

***The Beginning Of Human Life, Early Termination And Right To Life: A Discuss From Ethical Perspective***

***By***

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***Abstract***

*Human life is said to be sacrosanct and the protection of that life is undoubtedly concern of everybody in the society. The series of argument and counter argument on the point of emanation of life and that of its acceptance raises the question of point of attaching value to human life. This paper employed analysis, it discovered that the war-in-camp admits the existence of human life that needs to be protected but disagrees on the point. The paper concludes that both camps have their merits; nonetheless their demerits are what undermine their suitability as ideal solutions to the controversy. It further presents the principle of identity and double effects as more suitable solutions to the problem of morality of termination of life either from point of conception of later stage of existence.*

***Keywords: Human Life, Termination, Right to Life, Ethical Perspective***

***Introduction***

*Human life is said to be sacrosanct and the protection of that life is undoubtedly concern of everybody in the society. There has been series of argument and counter argument on the point of emanation of life and that of acceptance, but in the midst of the divergent views about when life begins, there seems to be undeniable facts among the war-in-camp that it must be protected, from history and legislation overview, From various sources, abortion and infanticide were practiced in the Ancient Mediterranean World. For example, the Spartans would dip the new-borns in the icy waters of the Styx to test their strength, for only the strongest did stand a chance in life. Plato, in the Republic, had no objections against the killing of*

*not only of handicapped new-borns, but also of those who are the product of inferior parents or of individuals past the ideal childbearing age.<sup>1</sup> In the Politics, Aristotle holds that deformed infants should not be allowed to live.<sup>2</sup> In Peri psychês, later translated in Latin under the title De anima, Aristotle's theory of the distinction between living and non-living organisms was that the former did possess an animating principle; something that gives the ability to move - which he called psychê, a principle of life.<sup>3</sup> In the Theory of Human Generation and Reproduction, Aristotle claimed that the male human foetus becomes animated (viz., starts moving) on day-40 after conception, and that it takes the female foetus 80 days to start moving.<sup>4</sup> In line with this view, before the foetus starts moving, it is not alive; therefore, abortion before 40 or 80 days is permissible. In the Eudaimian Ethics Aristotle wrote:*

*Just as we do not think: a foetus, who lives a purely vegetative existence, without awareness, lives a full human life, so we are not going to be willing to praise and congratulate the life of this hopeless inactive adult.<sup>5</sup>*

*The Stoics rejected Plato's theory of Forms. They had their own views on the psychê, also called pneuma, as the principle of specific animal life that allows poion, action. The stoic soul is a corporeal entity; it penetrates the physical body, and leaves it after death.<sup>6</sup> their concepts on human reproduction and embryology were written down by Hierocles in Elementa ethica (circa 200 CE.), and by the Greek physician, anatomist and philosopher Galen of Pergamon (129- circa 199 C.E.) in De foetofornatione. On their view, throughout most of gestation, the conceptus was just a growing thing, not really different from a growing plant. Progressively, the pure phusis (growth) becomes inhabited by the pneuma, the fiery breath, the intelligent fire. Thus, it was only at the moment of birth that, through an instantly hardening by contact with the cold air outside, the pneuma became psychê. The stoic psychê was together with the rational component necessary for thought, language, and decision-making, as well as the instrument for sensation and movement. The psychê was what allows us to lead an intelligent life within the boundaries of the body.<sup>7</sup> Like Aristotle; the Stoics saw the foetus as an almost purely vegetative entity.*

*It is quite clear that the concept of psychê in the classical Hellenic world had nothing in common with the later Christian*

*concept of soul, which is the cornerstone of the Roman Catholic pro-life position. The misinterpretation of the Greek concept of *psuchê* is attributable to what is commonly called the problem of the traduttore traditore (the so-called treason committed by translators): *psuchê* was translated *anima*, and *anima* was mistranslated *soul*.<sup>8</sup> The roots of this interpretation are found in Augustine's adoption of Plotinus' theory of emanation that said that the Creation issues is from God's thought, something like a composite of rationality and something celestial. On Plotinus' view, contrary to Plato's concept of the body as the dungeon of the soul, body and soul were supposed to live in harmony.<sup>9</sup> For Augustine, God created the human soul in His image. Our soul shares with the divine mind; our body is only a repository for the soul*

*Aquinas shared Aristotle's view on the spark of life, the principle of motion that makes a living being alive.<sup>10</sup> A foetus starts moving 40 days after conception - that is, when it starts to exhibit human features.<sup>11</sup> This became the official position of the Church at the Council of Vienna in 1312.<sup>12</sup> It remained as such until 1869 when Pope Pius IX repealed it. Early abortion was thus not morally forbidden until the second half of the nineteenth century neither by the Church nor by the common law.<sup>13</sup>*

*It was not until the first half of the seventeenth-century that Aristotle's theory, formerly supported by Aquinas and confirmed by the Council of Vienna, became discredited by Flemish physician, Thomas Feyens, alias Fienus. As a professor on the faculty of medicine at the Catholic University of Louvain, he published, in 1620, a treatise entitled *De formatione foetus in quo ostenditur animam rationalem in funditertia die*. Fienus' thesis was that human semen needs only three days to "coagulate the menstrual blood" so that it can receive a rational soul that will take care of the further organisation of the embryo and fetus.<sup>14</sup> The credit of the claim, made in Rome in 1621, that ensoulment does occur at the time of conception is to be attributed to the Italian physician Paolo Zacchias. In 1644, Pope Innocent X rewarded him for this brilliant achievement bestowing on him the title of General Proto-Physician of the Whole Roman Ecclesiastic State.<sup>15</sup> However; this did not affect the well-established and traditional view on abortion before quickening. Abortion remained still rather a sin against marriage since, following Augustine's teaching, sexual intercourse was only permissible in*

