Abortion and the application of Natural Law

The word “abortion” comes from the Latin word “aboriri” meaning “to fail to be born”. It might also be defined as:-the premature expulsion of a foetus (technical name for unborn baby) from a womb i.e. it is the termination of a pregnancy, If this happens naturally it is known as a spontaneous abortion or a miscarriage.

Medical Abortion: Abortion Pill, inserted in vagina, no surgery, a very heavy period

Surgical Abortion: Vacuum suction available 13 week pregnancy.

The legality of abortion in the UK, Abortion in the United Kingdom is legal if certain conditions apply:-

The Abortion Act 1967 stated:

1) If it would endanger her life to continue with the pregnancy

2) That continuation of the pregnancy would involve risk to the physical or mental health of the pregnant woman greater than if the pregnancy was terminated

3) The continuation of the pregnancy would involve injury to the physical or mental health of any coexisting children of the pregnant woman's family greater than if the pregnancy was terminated.

4) That there exists a substantial risk that, if the child was born it would suffer from such physical or mental abnormalities as to be seriously handicapped.'

A doctor is:

1) Not obliged to agree. Thus, a doctor is fully entitled to refrain from giving advice about abortion or contraception if he or she has a conscientious objection to doing so. However, patients should be clear as to where they can seek advice if their own doctor does not deal with these areas of practice.

2) Must sign the certificate with another doctor

3) There has also been one further important development in the law regarding abortion since this bill. The 1990 Human Fertilization and Embryology Act limited abortion to the first 24 weeks of pregnancy, unless the mother's life is directly under threat. This replaced a previous law that had stated that a baby who was capable of being born alive should be protected.

What is a person ?

Here is the main argument that is usually advanced against abortion:

• It is morally wrong to end the life of an innocent person.

• The foetus is an innocent person.

• Therefore, it is morally wrong to end the life of a foetus.

Much of the debate in regard to abortion has centred around the second premise, namely, whether the foetus is a person or not. If the foetus is a person, then it has the rights that belong to persons, including the right to life. The concept of personhood, in other words, is the bridge that connects the foetus with the right to life. A baby born with no brain may be a human being, but it isn't a human person. A human “person” develops attributes throughout its life. When should full human rights status be conferred? Peter Singer: ‘ To kill a human is murder … Yet there is no obvious sharp lines which marks the zygote from the adult. Hence the problem’

1. Conception : Can be vague

2. Zygote: Pre-Embryo 0-5 days

3. Blastocyst: roup multiplying cells, Pre-Embryo 5-14 days

4. Embryo: 14 days to 8 weeks

5. Foetus 8 weeks onwards

6. Newborn: 38-42 weeks

7. Thus, there are really two responses to the question as to whether the foetus is a human “person”

a) The first is that the foetus becomes a human “person” at a certain point. The actual point at which this happens, however, may vary: it might be when the soul appears or when the brain starts working.

b) In contrast it could be argued that the foetus never becomes human “person” as the crucial point is never reached. For example, it may never be conscious.

The biggest argument in favour of this position is the idea that the foetus is human. This is clearly dependent on other arguments, see the previous section for a discussion of this. However, if the foetus is human, surely it should be afforded the same rights as any other human being. It might be argued that rights only make sense if they apply to all people in all circumstances. A similar argument could be made whether the foetus is actually human or not. Some philosophers have argued that the fact that the foetus is potentially human should be enough to guarantee that it has the same rights as any human being. If the foetus is human, what sort of rights might it have? It is often suggested that a foetus should have a right to life, a right to be protected and a right to develop. This would clearly have an impact on the issue of abortion.

**Problems with this position,** Firstly, it could be argued that the foetus is not human. In addition many philosophers believe that if something has rights, then it implies that it also has responsibilities. Clearly, however, a foetus cannot be responsible for anything and thus it might be considered not to have rights. Further, the idea that the foetus has rights might lead to a contradiction. If the foetus does have rights, then the mother herself must be forced to recognize them. This implies that in some sense she does not have rights because she could be forced to have the child and has a duty to protect the foetus.

'The foetus does not have rights. The first argument that could be used here is that the foetus is not a human and consequently does not have any rights. It could be added that the foetus is part of the mother and therefore her rights are absolute: whatever she does to her body is her decision. A different sort of approach would be to argue that the whole idea of rights does not make sense. If this is true, clearly it would be meaningless to suggest that the foetus has rights.

**Problems with this position:** Firstly, it is an assumption to state that the foetus is not human. Someone adopting this position must also be quite careful as she/he would need to make clear how a child has rights whereas a foetus does not. Additionally, the consequences of this position must be accepted. For example, there can be nothing morally wrong with the idea of having an abortion in order to have a flat stomach. How about quickening – The Foetus moves inside the mother.

**(a) Sanctity of life:** It is often argued that there is something special, or even sacred, about human life. Indeed this is what the phrase 'sanctity of life' means. Due to the fact that life is special, it is argued that we should be obliged to preserve or protect anything that is alive: the special status of human life guarantees that it should be protected. Thus abortion is considered to be wrong because it goes against this and does not respect the life of the foetus.

