strength of the foetus's right to life, which steadily increases with its development, with the particular right of the woman, which must also take into account the context of her situation.

Clearly there is no mathematical manner, neither in probability nor multiplication, of deciding if any given abortion is moral or not. Likewise, criteria that might decide conclusively the status of a foetus deny the changing status of a foetus. It seems clear that since the foetus is admittedly always human, there will always be a certain immorality to every abortion. We must realise though that the interdiction of an abortion might prove a greater immorality. Using viability as the touchstone of personhood seems the safest utilitarian solution to a difficult problem, just as we might decide night has arrived when we need to switch on lights. A woman's right to liberty and self-determination is identical to that of a man's: it might be seized as a sentence for a criminal act. Allowing an unwanted healthy foetus to develop to the seven or eighth or ninth month before demanding an abortion should be seen as not only an immoral but criminal act, and so certain restriction of

freedom might indeed be called for.

If we have displeased the Mary Anne Warrens of this world, we might now demonstrate impartiality by acting similarly towards the John T. Noonan Jr.s. Even if we close our eyes to reason and agree that abortion is always immoral and always unjustified--with the possible exception of those cases involving dubious woman who decide not to martyr themselves for the unborn--the fact remains that outlawing the procedure will not effect its cessation. The results will be twofold: firstly the back street kitchen will become the new operating theatre; secondly, not only might a foetus be killed, but women too. Reverting to Noonan's much favoured probability and mathematics, it is hard to understand how the probable death of two humans might be seen as more moral than the probable death of one--unless we multiply the evidence by five and add the number of madness.

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