*married couples and with the sole intention of procreating.<sup>16</sup> This remains the current official teaching of the Roman Catholic Church.*

*During the seventeenth-century, European Common Law did not consider that abortion was an indictable offence. It was only in 1803 that an English statute made abortion of a quickened foetus a criminal offence. From the seventeenth through the nineteenth centuries, American law followed the English Common Law.<sup>17</sup>*

*It was not until 1967 that abortion became decriminalised in Britain.<sup>18</sup> In fact, it took Britain 29 years after the Bourne case to reach this decision. On June 14th 1938, well-respected British gynaecologist Aleck William Bourne (1886-1974) aborted a fourteen-year old girl at St Mary's Hospital in Paddington. She was six-weeks pregnant after having been gang-raped. On July 18, Bourne was indicted at the Old Bailey for "using an instrument to procure a miscarriage", but was later acquitted by the jury.<sup>19</sup> The United States followed the British move on abortion in 1973 with the famous or infamous Roe v Wade.*

*The salient points in the Roe v Wade Supreme Court decision were: (1) a first trimester abortion is a woman's right ;( 2) the unborn has no constitutionally recognised rights; and (3) the "viable" foetus has a "potential life" (potentiality being here interpreted as the ability to survive outside of the uterus). These points are important indicators of a paradigm shift. There is no mention of the intrinsic value of the unborn in any moral sense. There is strong emphasis on women's rights with no right of any sort attributed to the unborn (hence, no conflict between the woman and the foetus). The State and the medical profession through the Court, however, retain the right of decision-making after the first trimester. This has been seen "as much a reaffirmation of the rights of physicians to practice as they see fit as it has been an affirmation of women's right to control their reproduction."<sup>20</sup>*

*Roe v Wade, however, was not the end of the story of the abortion debate in the US. In 1989, Chief Justice William Rehnquist (the 'loser' in R v W) made a significant retreat from the abortion rights that had followed from R v W In Webster v Reproductive Health Services, he made it clear that the State has an interest in protecting life, not just after viability, but throughout pregnancy because, he claimed, life begins with conception.<sup>21</sup> This fuelled the debate about the beginning of life and the sanctity of life even outside*

*of the courts. In 1992, Planned Parenthood v Casey reaffirmed the essential holding of R v Wan the affirmation has remained the dominant principle guiding abortion legislations in the United States.*<sup>22</sup>

*Today, almost all developed countries have liberalized their abortion laws for reasons of human rights and safety. Restrictive abortion laws in some countries such as Nigeria are often due to old colonial laws and strong religious influence, especially of the Roman Catholic Church. Nevertheless, these countries with restrictive abortion laws are in recent years continually bulled and clubbed by the developed countries of the West to liberalize the abortion laws.*

### **Pro-abortion Arguments**

*Reasons given by abortion advocates on why abortion is moral and should be legalized are numerous and have continued to grow as the debate itself evolves. These notwithstanding, the arguments can be classified into three categories: 1) Reasons that bother on the status of the foetus, 2) reasons from the mother's rights to autonomy and health and 3) utilitarian reasons. The discussion on this will incorporate this broad categorization.*

### **Arguments from the Status of the Foetus**

*As has been consistently argued in this paper, one of the central bones of contention in the abortion debate is the status of the foetus. The question is this: what is killed in abortion? Another way of formulating the question is, when does life begin? Now, almost all pro-abortion advocates agree with their anti-abortion opponents that the intentional killing of any human being is both immoral and unlawful, where they disagree with their anti-abortion opponents is that abortion amounts to such wilful killing. Their reasons for such denial usually come in two forms: first, an outright denial of the humanity of the foetus and the concomitant right to life that is the prerogative of every human being and second, a qualified concession that the foetus becomes a human being but much later in pregnancy not at the moment of conception. In recognition of these two positions, M. O. Izunwa explains that "Pro-choice (pro-abortion) advocates variously aver that life begins at viability, at birth, or until there is capacity for social interaction."<sup>23</sup> A variant of the argument, according to McSweeney, is that the "human being does not begin to*

*exist until the embryo is fully implanted in the uterus.*"<sup>24</sup>

*The contention of the scholars who support the first point is that a foetus is not a person or is still part of the mother and hence cannot be said to have a right to life quite apart from the mother's. The strongest representation of this position is epitomised by Michael Tooley's extreme stance. Tooley states that abortion and infanticide are morally permissible. The main argument he is making to underpin this thesis is the lack of personhood not only of the unborn but also of the infant during the first months after birth. If rationality is what characterises a person, he says, and if to be a person is what ascribes moral standing and the right to life, then abortion and infanticide are morally permissible. What is morally impermissible, he claims, is to inflict pain even to an animal (but this does not mean that an animal has a right to life).*

*At a later stage, Tooley<sup>43</sup> modified his argument by changing the link between rights and desires to a link between rights and interests. In other words, to have a right to life, one must have an interest in having one's life continued. That interest, however, should not be something momentary. In addition, to have a "nonmonetary interest" one needs a concept of a "continuing mental substance."*<sup>25</sup>

*This moral position has worn some remarkable legal recognition in Europe, particularly in the English law. For instance, in Paton v. British Pregnancy Advisory Service Trustees, the court affirmed that "the foetus cannot, in English law have a right of its own at least until it is born and has separate existence from its mother."*<sup>26</sup> *This decision of the court in Paton's case was brought before the European Commission on Human Rights. The Commission considered the decision vis-à-vis the provision of Article 2 of the European Commission of Human Rights which states that "Everyone's" right to life shall be protected by law." At the end of their considerations they felt that the term "Everyone" applied only to post-natal and that a pre-natal construction of the same will fail.*<sup>27</sup> *This view-point received another legal seal in Winnipeg Child and Family Services v. G<sup>28</sup> where the Supreme Court of Canada held that the law does not recognize the unborn child as a legal or judicial person possessing any rights but has always treated the mother and the unborn child as one legal entity.*