**Problems:** Firstly, this position seems to require a reason as to why life is sacred. It could be God that ensures the sanctity of life but this would be quite a big assumption. Secondly, it is presumably human life that it is considered to be sacred, otherwise we would be obliged to protect all animals and plants as well. However, this begs the question as to whether the foetus is humans. It is generally agreed that neither the separate sperm nor egg is a human person. It is also generally agreed that a baby should be treated as a human person i.e. it should be protected from being killed. Thus at some point between after conception and birth the foetus should be considered to be a human person . There have been a number of suggestions as to when this might be.

**Conception:** This is the moment in which the egg is fertilized by a sperm. In effect it is the point when a new life begins. Indeed this is one of the principal reasons given by some people who argue that it is this moment that ought to be the point in which the embryo should be considered human. If things are allowed to run their course, it is argued, then the fertilized egg will become a human baby: life has started and we should not interfere with such natural processes. Often a religious viewpoint is added to this argument and it is argued that everything happens because it is part of God's plan and it is not right for human beings to try to change what God has ordered.

**Problems:** Some biological facts are often used in support of the idea that conception cannot be the moment in which the foetus becomes a human person. Firstly, the chromosomes, the biological bits that make us what we are, do not develop until the third day. Secondly, many fertilized eggs, approximately half, do not attach themselves to the womb wall and thus do not become babies. In addition it is often argued that it is not wrong to interfere with natural processes: if it were wrong to do this, things such as heart transplants would also be ruled out. It should also be noted that it is an assumption to introduce the idea of God into any argument: many people might argue that He does not exist.

**Viability:** If something is viable, then it is capable of becoming real. Thus, in terms of a foetus, a foetus is viable if it could survive independently of its mother. This has been another key suggestion as to when the foetus becomes human person. If the foetus could survive without the mother, it is argued, surely it should be treated as a baby i.e. as a human person. The only difference between such a foetus and a baby is that one actually does not require its natural mother.

**Problem:** Currently a foetus is viable from about 21 weeks. However, with the inevitable advances in science a foetus' viability is likely to become earlier and earlier. For some this is a problem with using viability as the criterion for determining whether a foetus is human. Does it mean, for example, that what a human is becomes different? What about the situation in which the womb becomes no longer necessary? Would this mean that even embryos are human?

**Ensoulment:** 'Ensoulment' means having a soul attached to something. This is a very different suggestion as to when a foetus becomes human “person” . It is one that mainly draws on religious ideas for its defence. It is argued that the most important aspect of being a human “person” is having a soul, thus a foetus becomes a human person at the point when the soul is attached. In traditional Roman Catholic teaching the times that this happens is at 40 days for boys and 80 days for girls.

**Problem:** This point of view is clearly dependent on a belief in God, or at least some sort of supernatural agency that can attach souls. However, this is an assumption with which many people would not agree.

**Birth:** Before the foetus is born it is part of its mother's body. However, after it has been born, it has a certain independence and does not have to rely on its natural mother. Thus birth could be the defining moment as to when the foetus should be considered a human person : the baby is no longer physical part of its mother and exists on its own. Indeed it could be argued that the mother is responsible for the foetus, whereas society is responsible for a baby. Is the baby viable?

**Problem:** The idea that it is at birth that the foetus becomes a human “person” can be questioned. It could be argued that in terms of abilities, consciousness and intelligence, for example, there is no difference between an unborn and a born child. Why does the physical process of birth give one a higher status than the other?

**Consciousness/Sentience:** suggestion that might be made is the idea of consciousness or sentience. If you are conscious, then you are in some way aware of what is going on around you. It could be argued that this idea is at the heart of what makes a human “person” and thus a foetus is a human person when it is conscious.

**Problems:** There are, however, problems with this view. When does the foetus become conscious? It could be argued that this idea of self¬-awareness is not even shown by new-borns. Are they not human persons either?

Pro Life: 'No: abortion is never acceptable in any circumstances.

The foetus has rights: Another argument that is often employed is the idea that the foetus has rights. It is argued that the foetus has a right to life and a right to be protected. This sort of approach does usually recognize that the mother also has rights. However, in the instance of killing the foetus, it is argued that the foetus' right to life outweighs the mother's right to choose. There clearly does have to be some priority of rights when there is a clash between rights, and it is argued that the right to life is the most fundamental right there can be. Therefore, abortion must always be wrong because it goes against this most fundamental right. Indeed this sort of argument is often developed to attempt to show that abortion should be illegal. The foetus has a right to protection, it is argued, but cannot defend itself. Therefore, others (i.e. the law) should protect it.

Problems: As has already been discussed, not everyone would agree that the foetus has rights and indeed not everyone would argue that these rights are absolute: different circumstances might affect whether the foetus' rights should be maintained.

Pro-Life: abortion is acceptable.