*The second pro-choice argument for abortion based on the status of the foetus states that there is room for abortion in certain*

*conditions. What scholars who advance this view basically claim is that early abortion is permissible, but that it is morally wrong to terminate an advanced pregnancy. Now, one may ask: what is the criterion of moral considerability that tips the balance? On answers to this question, two schools of thought can be identified. One follows the recommendations of the Warnock Commission and the concept of the pre-embryo (or pro-embryo) with Joseph Donceel's position on delayed animation.*

*Contrary to the official position of the Catholic Church (divine command theories) which holds that the soul is infused at the moment of conception, (immediate animation), Donceel, a progressive theologian supports the view of delayed animation.<sup>29</sup> Donceel's argument rests on the relatively new concept of the pre-embryo (or pro-embryo). Advances in embryology have shown that during the first fourteen days of development a pre-embryo can split and produce identical twins; conversely (although very rarely) twin embryos can fuse (producing a chimera). In other words, before day fourteen the identity or the individuality of the pre-embryo is not definitely established; after the fourteenth day there is an individual. Donceel's point is that a soul cannot be infused before the individuality of the embryo is firmly established. In line with the embryological facts, he concludes that early abortion - that is, of a pre-embryo - is not immoral. On the whole, both Warnock and Donceel, believe that abortion of a pre-embryo is morally neutral. It follows from this argument that contraceptive methods such as the intra-uterine contraceptive device (IUD), the so-called morning after pill, and mifepristone are also morally neutral. The same argument would also allow the disposal of supernumerary embryos produced with in-vitro fertilization (IVF), as well as so-called embryo experimentation.*

*Another pro-choice thesis defending this second position is the claim that the acquisition of sentience is the criterion of moral considerability. The main advocate of sentience as the criterion of moral standing is L. Wayne Sumner<sup>30</sup>, who claims that a pre-sentient embryo/foetus has no right to life and can thus be aborted. The concept of sentience is also used by Peter Singer<sup>31</sup> as a criterion of moral standing of nonhuman animals. What this position basically claims is that early abortion is permissible, but that it is morally wrong to terminate an advanced pregnancy.*



*This view-point received legal seal in Roe v. Wade where US Supreme Court ruled that: "the state could not forbid to have an abortion during the first three months of pregnancy"<sup>32</sup> The court thus legalized abortion-on-demand during the first trimester for the major reason that life does not begin at conception or rather that the foetus does not become a human being until much later in pregnancy. It is from this background that Justice Blackmun writes in Roe v. Wade:*

*We need not resolve the difficult question of when life begins. When those trained in the respective disciplines of medicine, philosophy, and theology are unable to arrive at any consensus, the judiciary, at this point in the development of man's knowledge, is not in a position to speculate.<sup>33</sup>*

*The point here as Blackmun clarifies is that the state is not to take one theory of life (most likely, what he has in mind here is divine theory of immediate animation) and force those who do not agree with that theory to subscribe to it. This is also the reason why he again writes in Roe, "In view of all this, we do not agree that, by adopting one theory of life, Texas may override the rights of the pregnant woman that are at stake."<sup>34</sup> Similarly, in his dissenting opinion in Webster v. Reproductive Health Services, Justice Stevens goes even further than Blackmun:*

*The Missouri Legislature [which said that life begins at conception] may not inject its endorsement of a particular religious tradition in this debate, for 'the Establishment Clause does not allow public bodies to foment such disagreement.'<sup>35</sup>*

*Thus, the pro-life proposal that pro-choice women be prohibited from having abortions on the basis that individual human life begins at conception is viewed, not only as a violation of their right to privacy, but as a violation of the separation of church and state as well. Such a separation is supposedly necessary to sustain tolerance in a pluralistic society. As pro-choice advocate Virginia Mollenkott argues, "Women who believe that abortion is murder may never justly be required to have an abortion. Put in the words of a recent bumper-sticker: 'Don't like abortion, don't have one.'<sup>36</sup>*

*In approaching an evaluation of these pro-choice arguments on the status of the foetus, we need to recall the central conflicts in the abortion debate, when life begins or right to life. The conflicts as*



*we articulated them consist in the disagreement over the status of the foetus and the question of how to resolve the conflict autonomy between the mother and the foetus. Recalling this very important point is necessary because we are not out here to examine all the arguments against the pro-choice positions on the status of the foetus. What we intend doing is to assess these arguments according to whether it answers these two questions which we consider central in the abortion impasse.*

*Now, does the position of the pro-abortionists resolve the central conflicts in the abortion debate or when life begins as we articulated them? To answer this question, we need to remember that the first pro-choice position denies the personhood of the foetus together with the right to life that goes with. What this implies is that the position rejects the existence of any form of conflicts between the foetus and the mother. The only right that exists is the mother's and she should be allowed to do whatever she likes with it. That people believe there is a conflict of rights between the foetus and the mother is the reason there is debate in the first place. Thus, an outright denial of this conflict makes the position an unworthy candidate in resolving the abortion debate.*

*Another important reason, although less central to our discussion here, why the claim by pro-abortionists should be rejected is that it is counter intuitive and leads to absurd positions which no moral person would be ready to accept in practical life. Take for instance, the allowance that fetuses can be killed because they lack certain features observable in adults will by extension also legitimize the killing of infants since they too do not possess the said features (reasoning for example). As we have seen, this is actually the conclusion that scholars like Michael Tooley have come to and one begins to wonder what Tooley and his disciples think that society that makes law allowing mothers to kill their infants will look like. By and large, the position sounds repulsive and at odds with common-sense morality,*

*The second pro-choice argument on the status of the foetus when considered from the standard of measurement already explained does not fair better either. For example, the position assumes two stages of intrauterine life: 1) pre-sentience or pre-individuality; and 2) post-sentience or individuality/personhood. During phase 1 abortion is permissible, whereas during phase 2,*

*abortion is impermissible. During the gray area of dubious sentience the unborn is potentially sentient; after the pre-embryonic stage, the embryo/foetus is a potential person.*

*It is not only true that this position fail to convincingly address the mother-foetus autonomy conflict it also failed woefully to address the question that concerns the status of the foetus. Now, the underlining question this position tries to address is this: when does pain or reasoning begin? We can ask in this regards: what do we really know about the ability of an embryo/foetus to feel pain or to reason? Paraphrasing Thomas Nagel's famous "What is it like to be a bat?" (The difficulty if not the impossibility to know and to understand what other people really feel like), one may ask the question: "What is it like to be an embryo or a foetus?"*

*Particularly, the morality of abortion based on sentience not only assumes that from a certain stage, the foetus is sentient, but also that early termination inflicts pain to the foetus. This might well be a mere assumption, in need of scientific backup. Who of us recalls how painful it was to be squeezed through our mother's birth canal? If birth were so painful for the foetus (we surely know that it is for women), and if infliction of pain is always morally wrong, would there not be a moral obligation to deliver all foetuses by Caesarean section? But that would sound not only impossible but also outrageous. Similarly, labour wards where pain relief is not administered systematically to all parturient would be staffed by immoral midwives and obstetricians. For utilitarians, pleasure has to be maximised and suffering has to be minimised; and, every one counts for one and the same in the hedonic calculus. One might wonder why, in the utilitarian morality of abortion, only the foetus' pain (whatever that could be) seems to count in the hedonic calculus. The balance call for the avoidance of pain, women should be legally banned from having children until such a time that society finds means of delivery devoid of pain.*

### ***Arguments from the Mother's Right to Self-determination and Health***

*Beside the argument on the status of the foetus, another fundamental area pro-choicers anchor on to make their case for abortion is the mother's right to autonomy. The argument as it is usually formulated is that even if it is eventually established that the*

*foetus is a human being and thus has a right to life that still does not nullify the mother's right of self-determination which allows her to do with her body whatever she wants. Seen in this light, abortion becomes an issue not of killing a human being but simply of not allowing a human being to make use of another's property in this case the mother's womb. Among scholars who subscribe to this argument, two trends can be identified. (1) Scholars who accord the right to life to the foetus but still insist that the mother's rights to self-determination and health triumph such right (2) Scholars who hold that there is no conflict of rights because the right of the foetus is subsumed within the right of the mother*

*An instance of the first case is a situation in which pregnancy threatens the mother's life and abortion becomes an option in order to save the life of the mother. Pro-abortionists hold that even direct abortion is not only reasonable but necessary when the pregnant woman is very ill and her life is in a serious danger due to her pregnancy. In a situation like this according to pro-abortionists, the human conception in the womb is an unjust aggressor and it is therefore morally justified that the mother should in self-defence have the pregnancy terminated.<sup>37</sup>*

*A second practical instantiation of the first argument see abortion as a sign of maturity. According to this argument, for woman to be a full adult in the moral sense, not only does she have a right to bodily integrity but also to make and keep commitments. She has to determine her own life because if she does not, she is not capable of keeping prior and present commitments, and of making future ones, particularly in the areas of family, work and education. A right to abortion is integral to a woman's adult, mature responsibility and autonomy.<sup>38</sup>*

*A third example often used by pro-abortionists to buttress this first position is rape or incest. Before anything, it has to be observed that woman who becomes pregnant due to an act of either rape or incest is the victim of a horribly violent and morally reprehensible crime. Bioethicist Andrew Varga summarizes the argument from rape and incest in the following way:*

*It is argued that in these tragic cases the great value of the mental health of a woman who becomes pregnant as a result of rape or incest can best be safeguarded by abortion. It is also said that a pregnancy*

*caused by rape or incest is the result of a grave injustice and that the victim should not be obliged to carry the foetus to viability. This would keep reminding her for nine months of the violence committed against her and would just increase her mental anguish. It is reasoned that the value of the woman's mental health is greater than the value of the foetus. In addition, it is maintained that the foetus is an aggressor against the woman's integrity and personal life; it is only just and morally defensible to repel an aggressor even by killing him if that is the only way to defend personal and human values. It is concluded, then, that abortion is justified in these cases.<sup>39</sup>*

*The argument here then is that no woman should be compelled to endure unwanted pregnancy resulting from rape. To carry the child of a man who raped her is not just a violation of a woman's autonomy but also the greatest agony a woman can be made to go through. She is likely to live the rest of her life in fear of her sexual freedom being violated by an unwanted person.*

*Thomson criticizes the common method of deducing a woman's right to abort from the permissibility of a third party committing the abortion. In almost all instances, a woman's right to abortion may hinge on the doctor's willingness to perform it. If the doctor refuses, then the woman is denied her right. To base the woman's right on the accordance or refusal of a doctor, she says, is to ignore the mother's full personhood, and subsequently, her rights to her body. Thomson presents the hypothetical example of the 'expanding child:*

*Suppose you find yourself trapped in a tiny house with a growing child. I mean a very tiny house, and a rapidly growing child, you are already up against the wall of the house and in a few minutes you'll be crushed to death. The child on the other hand won't be crushed to death; if nothing is done to stop him from growing he'll be hurt, but in the end he'll simply burst open the house and walk out a free man.<sup>40</sup>*