Foetus is not a person: In many ways this argument really is a direct contradiction of one of the arguments used against abortion. It is argued that the foetus is not human and consequently it does not have any rights. As a consequence of this no one has any responsibilities for looking after the foetus.

Problems: Clearly, this argument rests on the assumption that the foetus is not human and, as has been seen, this can be questioned.

The woman's right of choice is absolute: The foetus is clearly absolutely dependent on the mother for its existence. Indeed, it is often been described as being part of the mother's body. As such, it is presumably the mother's decision as to what to do with the foetus. It does not matter that the foetus is alive, the crucial part is that the mother always has the right to choose what to do with her body and, as the foetus is part of her, she always has the decision as to whether to abort it or not. Consider, for example, the dea of a cancerous growth: even if this growth did not threaten the life of the mother, most people would agree that she had a right to get rid of it if she wished. A parallel could be drawn to the foetus here: the mother should be able to get rid of the foetus too if she wishes.

It seems. as if this comparison to a growth requires the assumption that the foetus is not a human being. However, some philosophers have argued that this is not necessarily true. Judith Jarvis Thomson, for example, used what has become a very famous example of a violinist. ['A Defence of Abortion', Judith Jarvis Thomson, as quoted in Applied Ethics, ed. Peter Singer.] Imagine that during the course of the night a famous, expert violinist has been plugged into you: the only way that the violinist can continue to survive is if he remains plugged into you. Judith Jarvis Thomson argued that not many people would believe that you could be forced to continue to support the violinist, however great that violinist is or even how great he might become. Rather most people would believe that we had the choice as to whether we wanted to do this or not. Judith Jarvis Thomson argued that the same is true with the foetus and thus it does not matter whether the foetus is considered to be human.

Problems: It could be argued that this approach rests on the assumption that if the foetus has rights, then these rights are not as important as the mother's. This would go against the idea that the foetus' right to life is absolute. However, the question, as to whether the mother should be forced to do something that she does not want to, remains. It is possible to criticise Judith Jarvis Thomson's position on this. There is a difference between the foetus and the violinist: the foetus is the result of the mother's actions, the violinist is not. It is therefore sometimes argued that the mother should live with the consequences of her actions and this is reason enough to oppose abortion.

The second century theologian Tertullian in 'On the Soul' argued that the foetus is alive before birth. This idea was developed by the sixth century writer Augustine who also introduced the notion of 'ensoulment'. Indeed it was Augustine who argued that there was a distinction between foetuses dependent on their sex: boys are ensouled after 40 days and girls after 90. In the seventh century Theodore stated that abortion after 40 days is murder.

A similar statement was made by the theologian Aquinas in the thirteenth century. He recognized the distinction between boys and girls but is also famous for developing an important principle. For Aquinas, and consequently as part of Catholic doctrine, there is such a thing as natural law. Each thing, it is argued, has been designed by God for a particular purpose and thus to do anything that goes against this natural law would be wrong. Aquinas therefore argued that abortion is never acceptable since it would go against the natural order i.e. it would go against the purpose of the foetus and of conception.

The Roman Catholic teaching that the foetus is a human being from the moment of conception, and that its rights to life are equal to that of the mother's, is based on two theories:

• Ensoulment: In the 13th century Thomas Aquinas argued that the male foetus becomes a human being at 40 days and the female at 90 days after conception.

• Quickening: This is the time that the baby first moves in the womb.

'By the authority which Christ conferred upon Peter and his successors, and in communion with the bishops of the Catholic Church, I confirm that the direct and voluntary killing of an innocent human being is always gravely immoral.' (Papal Encyclical 1995) However, Catholics will allow abortion in the case of the principle of double effect. For example, in the case of abortion consider the instance of an ectopic pregnancy, which is where the an embryo develops inside a woman's fallopian tube rather than the womb. This would cause pain and threaten the life of the mother. It might therefore be acceptable for the woman to have an operation to remove the fallopian tube. Indeed the principal reason for such an operation would be to save the mother. However, there will be a second consequence (or double effect) of this operation in that the embryo will be destroyed. However, the principle of double effect suggests that the operation may still be acceptable.

Howard Kainz: Two other precepts are perhaps even more relevant to the issue of Abortion: Preservation of Life , Right to procreation. But opens up a debate ‘if every woman has a right to conceive and procreate, and if this right implies that she has the right to make that choice voluntarily, no more obvious infractions of that right to rape and incest can be contemplated. If ones uses an exemption to the Primary Precept, one might have to admit further exemptions in applying two precepts of right to procreation and nurturing offspring. Just as one has the right to preserve life one has the equal right to preserve ones’ choice to procreate, Rape clearly violates this choice, it also opens up a debate about the real and apparent goods. But Christian principle might supercede considerations, a rape victim might nurture a child after rape which shows virtuous behavior.

Kainz argues that Natural Law must use reason and Christian Virtues, a woman who had been raped who went the extra mile would be seen as heroic.

Pope Pius: ‘Abortion is against the precept of God and the law of nature ‘Thou shall not Kill’.