*Thomson concedes that a third party indeed cannot make the choice*

*to kill either the person being crushed or the child. However, this does not mean that the person being crushed cannot act in self-defence and attack the child to save his or her own life. To liken this to pregnancy, the mother can be thought to be the house, the foetus the growing-child. In such a case, the mother's life is being threatened, and the foetus is the one who threatens it. Because for no reason should the mother's life be threatened, and also for no reason is the foetus threatening it, both are innocent, and thus no third party can intervene. But, Thomson says, the person threatened can intervene, by which justification a mother can rightfully abort. Continuing, Thomson returns to the 'expanding child' example and points out:*

*For what we have to keep in mind is that the mother and the unborn child are not like two tenants in a small house, which has, by unfortunate mistake, been rented to both: the mother owns the house. The fact that she does adds to the offensiveness of deducing that the mother can do nothing from the supposition that third parties can do nothing. But it does more than this: it casts a bright light on the supposition that third parties can do nothing.<sup>41</sup>*

*If we say that no one may help the mother obtain an abortion, we fail to acknowledge the mother's right over her body (or property). Thomson says that we are not personally obligated to help the mother but this does not rule out the possibility that someone else may act. As Thomson reminds, the house belongs to the mother; similarly, the body which holds a foetus also belongs to the mother.<sup>42</sup>*

*Similar version of Thompson's argument has also been offered by Block's in what he calls the theory of eviction. According to this theory, a foetus can be aborted only if it is not killed as a result (provided that it is a genuine medical possibility). Block claims to derive such a conclusion from the libertarian axiom of non-aggression, which prohibits harming other human beings (even those not yet conscious of their humanity), but allows for forcible removal of trespassers from one's private property (in this case the woman's womb).<sup>43</sup>*

*In line with the contention of those scholars who insist that there is no conflict between the mother's right to self-determination and the foetus right to life, Block denies that the voluntariness of the pregnancy obliges the woman to carry the foetus to term. According*

*to him, such an obligation could stem only from being an implicit contract between the two, and Block denies the existence of any such contract on the ground that one cannot consent (even implicitly) to any decision made before one came into being. Thus, he contends that the only valid reason for obliging the mother to carry out the pregnancy could stem from the existence of a relevant positive right (e.g., foetus's right to life), which is a notion incompatible with libertarian ethics.<sup>44</sup>*

*Curiously enough, as indicated in the first paragraph, Block also asserts that lethally aborting the foetus counts as a murder only given the existence of non-lethal ways of performing abortion, but does not so count if no such methods are available. This in itself seems to undermine Block's proposal, since it appears to introduce an arbitrary complication into the principle of non-aggression—after all, if evicting a trespasser is a right of every human being, and one should not be thought of as responsible for what happens to the trespasser after he is evicted, then why should the moral evaluation of the act of eviction depend on what eviction options are available and on which of them is applied to the trespasser?*

*By and large, the case this second argument makes is that any attempts to force women into a legal corner concerning their decisions during pregnancy must be avoided. Arguing purely from autonomy-based rights, the woman and only the woman is a rights bearer in these situations. There is no other legal person in existence and nobody else who can consent on the competent woman's behalf. She and she alone is custodian of her physical integrity. The woman has no autonomy-based obligation to the foetus because the foetus is not a person and cannot be thought to possess subjective interest. So if we do not concede that the foetus is a person, then we own it no duties and obligations, even if we may offer it some respect.*

*In spite of whatever form it appears, the bulwark of the arguments we examined here is that the mother's autonomy is the central question in the abortion debate and in order to respect that the mother should be allowed to abort. However, if respect for autonomy is a basic tenet or is the basic tenet of pro-choicer (and there is no reason to disagree with the importance of autonomy), it does not solve anything in the abortion debate. If the embryo/foetus is autonomous and has an inalienable right to life, the pregnant woman equally possesses inalienable autonomy and the right to life.*

*Since abortion has been medicalised, it can also conflict with the health care provider's autonomy (conscientious objection). Since men are responsible for impregnating women, they should be part of the decision-making process and share the responsibility. This adds up to four autonomies to be reconciled, or, at least, to be taken into consideration. This is a conundrum that pro-choicers cannot solve.*

### **Utilitarian Arguments**

*The third sets of arguments used by abortion advocates to justify their support for abortion are utilitarian in nature. Consequently, before accessing these arguments, let us first familiarize ourselves with the meaning of utilitarianism. An understanding of utilitarianism however, requires an insight into the meaning of consequentialism, an umbrella theory that encompasses both utilitarianism and other consequentialist theories. Thus, we shall begin our journey into utilitarianism from consequentialism. As the word implies, consequentialism is a label affixes to theories holding that actions are right or wrong according to the balance of their good or bad consequences. To buttress this meaning T. L. Beauchamp & J. F. Childress explain that for the consequentialists the right act in any circumstance is the one that produces the best overall result, as determined from an impersonal perspective that gives equal weight to the interests of each affected party. According to them, consequentialism "...is the belief that what ultimately matters in evaluating or judging actions or policies of action are the consequences that result from choosing one action or policy rather than the alternative."<sup>45</sup> In order words, in deciding the morality of actions, those actions that produce good, positive or desirable results are adjudged moral whereas those that produce negative or undesirable results are adjudged immoral. Seen as a subset of consequentialism, utilitarianism posits that all action should be directed toward achieving the greatest utility for the greatest number of people. It follows therefore that utilitarianism is an ethical doctrine that the moral worth of an action is solely determined by its contribution to overall utility. This philosophy judges everything in terms of its utility or usefulness. The basic tenet of utilitarianism and therefore the scale on which the morality of every action is measured is the moral imperative to avoid harm or pain. Thus, according to utilitarianism, pains are the greatest evil and*



*pleasure the greatest good. We should minimize pain and maximize pleasure for the greatest number.*<sup>46</sup>

However, in S. E. Stumpf's articulation, for utilitarian's, causing pain can only be morally justified if it is the only means to bring about a greater good. This is still in consonance with the "greatest happiness principle" according to which actions are right in proportion as they tend to promote happiness and wrong as they tend to produce the reverse of happiness. "By happiness are intended pleasure, and the absence of pain; by unhappiness, pain, and the privation of pleasure."<sup>47</sup> The point Stumpf makes in this quotation buttresses what we underscored our explanation on consequentialism according to which consequences is the basis for judging the morality of actions. Hence, while action may involve pain, the action is still considered moral if the pleasure of its utility outweighs the pain used in procuring the pleasure.

When applied to the abortion debate, utilitarianism is concerned with the amounts of pleasure and pain in situations where abortion is permitted as contrasted with the amounts of pleasure and pain where it is forbidden. As in the case with many issues in the utilitarian system, the rightness or wrongness of abortion turns mainly not on the mother or the foetus directly affected by the act, but on the less direct effects on the community at large. That is, the issue of abortion within a utilitarian consideration is stripped of the language of 'rights' and emotional sway over 'murdering babies', to the question of the desirability of the overall impact of abortion on the population.

Usually, the abortion arguments within the utilitarian framework are coined around two subheadings. The first consists in using the difficulty involved in implementing anti-abortion laws and the attendant health hazard of illegal abortion to argue for permissive abortion laws. The second justifies its call for the liberalization of abortion laws on grounds of the direct benefits of abortion to society.

In sum, advocates of the first position, contend that restrictive abortion law does not stop women who are determined to procure abortion from doing so. What it does is that it drives them to seek backstreets or illegal abortions in the hands of quacks and since these abortions are performed by non-experts the women either lose their lives or have their reproductive health permanently impaired in the process. The case here is that to stop or at least reduce the high

*maternal mortality associated with illegal abortion, abortion should be legalized. Legalization will make experts and adequate healthcare provision available for women who would wish to abort and hence reduce the deaths associated with illegal abortion.*

*It is obvious but needs to be reemphasized that pro-choice utilitarian arguments do not succeed in addressing the two questions that we consider very central to the abortion debate in this paper. The contentions that abortion law cannot be completely enforced, that some women die when they embark on illegal abortion, or that liberal abortion laws can be used to control overpopulation and crime does not address the question on the status of the foetus neither does it respond to the mother-foetus right dichotomy or address why abortion is considered a moral issue in the first place.*

*In addition, arguments from utilitarianism totally beg the question, because they assume that the unborn are not fully human. If the unborn are fully human, this argument is tantamount to saying that, since people will murder other people anyway, we ought to make it safe and legal for them to do so. But murder is never justified, even if there are social difficulties in forbidding it. Second, "A reasonable estimate for the actual number of criminal abortions per year in the pre-legalization era [prior to 1967] would be from a low of 39,000 (1950) to a high of 210,000 (1961) and a mean of 98,000 per year."<sup>48</sup> Contrasting this with the fact that there has been an average of 1.5 million abortions per year since 1973, one can only conclude that the pre-Roe anti-abortion laws were quite effective in limiting the number of abortions.*

*Now if the pro-choice advocate claims that a law cannot stop all abortions, he or she makes a trivial claim, for this is true of all laws which forbid illegal acts. For example, even though both hiring paid assassins and purchasing child pornography are illegal, some people remain undaunted and pursue them illegally. But there is no doubt that their illegality does hinder a vast number of citizens from obtaining them. Should we then legalize child pornography and the hit-man profession because we can't stop all people from obtaining such "goods" and "services"? Such reasoning is absurd.*

*In the final analysis, pro-abortionists, starting from those who argue for the non-personhood of the foetus through those who insist on the mother's right to personal autonomy or self-determination to those who endorse the utilitarian advantages of*

*abortion over its disadvantages, the common ground for all these positions is that abortion is not or is not total immoral and therefore should not be completely outlawed. In time, we will devote some more space to a closer examination of these arguments, for the meantime however, let us turn over to the arguments of pro-lifers.*

### ***Anti-abortion Arguments***

*The approach usually adopted by many scholars in presenting the abortion debate is to delineate the arguments from a particular group, pro-choicers for example and then sequentially use the arguments of their opponents, pro-lifers to evaluate the validity of the later position.*

### ***Arguments from the Status of the Foetus***

*Many pro-lifers have dwelt extensively on evidence from science to make their case that life begins at conception. J. Mat presented the following argument:*

*Pro-life and pro-choice advocates both seem to genuinely believe they are acting ethically. How can this be? I believe the question really boils down to how an individual views human life. Before I explain this, however, let me first dispel the common misconception that we somehow “don’t know exactly when life begins”. This is an outright falsehood. Any honest, thinking person who defends abortion will immediately concede that life begins at conception. Science answered that question a long time ago (for confirmation, just open any embryology textbook). Those who claim that a foetus is “only a clump of cells” overlook the fact that all of us are really just clumps of cells.<sup>49</sup>*

*However, this is not all. The question of why it is basically wrong to kill a human being which is more fundamental than the question of when life begins is still unanswered. For example, admitted that human life begins at conception but humans are not the only beings that have life, animals do as well. Why is it right to kill a cow but wrong to kill a human being?*

*Pro-lifers generally address the question of why it is wrong to kill human beings with their Principle of Sanctity of Life (PSL).*

*According to Ronald Dworkin, the PSL is at the heart of the conflict between staunch pro-lifers and liberal pro-choicers. The reason of the conflict is that for the pro-lifers abortion violates the PSL - this is what he calls the detached objection to abortion. Life is sacrosanct. End of the discussion.*<sup>50</sup>

*There are two different arguments supporting the PSL: the argument from association and the argument from history. Examples of the PSL by association would be that of the Osu Cast system in traditional Igbo society and the sacred cows in India; the lives of the Osu people and the cows are valued because they are associated with certain divinities. The basic argument which associated in use over the centuries to condemn killing which has been used in recent times against abortion is the imago Dei argument. The contention is that human life is sacred because man is the image of God. The foetus in the mother's womb, from the moment of conception bears this image in no less degree than the adult and therefore he or she has the right to life as much as the adult. Protecting the right of the foetus to life is as much the responsibility of the society as much as that of the adult. J. Mat states this as it is seen by pro-lifers:*

*This is why those of us on the pro-life side of the argument often speak in terms of the sanctity of human life rather than the happiness of human life. What does this mean? It means that we view all human life as having God-given value and certain inalienable rights – from the moment of conception to the moment of death. A life is valuable because it is created in the image of God – not because it possesses certain physical, mental, or emotional abilities...and not because it enjoys more total “happiness” than “unhappiness”.*<sup>51</sup>

*The argument from history derives either from the Divine Command theory or from the Natural Law theory. The basic claim of the Divine Command theorists is that a soul is infused at the time of conception; therefore, human life is sacrosanct from the time of conception. No exception should ever be tolerated. This is the expression of God's will. It has to be observed also that the divine command theory has its root in the Judeo-Christian “thou shall not kill” maxism.*

*The position of the Natural Law theorists is a secular variation on the Divine Command Theory: thou shall not kill. What nature has endowed with life is to be respected and allowed to follow*

*its course. Natural Law stands above and apart from the activities of human lawmakers; it constitutes an objective set of principles that can be discovered by the use of reason.*<sup>52</sup>

*Other versions of pro-life arguments demonstrating that fetuses are human beings and therefore must not be aborted have their roots on the theories we have described above. For example, Don Marquis' potentiality argument which contends that abortion is wrong because it robs someone of a "future like ours"<sup>53</sup>, still requires a justification of why human life is sacred in the first place. In the same manner, the arguments from essence and substance from Peter Kreeft<sup>54</sup> and J. P. Moreland respectively, attempts to answer the question on when human life begins but does not say why it is morally reprehensible to kill a human being.*<sup>55</sup>

*Be that as it may, the central claim of anti-abortionist in relation to the status of the foetus is not just that life begins at conception but also that life is sacrosanct because it has a special origin or association which endows it with sanctity and dignity. This sanctity is what makes killing a human being morally wrong at every stage of his development. In a telling elegance, J. Mat juxtaposes this position with utilitarian pro-choice argument:*

*In order to rationally justify the practice of abortion, a person must first accept the existentialist notion that human life is devoid of objective meaning (meaning derived from a Higher Source – not to be confused with subjective meaning derived from oneself). This philosophy then makes it possible for a person to embrace utilitarianism – a brand of ethics that seeks to maximize the overall level of "happiness" in the world. Following utilitarianism to its logical conclusion, one can then successfully argue that abortion is ethically justifiable. The aborted child doesn't enter the world to experience happiness or unhappiness, and the life of the woman with the pregnancy is made more "happy" (just for the sake of argument here) by not having to raise or support an unwanted child.*<sup>56</sup>

*As with pro-choice arguments on the status of the foetus, the positions of the pro-life advocates do not address the central questions in the abortion debate. Specifically, pro-lifers in a bid to protect the right to life of the foetus fail to recognize that the mother also has right that*

*must be protected. In order words, their either-or position leads to a dead-end that the argument itself cannot resolve.*

*Furthermore, One of the main difficulties with the Divine Command position is the fact that a theological premise (the infusion of a soul) is supposed to lead to a general moral conclusion (an ensouled entity is sacrosanct). The validity of an argument depends on whether the premise(s) is/are true. Since, as Curzer writes, “we have nothing like a soul detector”<sup>57</sup>, without a leap of faith the premise cannot be substantiated. Although there should be room, understanding, and tolerance for theologically inspired worldviews, the Divine Command theory is convincing only for those who believe in the existence of the God given soul. Nevertheless, as we observed above, even among those who believe in the soul new perspectives are currently defended. While the current official position and teaching of the Roman Catholic Church still sticks strictly to the Divine Command theory, progressive theologians like Joseph Donceel however, support the view of the so-called delayed animation(as opposed to the doctrine of immediate animation).*

*Natural Law theorists are mainly concerned with the sanctity of human life. Some of their arguments are, for instance, that a fertilised human egg is human because it has a complete and specifically human genetic equipment, or that since the time of conception the fertilised egg is alive.<sup>58</sup> No one would really argue seriously against the claim that a human embryo (or zygote for that matter) is both human and alive, and that it has a human genome. These are plain biological facts. Conversely one could, however, argue (for argument sake) whether chromosomal abnormalities (missing or additional chromosomes) deprives an entity from humanity in the same way as we deny apes humanity (their genetic equipment is extremely close to that of humans).*

*What really matters is, first, whether to be a zygote/pre-embryo/embryo is enough to possess moral standing, and, second, whether one should ascribe moral standing only to the species Homo sapiens. Animal rights activists have a serious moral objection against speciesism. The moral consider ability of a zygote remains a matter of ongoing debate. The last word has not yet been said in reproductive technology, and the related moral issues surrounding it are cropping up every day. A clear example of the complexity of the ethics of reproduction and of the ascription of a clear-cut moral*

*weight to a pre-embryo is that moral philosophers with a more or less strong pro-life inclination choose the middle-of-the-road argument from potentiality to ascribe moral standing to the unborn. It is not in virtue of what the zygote/pre-embryo/embryo proper/foetus is now (because at the early stages it is just a cell or a cluster of cells that, if circumstances permit, will one day become a person) that it deserves moral consideration, but rather in virtue of what it the potential to become has. However, one could argue and ask whether a frozen human embryo has a potential unless it is implanted in a woman's uterus; if not implanted a frozen embryo will ultimately be discarded, unless its stem cells are utilised (the only alternative potentiality).*

### ***Need to be Responsible***

*Pro-lifers also argue that keeping and bringing a pregnancy to terms in itself is a way of owning-up or showing responsibility for one's actions. The argument here is that any woman engaging in sex should bear in mind that sexual activity can result to pregnancy. If in spite of this awareness, the woman still goes ahead to indulge in sexual activity, the woman should bear the consequence of her action by undergoing the pregnancy and the labour. According to pro-lifers, to abort the child is dodging the responsibility of her actions and meting out capital punishment on the innocent child. To abort in this condition becomes an act of cowardice, selfishness and irresponsibility.*

*A high profile proponent of this position is J. Mat. He articulates his position on this as follows:*

*When people ask me why I'm not pro-choice, I respond by saying I AM pro-choice: I support a woman's right to choose whether or not to get pregnant. Sex isn't a biological necessity, and abstinence is a 100% fool proof way to avoid pregnancy. I support a woman's right to make this choice. When a woman chooses to become sexually active – regardless of the type of birth control being used (if any) – she does so with the knowledge that this behaviour might result in pregnancy.<sup>59</sup>*

*This according to Mat is where personal responsibility comes into play. He was insistent that when a woman engages in sexual activity, she ought to be held morally and legally responsible for protecting*



*the life of her child in the event that a pregnancy occurs. He as well believes that a man who engages in sexual activity ought to be held responsible in a similar manner “(ideally by helping to raise the child as a father...but at the very least, by being held financially accountable for the child).” In summary, Mat’s argument consists in this:*

*But when a man and a woman engage in irresponsible, recreational sex...they shouldn’t be allowed to decide that they don’t want to “keep the baby”. If two adults make poor decisions, the solution isn’t to murder an innocent child.<sup>60</sup>*

*As the arguments from the need for responsibility does not address the fundamental problems of the abortion impasse, we shall not be detained here evaluating. We naturally assume that our points in the previous subheading adequately apply to this subheading as well.*

### **Utilitarian Arguments**

*Although, anti-abortion arguments are in the main valued-based or deontological in nature nevertheless, sometimes in order to meet their opponents on their own grounds, pro-lifers also adopt utilitarian reasoning to demonstrate the immorality of abortion. The arguments generally use either the negative impacts of allowing or the positive outcomes of disallowing abortion on individuals and society to support their call for anti-abortion legislation.*

*One of such negative arguments is that abortion procedures, especially the surgical ones, no matter how safe we wish to claim that technology has made them still poses some degree of real danger to the mother’s health and life. According to Ekwutosi some of these risks include, “a perforated uterus, perforated bowel, sterility, and death.” He maintains that:*

*The risk of complication can increase depending on how far pregnancy has progressed. The risk is also dependent upon the skill and experience of the practitioner; maternal age, health, pre-existing conditions, methods and instruments used, medications used; the skill and experience of those assisting the practitioner and quality of recovery and follow-up care.<sup>61</sup>*

*Although, Ekwutosi is ready to concede that:*

*In some societies where abortion is illegal the risks are*

*even higher due to quack and unsafe method used. Unsafe abortion methods (e.g. use of certain drugs, herbs, or insertion of non-surgical objects in the uterus) are potentially dangerous, carrying a significantly elevated risk for permanent injury or death, as compared to abortion done by professionals.<sup>62</sup>*

*The point he particularly intends to underline is that abortion is never free from risks. In that regards, he argues that it is safer and more beneficial to women and society if abortion is avoided altogether.*

*Louise-Kennedy also makes similar point when he argues that:*

*Induced abortion involves risks. Repeated abortion by dilation and curettage for instance, weakens and damages the cervix. This often leads to premature delivery or spontaneous abortion in subsequent pregnancies. Again, the cavity of the uterus may be damaged leading to the formation of scar tissue and consequently secondary infertility. Even when the abortion is procured by suction, the womb may be displace from its natural position. When the womb is not in its proper position, conception may take place in the fallopian tube but the zygote cannot be nourished by the wall of the uterus. As a result of this, the zygote dies away. In some women, frequent abdominal pain occurs. Abdominal pains are not conducive for pregnancy and miscarriage may occur. In the case of some young girls it is even worst. Some of them also suffers from psychological disturbances and attracts aspersions to themselves. Not only do the moral consequences of their act weight them down, their social relationship too is marred. They may need good counselling and other kinds of asylum, confidence and self-esteem.<sup>63</sup>*

*Another utilitarian reason pro-lifers use to justify their anti-abortion stance is that granted that pregnancy can be very burdensome; however, there are good alternatives short of abortion that can take care of unwanted pregnancy. Analyzing this position, Ekwutosi explains that a woman put in the family way through rape etc. who feels it would be difficult for her to show love to the child*

*or a mother who feels she has many children and therefore does not want to have the child, should hand it over for adoption or to motherless homes instead of aborting it. His reason for advocating this alternative is that there are many childless couples willing to adopt children.*

*Now the overall logic underpinning this advocacy lies in the utilitarian principle that emphasizes the primacy of utility. Going back to Ekwutosi's contention above, if the child is adopted instead of aborted, the child whose life is spared, the mother, who is saved from the moral and psychological burden of abortion, the childless couple who adopt the child and the society itself stand to gain much more than it would have if the child is aborted. Considering these utilitarian categories within the framework of utility calculus, the average pro-lifer believes that it is more beneficial to society as well as individuals to disallow abortion. On the whole, pro-life-utilitarian arguments like all arguments by pro-lifers aim at a single purpose: to rationally explain the immorality of abortion and hence explain why it should not be permitted.*

### **Conclusion**

*Finally, the pro-choice and pro-life positions as our analyses in this paper have shown their merits. Nonetheless, their demerits are what undermine their suitability as ideal solutions to the abortion controversy. This paper presents the principle of identity and the doctrine of double effect as more suitable solutions to the problem of the morality of abortion.*

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